

District of Columbia
Code
1961 EDITION

TITLES 18-44

OFFICE OF LAW REVISION COUNSEL



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DISTRICT OF COLUMBIA CODE

ANNOTATED

1961 EDITION

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF
COLUMBIA BY REASON OF BEING GENERAL AND PER-
MANENT LAWS OF THE UNITED STATES),
IN FORCE ON JANUARY 2, 1961

NOTES TO DECISIONS THROUGH DECEMBER 1960



VOLUME TWO

TITLE 18—DECEDENTS' ESTATES
AND THEIR DISTRIBUTION
TO
TITLE 44—RAILROADS AND OTHER CARRIERS

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TITLES OF DISTRICT OF COLUMBIA CODE

1. Administration.
2. District Boards and Commissions.
3. Board of Public Welfare.
4. Police and Fire Departments.
5. Building Restrictions and Regulations.
6. Health and Safety.
7. Highways, Streets, Bridges.
8. Parks and Playgrounds.
9. Public Buildings and Grounds.
10. Weights, Measures, and Markets.
11. Judiciary and Jurisdiction.
12. Right to Remedy—Conditions Affecting.
13. Process, Pleadings and Parties.
14. Proof.
15. Judgments and Execution of Judicial Powers.
16. Special Remedies and Proceedings.
17. Review.
18. Decedents' Estates and Their Distribution.
19. Wills.
20. Administrators, Executors, and Collectors.
21. Guardian and Ward, and Insane Persons.
22. Criminal Offenses.
23. Criminal Procedure.
24. Prisoners and Their Treatment.
25. Alcoholic Beverages.
26. Banks and Other Financial Institutions.
27. Cemeteries and Crematories.
28. Commercial Instruments and Transactions.
29. Corporations.
30. Domestic Relations.
31. Education and Cultural Institutions.
32. Eleemosynary, Curative, Correctional and Penal Institutions and Agencies.
33. Food and Drugs.
34. Hotels and Lodging-Houses.
35. Insurance.
36. Labor.
37. Libraries.
38. Liens.
39. Military.
40. Motor Vehicles.
41. Partnerships.
42. Personal Property.
43. Public Utilities.
44. Railroads and Other Carriers.
45. Real Property.
46. Social Security.
47. Taxation and Fiscal Affairs.
48. Trade-Marks and Trade Names.
49. Compilation and Construction of Code.

CONTENTS

PREFACE.....	Page vii
TABLE OF TITLES AND CHAPTERS.....	ix
TITLE 18—DECEDENTS' ESTATES AND THEIR DISTRIBUTION.....	827
TITLE 19—WILLS	855
TITLE 20—ADMINISTRATORS, EXECUTORS, AND COLLECTORS.....	869
TITLE 21—GUARDIAN AND WARD, AND INSANE PERSONS.....	891
TITLE 22—CRIMINAL OFFENSES.....	919
TITLE 23—CRIMINAL PROCEDURE.....	1037
TITLE 24—PRISONERS AND THEIR TREATMENT.....	1057
TITLE 25—ALCOHOLIC BEVERAGES.....	1089
TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS.....	1117
TITLE 27—CEMETERIES AND CREMATORIES.....	1145
TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS.....	1151
TITLE 29—CORPORATIONS	1233
TITLE 30—DOMESTIC RELATIONS.....	1311
TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS.....	1323
TITLE 32—ELEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTI- TUTIONS	1381
TITLE 33—FOOD AND DRUGS.....	1419
TITLE 34—HOTELS AND LODGING-HOUSES.....	1443
TITLE 35—INSURANCE	1445
TITLE 36—LABOR	1549
TITLE 37—LIBRARIES	1583
TITLE 38—LIENS.....	1585
TITLE 39—MILITARY	1597
TITLE 40—MOTOR VEHICLES.....	1615
TITLE 41—PARTNERSHIPS.....	1677
TITLE 42—PERSONAL PROPERTY.....	1681
TITLE 43—PUBLIC UTILITIES.....	1685
TITLE 44—RAILROADS AND OTHER CARRIERS.....	1743

PREFACE

This is the fourth edition of the Code of Laws of the District of Columbia prepared and published pursuant to Title 1 U.S. Code, section 202. This edition contains all the general and permanent laws relating to or in force in the District of Columbia, on January 2, 1961, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature. The Code is prima facie evidence of existing law.

Many new features and improvements were incorporated in the 1940 edition, reflecting, as far as practicable, the preferences of the users of the Code who responded to a questionnaire sent out by the Committee on Revision of the Laws to several thousand attorneys and Government officers and employees within the District of Columbia.

An entirely new arrangement of subject matter was adopted which presents all the procedural statutes in Volume One and the general statutes, in modern alphabetical arrangement, in Volume Two of that edition.

A modern method of numbering the sections was adopted. The number before the dash indicates the title; the last two numbers indicate the section; and the middle number or numbers indicates the chapter. No chapter in any title has more than 60 sections. An example: Section 11-1208 would be found as Section 8 of chapter 12 in Title 11. Section 1-240 would be Title 1, chapter 2, section 40.

Provision has been made for future annual supplements in the form of pocket parts rather than separate volumes.

The 1940 edition was the first official Code containing the annotations of the court decisions interpreting these laws. Numerous cross references and historical notes have been added to increase the usefulness of this Code. These annotations, cross references and historical notes are brought up to the end of 1960 in this edition and will be kept current in the future annual supplements.

The work of preparing this edition was done by the Committee on the Judiciary of the House of Representatives with the assistance of the West Publishing Company and the Edward Thompson Company. The Committee acknowledges especially the valuable assistance rendered by the staff of Dr. Charles J. Zinn, law revision counsel for the Committee. Acknowledgment is also made to the numerous officials of the District and Federal governments and the members of the bench and bar of the District whose suggestions have been most helpful.

The Committee invites all criticisms and suggestions looking to the improvement of the Code.


Chairman.


Chairman, Subcommittee No. 3.

WASHINGTON, D.C., January 1961.

Page vii

TABLE OF TITLES AND CHAPTERS

PART I.—GOVERNMENT OF DISTRICT (JUDICIARY EXCEPTED)

TITLE 1.—ADMINISTRATION

Chapter	Section
1. Creation of District—General Provisions.....	1-101
2. Commissioners and Other Officers.....	1-201
3. Officers and Employees Generally.....	1-301
4. Commissioners of Deeds.....	1-401
5. Notaries Public.....	1-501
6. Surveyor.....	1-601
7. Inspection—Regulatory Provisions.....	1-701
8. Contracts.....	1-801
9. Claims against District.....	1-901
10. National Capital Planning Commission.....	1-1001
11. Elections.....	1-1101
12. Presidential Inaugural Ceremonies.....	1-1201
13. Washington Metropolitan Region Development.....	1-1301
14. National Capital Region Transportation.....	1-1401

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

1. Healing Arts Practice Act.....	2-101
2. Anatomical Board.....	2-201
3. Dentists.....	2-301
4. Nurses.....	2-401
5. Optometrists.....	2-501
6. Pharmacy.....	2-601
7. Podiatry.....	2-701
8. Veterinarians.....	2-801
9. Accountants.....	2-901
10. Architects.....	2-1001
11. Barbers.....	2-1101
12. Boxing Commission.....	2-1201
13. Cosmetologists.....	2-1301
14. Plumbers.....	2-1401
15. Steam and Other Operating Engineers.....	2-1501
16. Transferred.....	
17. Armory Board.....	2-1701
18. Professional Engineers.....	2-1801
19. Council on Law Enforcement.....	2-1901
20. Pawnbrokers.....	2-2001
21. Charitable Solicitations.....	2-2101
22. Legal Aid Society.....	2-2201
23. Bonding of Home Improvement Business.....	2-2301

TITLE 3.—BOARD OF PUBLIC WELFARE

1. Board of Public Welfare.....	3-101
---------------------------------	-------

TITLE 4.—POLICE AND FIRE DEPARTMENTS

1. Metropolitan Police.....	4-101
2. United States Park Police.....	4-201
3. White House Police.....	4-301
4. Fire Department.....	4-401
5. Police and Firemen's Retirement and Disability.....	3-501
6. Trial Boards.....	4-601
7. Awards for Meritorious Service.....	4-701
8. Salaries.....	4-801
9. Miscellaneous Provisions.....	4-901

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chapter	Section
1. Alley Dwellings.....	5-101
2. Building Lines.....	5-201
3. Fire Escapes and Safety Provisions.....	5-301
4. Zoning and Height of Buildings.....	5-401
5. Unsafe Structures.....	5-501
6. Insanitary Buildings.....	5-601
7. Housing Redevelopment.....	5-701
8. Preservation of Historic Places and Areas in the Georgetown Area.....	5-801

TITLE 6.—HEALTH AND SAFETY

1. Health Department—Organization.....	6-101
2. Blindness in Infants—Prevention.....	6-201
3. Vital Statistics.....	6-301
4. Drainage of Lots.....	6-401
5. Garbage.....	6-501
6. Manufacture, Renovation, and Sale of Mattresses.....	6-601
7. Privies.....	6-701
8. Smoke Prevention.....	6-801
9. Weeds and Plant Diseases.....	6-901
10. Black-outs in War Time.....	6-1001
11. Federal Government Restaurants.....	6-1101
12. Office of Civil Defense.....	6-1201
13. Cancer and Malignant Neoplastic Diseases.....	6-1301

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

1. Highway Plans.....	7-101
2. Land for Streets.....	7-201
3. Alleys and Minor Streets.....	7-301
4. Closing Streets, Alleys, or Highways.....	7-401
5. Bridges, Viaducts, and Subways.....	7-501
6. Repair and Construction.....	7-601
7. Street Lighting.....	7-701
8. Removal of Snow and Ice.....	7-801
9. Rental of Space under Sidewalks.....	7-901
10. Real Estate Sale or Rent Signs.....	7-1001
11. Barbed-Wire Fences.....	7-1101
12. Miscellaneous.....	7-1201
13. Washington National Airport.....	7-1301
14. Public Airports.....	7-1401

TITLE 8.—PARKS AND PLAYGROUNDS

1. Parks and Playgrounds.....	8-101
2. Recreation Board.....	8-201

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

1. Regulating Provisions.....	9-101
2. Construction of Public Buildings.....	9-201
3. Sale of Public Lands.....	9-301
4. Exchange of District-owned land.....	9-401
5. Repairs and Improvements.....	9-501

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

1. Weights, Measures, and Markets.....	10-101
--	--------

PART II.—CIVIL PROCEDURE**TITLE 11.—JUDICIARY AND JURISDICTION**

Chapter	Section
1. General Provisions.....	11-101
2. United States Court of Appeals for the District of Columbia.....	11-201
3. United States District Court for the District of Columbia.....	11-301
4. Clerk of District Court.....	11-401
5. Probate Court.....	11-501
6. Police Court.....	11-601
7. Municipal Court and Municipal Court of Appeals.....	11-701
8. Small Claims and Conciliation Branch of Municipal Court.....	11-801
9. Juvenile Court.....	11-901
10. United States Attorney.....	11-1001
11. Marshal.....	11-1101
12. Coroner.....	11-1201
13. Attorneys.....	11-1301
14. Juries and Jury Commissioners.....	11-1401
15. Fees and Costs.....	11-1501
16. Uniform Support.....	11-1601

TITLE 12.—RIGHT TO REMEDY—CONDITIONS AFFECTING

1. Abatement and Revivor.....	12-101
2. Limitation of Actions.....	12-201
3. Statute of Frauds.....	12-301
4. Fraudulent Conveyances.....	12-401

TITLE 13.—PROCESS, PLEADINGS AND PARTIES

1. Process.....	13-101
2. Pleadings.....	13-201
3. Amendment of and Mistakes in Pleadings and Proceedings.....	13-301
4. Parties.....	13-401

TITLE 14.—PROOF

1. Evidence in General.....	14-101
2. Depositions.....	14-201

Chapter

Section

3. Competency of Witnesses.....	14-301
4. Documentary Evidence.....	14-401
5. Absence for Seven Years.....	14-501

TITLE 15.—JUDGMENTS AND EXECUTION OF JUDICIAL POWERS

1. Judgments and Decrees.....	15-101
2. Executions.....	15-201
3. Proceedings in Aid of Execution.....	15-301
4. Exemptions.....	15-401

TITLE 16.—SPECIAL REMEDIES AND PROCEEDINGS

1. Account.....	16-101
2. Adoption.....	16-201
3. Attachment and Garnishment.....	16-301
4. Divorce and Separation.....	16-401
5. Ejectment.....	16-501
6. Eminent Domain.....	16-601
7. Gaming Transactions.....	16-701
8. Habeas Corpus.....	16-801
9. Joint Contracts.....	16-901
10. Mandamus.....	16-1010
11. Change of Name.....	16-1101
12. Negligence Causing Death.....	16-1201
13. Partition and Assignment of Dower.....	16-1301
14. Payment of Money into Court.....	16-1401
15. Quieting Title Obtained by Adverse Possession.....	16-1501
16. Quo Warranto.....	16-1601
17. Reference of Questions of Law and Fact.....	16-1701
18. Replevin.....	16-1801
19. Set-Off.....	16-1901
20. Sureties.....	16-2001

TITLE 17.—REVIEW

1. Jurisdiction and Method.....	17-101
---------------------------------	--------

PART III.—PROBATE LAW AND PROCEDURE**TITLE 18.—DECEDENTS' ESTATES AND THEIR DISTRIBUTION**

1. Law of Descents.....	18-101
2. Dower and Curtesy Rights.....	18-201
3. Assets of Estate.....	18-301
4. Inventory of Assets.....	18-401
5. Claims of Creditors.....	18-501
6. Sale of Assets.....	18-601
7. Distribution of Surplus—Beneficiaries.....	18-701
8. Family Allowance and Administration of Small Estates.....	18-801
9. Uniform Simultaneous Death.....	18-901

TITLE 19.—WILLS

1. Wills in General.....	19-101
2. Devises by Will.....	19-201
3. Probate of Wills.....	19-301
4. Register of Wills.....	19-401

TITLE 20.—ADMINISTRATORS, EXECUTORS, AND COLLECTORS

1. General Provisions.....	20-101
2. Administrators.....	20-201
3. Executors.....	20-301
4. Collectors.....	20-401
5. Suits.....	20-501
6. Accounts.....	20-601
7. Estates of Absentees and Absconders.....	20-701

TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS

1. Infants and Other Incompetents.....	21-101
2. Property of Infants and Persons Non Compos Mentis.....	21-201
3. Insane Persons, Inquests.....	21-301
4. Drunkards and Drug Addicts.....	21-401
5. Conservators.....	21-501

PART IV.—CRIMINAL LAW AND PROCEDURE**TITLE 22.—CRIMINAL OFFENSES**

Chapter	Section	Chapter	Section
1. General Provisions.....	22-101	28. Rape.....	22-2801
2. Abortion.....	22-201	29. Robbery.....	22-2901
3. Adultery.....	22-301	30. Seduction.....	22-3001
4. Arson.....	22-401	31. Trespass—Injuries to Property.....	22-3103
5. Assault—Mayhem—Threat of Bodily Harm.....	22-501	32. Weapons.....	22-3201
6. Bigamy.....	22-601	33. Vagrancy.....	22-3301
7. Bribery—Obstructing Justice.....	22-701	34. Miscellaneous.....	22-3401
8. Cruelty to Animals.....	22-801	35. Sexual Psychopaths.....	22-3501
9. Domestic Relations.....	22-901	36. Implements of Crime.....	22-3601
10. Fornication.....	22-1001		
11. Disorderly Conduct.....	22-1101		
12. Embezzlement.....	22-1201		
13. False Pretenses—False Personation.....	22-1301		
14. Forgery—Frauds.....	22-1401		
15. Gambling.....	22-1501		
16. Game and Fish Laws.....	22-1601		
17. Harbor Regulations.....	22-1701		
18. Housebreaking.....	22-1801		
19. Incest.....	22-1901		
20. Indecent Publications.....	22-2001		
21. Kidnaping.....	22-2101		
22. Larceny—Receiving Stolen Goods.....	22-2201		
23. Libel—Blackmail.....	22-2301		
24. Murder—Manslaughter.....	22-2401		
25. Perjury.....	22-2501		
26. Prison Breach—Misprisions.....	22-2601		
27. Prostitution—Pandering.....	22-2701		

TITLE 23.—CRIMINAL PROCEDURE

1. General Provisions.....	23-101
2. Indictments.....	23-201
3. Search Warrants and Arrest.....	23-301
4. Fugitives from Justice.....	23-401
5. Uniform Act on Fresh Pursuit.....	23-501
6. Professional Bondsmen.....	23-601
7. Death Penalty.....	23-701
8. Out-of-State Witnesses.....	23-801

TITLE 24.—PRISONERS AND THEIR TREATMENT

1. Probation.....	24-101
2. Indeterminate Sentences and Paroles.....	24-201
3. Insane Criminals.....	24-301
4. Prisons and Prisoners.....	24-401
5. Rehabilitation of Alcoholics.....	24-501
6. Rehabilitation of Users of Narcotics.....	24-601

PART V.—GENERAL STATUTES**TITLE 25.—ALCOHOLIC BEVERAGES**

Chapter	Section	Chapter	Section
1. Alcoholic Beverage Control.....	25-101	5. Liabilities of Parties.....	28-501

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

1. Banking Institutions in General.....	26-101
2. Joint Accounts—Adverse Claimants—Trust Accounts.....	26-201
3. Trust, Loan, Mortgage, Safe Deposit and Title Corporations.....	26-301
4. Building Associations.....	26-401
5. Credit Unions.....	26-501
6. Money Lenders—Licenses.....	26-601
7. Common Trust Funds.....	26-701

TITLE 27.—CEMETERIES AND CREMATORIES

1. Cemetery Associations—Regulatory Provisions.....	27-101
---	--------

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS**NEGOTIABLE INSTRUMENTS—UNIFORM LAW**

1. Form and Interpretation.....	28-101
2. Consideration.....	28-201
3. Negotiation.....	28-301
4. Rights of Holder.....	28-401

6. Presentment for Payment.....	28-601
7. Notice of Dishonor.....	28-701
8. Discharge of Negotiable Instruments.....	28-801
9. Bills of Exchange.....	28-901
10. Promissory Notes and Checks.....	28-1001

SALES—UNIFORM ACT

11. Formation of Contract.....	28-1101
12. Transfer of Property as Between Seller and Buyer.....	28-1201
13. Performance of Contract.....	28-1301
14. Rights of Unpaid Seller against Goods.....	28-1401
15. Actions for Breach of Contract.....	28-1501
16. Interpretation of Uniform Sales Act.....	28-1601
17. Bulk Sales.....	28-1701

WAREHOUSE RECEIPTS—UNIFORM LAW

18. Issuance of Warehouse Receipts.....	28-1801
19. Obligations and Rights of Warehousemen upon Their Rights.....	28-1901
20. Negotiation and Transfer of Receipts.....	28-2001
21. Criminal Offenses.....	28-2101
22. Interpretation.....	28-2201
23. Fiduciaries.....	28-2301
24. Bonds and Undertakings.....	28-2401
25. Assignment of Choses in Action.....	28-2501
26. Assignments for Benefit of Creditors.....	28-2601

Chapter	Section
27. Interest and Usury.....	28-2701
28. Computation of Time.....	28-2801
29. Stock Transfers.....	28-2901

TITLE 29.—CORPORATIONS

1. General Provisions.....	29-101
2. Business Corporations (1901).....	29-201
3. Boards of Trade.....	29-301
4. Institutions of Learning.....	29-401
5. Religious Societies.....	29-501
6. Charitable, Educational and Religious Associations.....	29-601
7. Dissolution.....	29-701
8. Cooperative Associations.....	29-801
9. Business Corporations (1954).....	29-901

TITLE 30.—DOMESTIC RELATIONS

1. Marriage.....	30-101
2. Property Rights.....	30-201

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

1. Board of Education.....	31-101
2. Compulsory School Attendance and Work Permits.....	31-201
3. Tuition of Nonresidents.....	31-301
4. Free Textbooks.....	31-401
5. Vocational Rehabilitation of Residents of the District of Columbia.....	31-501
6. Teachers, School Officers and Other Employees in General.....	31-601
7. Retirement of Public School Teachers.....	31-701
8. Use of School Buildings.....	31-801
9. Medical and Dental Colleges.....	31-901
10. Gallaudet College.....	31-1001
11. Miscellaneous.....	31-1101
12. Aviation Education in High Schools.....	31-1201
13. Educational Agency for Surplus Property.....	31-1301
14. Public School Food Services.....	31-1401
15. Salaries of Teachers, School Officers and Other Employees.....	31-1501

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS AND AGENCIES

1. Association for Works of Mercy.....	32-101
2. Washington Humane Society.....	32-201
3. Hospitals and Asylums—General Provisions.....	32-301
4. Saint Elizabeths Hospital.....	32-401
5. Industrial Home School.....	32-501
6. District Training School.....	32-601
7. Home Care for Dependent Children.....	32-701
7A. Aid to Dependent Children.....	32-751
7B. Placement of Children in Family Homes.....	32-781
8. National Training School for Boys.....	32-801
9. National Training School for Girls.....	32-901
10. Miscellaneous.....	32-1001

TITLE 33.—FOOD AND DRUGS

1. Adulteration.....	33-101
2. Candy.....	33-201

Chapter	Section
3. Milk, Cream and Ice Cream.....	33-301
4. Uniform Narcotic Drug Act.....	33-401
5. Meats and Meat Products.....	33-501
6. Restaurants.....	33-601
7. Regulation and Control of Certain Drugs Other Than Narcotics.....	33-701

TITLE 34.—HOTELS AND LODGING-HOUSES

1. Rights and Liabilities.....	34-101
--------------------------------	--------

TITLE 35.—INSURANCE

1. Insurance Department—General Provisions.....	35-101
2. Provisions Applicable to More Than One Kind of Insurance.....	35-201
3. Life Insurance—Definitions.....	35-301
4. Department of Insurance with Respect to Life Companies.....	35-401
5. Domestic Life Companies.....	35-501
6. Foreign and Alien Life Companies.....	35-601
7. Provisions Relating to All Life Insurance Companies.....	35-701
8. Life Insurance—Penalties—Constitutionality.....	35-801
9. Fraternal Benefit Associations.....	35-901
10. Industrial Life Insurance.....	35-1001
11. Marine Insurance.....	35-1101
12. Insurance Agents Other Than Life.....	35-1201
13. Fire, Casualty and Marine Insurance.....	35-1301
14. Regulation of Fire Insurance Rates.....	35-1401
15. Regulation of Casualty and Other Insurance Rates.....	35-1501

TITLE 36.—LABOR

1. Apprentices.....	36-101
1A. Voluntary Apprentices.....	36-121
2. Child Labor and Work Permits.....	36-201
3. Employment of Women.....	36-301
4. Minimum Wage Law.....	36-401
5. Workmen's Compensation.....	36-501
6. Payment and Collection of Wages.....	36-601

TITLE 37.—LIBRARIES

1. Public Libraries.....	37-101
--------------------------	--------

TITLE 38.—LIENS

1. Mechanics, Materialmen and Contractors.....	38-101
2. Garage Keepers and Liverymen.....	38-201
3. Hospitals.....	38-301

TITLE 39.—MILITARY

1. Composition, Organization and Control.....	39-101
2. Commissioned Officers.....	39-201
3. Noncommissioned Officers.....	39-301
4. Enlisted Personnel.....	39-401
5. Armament, Equipment and Supplies.....	39-501
6. Active Military Duty.....	39-601
7. Courts-Martial.....	39-701
8. Pay and Allowances.....	39-801
9. Miscellaneous Provisions.....	39-901

TITLE 40.—MOTOR VEHICLES

Chapter	Section
1. Registration of Motor Vehicles.....	40-101
2. Inspection	40-201
3. Operators' Permits.....	40-301
4. Motor Vehicle Safety Responsibility....	40-401
5. Public-Owned Vehicles.....	40-501
6. Regulation of Traffic.....	40-601
7. Liens on Motor Vehicles or Trailers....	40-701
8. Regulation of Parking.....	40-801
9. Installment Sales of Motor Vehicles....	40-901

TITLE 41.—PARTNERSHIPS

1. Limited Partnerships.....	41-101
2. Dissolution and Payment of Debts.....	41-201

TITLE 42.—PERSONAL PROPERTY

1. Recordation of Instruments.....	42-101
------------------------------------	--------

TITLE 43.—PUBLIC UTILITIES

1. Definition of Terms and Application of Law.....	43-101
2. Creation of Public Utilities Commission—Members—Counsel—Employees	43-201
3. Service, Valuation, Accounts.....	43-301
4. Rates, Examinations, Investigations, and Hearings.....	43-401
5. Sale and Merger of Utilities.....	43-501
6. Gas and Electric Corporations.....	43-601
7. Orders and Court Proceedings.....	43-701
8. Issuance of Securities.....	43-801
9. Penal Provisions.....	43-901
10. General Provisions.....	43-1001
11. Electric Light and Power Companies—Special Acts.....	43-1101
12. Gas Companies—Special Acts.....	43-1201
13. Private Conduits.....	43-1301
14. Telegraph and Telephone Companies....	43-1401
15. Water Supply, Assessments, and Rates	43-1501
16. Sanitary Sewage Works.....	43-1601

TITLE 44.—RAILROADS AND OTHER CARRIERS

1. Railroads.....	44-101
2. Street Railways and Bus Lines.....	44-201
3. Passenger Motor Vehicles for Hire....	44-301
4. Employers' Liability.....	44-401

TITLE 45.—REAL PROPERTY

1. Conveyable Estates and Methods of Conveyance.....	45-101
2. Interpretation of Instruments.....	45-201
3. Forms—Covenants and Warranties....	45-301
4. Acknowledgments.....	45-401
5. Effective Date and Recording of Deeds	45-501
6. Mortgages and Deeds of Trust.....	45-601
7. Recorder of Deeds.....	45-701
8. Estates in Land.....	45-801
9. Landlord and Tenant.....	45-901
10. Powers.....	45-1001

Chapter	Section
11. Sale of Contingent and Limited Interests.....	45-1101
12. Uses and Trusts.....	45-1201
13. Waste.....	45-1301
14. Real Estate and Business Brokers' Licenses.....	45-1401
15. Ownership by Aliens.....	45-1501
16. Rent Control.....	45-1601
17. Servicemen's Readjustment.....	45-1701

TITLE 46.—SOCIAL SECURITY

1. Care of Blind.....	46-101
2. Old Age Assistance.....	46-201
3. Unemployment Compensation.....	46-301

TITLE 47.—TAXATION AND FISCAL AFFAIRS

1. General Provisions.....	47-101
2. Budget Estimates.....	47-201
3. Collection and Disbursement of Taxes..	47-301
4. Designation of Property for Assessment and Taxation.....	47-401
5. Rates, Records and Surplus Funds....	47-501
6. Tax Assessor.....	47-601
7. Assessment of Real Property.....	47-701
8. Exemptions from Taxation.....	47-801
9. Family Dwellings Occupied by Owners..	47-901
10. Real Property Tax Sales.....	47-1001
11. Special Assessments.....	47-1101
12. Taxation of Personal Property.....	47-1201
13. Enforcement of Personal Property Taxes by Distrain or Levy.....	47-1301
14. Enforcement of Personal Property Taxes by Acquisition of Lien.....	47-1401
15. Income and Franchise Taxes.....	47-1501
16. Inheritance and Estate Taxes.....	47-1601
17. Financial Institution, Guaranty Company and Public Utility Taxes.....	47-1701
18. Insurance Companies.....	47-1801
19. Motor Fuel Tax.....	47-1901
20. Dog Tax.....	47-2001
21. Private Employment Agency Licenses..	47-2101
22. Public Auction Permits.....	47-2201
23. General License Law.....	47-2301
24. District of Columbia Tax Court.....	47-2401
25. Miscellaneous Provisions.....	47-2501
26. Gross Sales Tax.....	47-2601
27. Compensatory-Use Tax	47-2701
28. Cigarette Tax.....	47-2801
29. Admission to Licensed Places—Posting of Price Scale.....	47-2901
30. Closing Out Sales.....	47-3001

TITLE 48.—TRADE-MARKS AND TRADE NAMES

1. Registration of Mineral Water Bottles..	48-101
2. Registration of Milk Containers.....	48-201
3. Registration of Containers for Beverages Composed Principally of Milk....	48-301
4. Registration of Labor Union Labels....	48-401

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

1. General Provisions.....	49-101
2. Rules of Construction.....	49-201
3. Laws Remaining in Force.....	49-301

PART III

PROBATE LAW AND PROCEDURE

TITLE 18.—DECEDENTS' ESTATES AND THEIR DISTRIBUTION

Chap.	Sec.
1. Law of Descents.....	18-101
2. Dower and Curtesy Rights.....	18-201
3. Assets of Estate.....	18-301
4. Inventory of Assets.....	18-401
5. Claims of Creditors.....	18-501
6. Sale of Assets.....	18-601
7. Distribution of Surplus—Beneficiaries.....	18-701
8. Family Allowance and Administration of Small Estates.....	18-801
9. Uniform Simultaneous Death.....	18-901

Chapter 1.—LAW OF DESCENTS

Sec.
18-101. Course of descents generally.
18-102. Trust estates.
18-103 to 18-105. Repealed.
18-106. Antenuptial children.
18-107. Repealed.
18-108. Advancements.
18-109. Party committing murder or manslaughter takes no interest in estate of deceased—Descent of affected property—Bona fide purchasers.
18-110. Descent through alien ancestor no bar.
18-111. Repealed.

§ 18-101. Course of descents generally.

On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred as follows: To those persons, who, according to the laws of the District of Columbia now or hereafter in force relating to the distribution of the personal property of intestates, would be the distributees to take the surplus personal property of such intestate, if he or she had died a resident of the District of Columbia and possessed of such surplus of personalty; and such kindred (including the surviving spouse as such) shall take in the same proportions as are or shall be fixed by such laws relating to personal property, and shall take as tenants in common. (Mar. 3, 1901, 31 Stat. 1342, ch. 854, § 940; Mar. 6, 1935, 49 Stat. 39, ch. 28, § 3 (A); Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 1.)

AMENDMENTS

1957—Act Aug. 31, 1957, amended section generally to read as above set out. Prior to such amendment, section read as follows:

On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred in the following order, namely:

"First. To his child or children and their descendants, if any, equally.

"Second. If there be no child or descendant of a child, then equally to the father and mother of the intestate, or the whole to the sole surviving parent.

"Third. If there be no father or mother, then to the brothers and sisters of the intestate, and their descendants equally.

"Fourth. If there be no brother or sister, or descendant from a brother or sister, then the whole shall go to the widow or widower of the intestate.

"Fifth. If none such, then one moiety of the estate shall go to the paternal, the other to the maternal kindred of the intestate in the following order:

"Sixth. First to the grandfather and grandmother equally, but if one be dead the entire moiety to the sole surviving grandparent.

"Seventh. If none, then to the uncles and aunts of the intestate, and their descendants equally.

"Eighth. If none such, then to the great-grandfathers and great-grandmothers, in the same manner prescribed for grandfather and grandmother in subdivision 6.

"Ninth. If none, then to the brothers and sisters of the grandfathers and grandmothers, and their descendants equally.

"Tenth. And so on in other cases, without end, passing to the nearest lineal ancestors and the descendants of such ancestors.

"Eleventh. If there be no paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal or paternal kindred, the whole shall go to the kindred of the husband or wife of the intestate in the like course as if such husband or wife had died entitled to the estate; and if the intestate has had more husbands or wives than one, and all have died before such intestate, then the estate shall be equally divided among the kindred of the several husbands or wives in equal degree."

1935—Act Mar. 6, 1935, § 3(A), amended section 940 of act Mar. 3, 1901 generally, and section 3(B) of act Mar. 6, 1935, repealed sections 941-951 of act Mar. 3, 1901. Prior to such amendment, sections 940-951 of act Mar. 3, 1901, read as follows:

"SEC. 940. CHILDREN.—On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred in the following order, namely: First. To his child or children and their descendants, if any, equally.

"SEC. 941. ESTATE DESCENDED FROM FATHER.—If there be no child or descendant of a child, and the estate descended to the intestate on the part of the father, then to the brothers and sisters of the intestate, of the blood of the father, and their descendants equally.

"SEC. 942. If there be no brother or sister, as aforesaid, or descendant from a brother or sister, then to the grandfather on the part of the father; and if no such grandfather living, then to the descendants of such grandfather and their descendants in equal degree equally; and if no descendant of such grandfather, then to the father of such grandfather, and if none such living, then to the descendants of such father in equal degree; and so on, passing to the next lineal male paternal an-

cestor, and if none such, to his descendants in equal degree equally, without end.

"Sec. 943. If there be no paternal ancestor or descendant from such ancestor, then to the mother of the intestate, and if no mother living, then to her descendants in equal degree equally.

"Sec. 944. If there be no mother living, or descendants from such mother, then to the maternal ancestors and their descendants, in the same manner as is above directed as to the paternal ancestors and their descendants.

"Sec. 945. ESTATE DESCENDED FROM MOTHER.—If the estate descended to the intestate on the part of the mother, and said intestate shall leave no child or descendant of a child surviving him, then the estate shall go to his brothers and sisters, of the blood of the mother, and their descendants in equal degree equally.

"Sec. 946. If there be no such brother or sister or descendant of such brother or sister, then to the grandfather on the part of the mother, and if no such grandfather living, then to his descendants in equal degree equally; if no such descendant of such grandfather, then to the father of such grandfather, and if none such living, then to his descendants in equal degree; and so on, passing to the next male maternal ancestor, and, if none such living, to his descendants in equal degree equally.

"Sec. 947. If there be no such maternal ancestor or descendant from such maternal ancestor, then to the father, and if no father living, then to his descendants in equal degree equally; and if no father or descendant from the father, then to the paternal ancestors and their descendants, in the same manner as hereinbefore directed as to the maternal ancestors.

"Sec. 948. ESTATE ACQUIRED BY PURCHASE.—If the estate was acquired by the intestate by purchase, or descended to or vested in him in any other manner than as hereinbefore mentioned, and there be no child or descendant of a child of such intestate, then the estate shall descend to his brothers and sisters of the whole blood and their descendants in equal degree equally.

"Sec. 949. HALF-BLOOD BROTHERS AND SISTERS.—If there be no brother or sister of the whole blood, or descendant of such brother or sister, then to the brothers and sisters of the half blood and their descendants in equal degree equally.

"Sec. 950. PATERNAL AND MATERNAL ANCESTORS ALTERNATELY.—If there be no brother or sister of the whole or the half blood, or any descendant from such, then to the father, and if no father living, then to the mother, and if no mother living, then to the grandfather on the part of the father, and if no such grandfather living, then to the descendants of such grandfather in equal degree equally; and if no such grandfather or any descendant from him, then to the grandfather on the part of the mother, and if no such grandfather, then to his descendants in equal degree equally; and so on without end, alternating the next male paternal ancestor and his descendants, and the next male maternal ancestor and his descendants, and giving preference to the paternal ancestor and his descendants.

"Sec. 951. HUSBAND AND WIFE.—If there be no descendants or kindred of the intestate, as aforesaid, to take the estate, then the same shall go to the husband or wife, if any, as the case may be; and if the husband or wife be dead, then to his or her kindred, in the like course as if such husband or wife had survived the intestate and had then died entitled to the estate by purchase; and if the intestate has had more husbands or wives than one, and all shall have died before such intestate, then the estate shall be equally divided among the kindred of the several husbands or wives in equal degree equally."

EFFECTIVE DATE OF 1957 AMENDMENT

Section 11 of act Aug. 31, 1957, provided that: "This Act [adding sections 18-201a and 18-215a, amending this section and sections 18-210 to 18-212, 18-714 to 18-717 and 30-201, and repealing sections 18-103 to 18-105, 18-107, 18-111 and 18-213 to 18-215] shall become effective ninety days after the date of its enactment [Aug. 31, 1957]."

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of act Aug. 31, 1957, provided that: "Any provision of law inconsistent with the provisions of this

Act or any amendment made by this Act [adding sections 18-201a and 18-215a, amending this section and sections 18-210 to 18-212, and 30-201, and repealing sections 18-103 to 18-105, 18-107, 18-111 and 18-213 to 18-215], is hereby repealed."

CROSS REFERENCES

Distribution of death benefits of fraternal benefit associations, see § 35-901.

Distribution of personal property, see §§ 18-701 to 18-723.

Distribution of proceeds of action for wrongful death, see § 16-1203.

Inheritance by adopted children, see § 16-222.

NOTES TO DECISIONS

Agreements between kin 1
Ancestral property 2
Construction of wills 3
Evidence 4
Per stirpes or per capita 5

1. Agreements between kin

Where deceased's cousins entered into agreement admitting that other claimants were deceased's uncle and aunt and providing for distribution of deceased's estate but in plenary proceedings to determine heirship cousins refused to execute answer admitting such relationship, and instead filed answer which denied such relationship and stated that the cousins were deceased's sole heirs, after which the alleged uncle and aunt filed answer claiming to be deceased's sole heirs, in cousin's action for declaratory relief, evidence sustained finding that the cousins had not repudiated the agreement and justified determination that the agreement was enforceable. *Wueger v. Braun* (1943, 132 F. 2d 25, 77 U.S. App. D.C. 50).

2. Ancestral property

Real estate devised to testatrix by her grandmother was ancestral property, and would have descended to her surviving brother as her sole heir at law in the absence of a will under the prior law. *Thomas v. Young* (1928, 22 F. 2d 588, 57 App. D.C. 282).

3. Construction of wills

Where will devised the residue consisting of personal property to heirs at law and next of kin in accordance with existing laws of the District, the surviving next of kin, who were first cousins, are entitled to take all the personalty as against second cousins who would have been heirs had realty been devised. *Binford v. Diller* (1950, 177 F. 2d 731, 85 U.S. App. D.C. 365).

4. Evidence

To establish pedigree there must be some competent evidence of relationship between himself and declarants. *Welch v. Lynch* (30 App. D. C. 122).

5. Per stirpes or per capita

Where property descends to descendants of the maternal grandfather, the distribution is per stirpes of the grandfather and not per capita. *McManus v. Lynch* (28 App. D. C. 381).

§ 18-102. Trust estates.

Whenever a trustee is seized of the naked legal estate in any lands, tenements, or hereditaments in fee simple, and shall die intestate thereof, the said legal estate shall be deemed to have descended to such person or persons as would inherit the beneficial estate if the same were vested in him according to the provisions aforesaid. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 952.)

§§ 18-103 to 18-105. Repealed. Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 4 (a-c).

Section 18-103, act Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 953, related to right of inheritance of children in being and after born children, and is now covered by section 18-714.

Section 18-104, acts Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 954; Mar. 6, 1935, 49 Stat. 40, ch. 28, § 4, related to kindred of the whole and half blood, and is now covered by section 18-715.

Section 18-105, acts Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 955; Mar. 6, 1935, 49 Stat. 40, ch. 28, § 5, related to the degrees of representation in the estate of an intestate.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective 90 days after Aug. 31, 1957, see note under section 18-101.

§ 18-106. Antenuptial children.

If any man shall have a child or children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgment, be legitimated and capable in law of inheriting and transmitting heritable property as if born in wedlock. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 957.)

NOTES TO DECISIONS

1. Children born out of wedlock

Child born out of wedlock are legitimated under this section. *Thomas v. Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

There was no evidence introduced before the court that the father had married either of the women and acknowledged the children as his own, both of which acts, marriage and acknowledgment, are necessary to legitimize children in this jurisdiction under the Code. *Blethyn v. Bidder* (1949, 80 F. Supp. 962).

§ 18-107. Repealed. Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 4(d).

Section, acts Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 958; June 30, 1902, 32 Stat. 537, ch. 1329, related to the rights of illegitimate children, and is now covered by section 18-716.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 90 days after Aug. 31, 1957, see note under section 18-101.

§ 18-108. Advancements.

Any child or children of an intestate, or their issue, who may have received from the intestate any real estate by way of advancement may elect to come into partition with his other heirs on bringing such advancement, or the value thereof at the time such advancement was received, into hotchpot with the estate descended; but such child or children, or their issue, shall not be entitled to claim a share by descent without bringing such advancement, or the value thereof as aforesaid, into the common stock or hotchpot, if there be another child or children not equally provided for: *Provided*, That if any child or children or descendant shall have been advanced by the intestate by settlement or portion of personalty, which shall not be equalized under the provisions of section 18-707, such advance shall be treated as real estate for the purposes of this section. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 959; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out the word "unprovided" and inserted in lieu thereof the words "not equally provided."

CROSS REFERENCE

Legacy as satisfaction of advancement, see §§ 18-707, 19-109.

§ 18-109. Party committing murder or manslaughter takes no interest in estate of deceased—Descent of affected property—Bona fide purchasers.

No person who shall be convicted of the felonious homicide of another, either by way of murder or manslaughter, shall take any estate or interest of any kind whatsoever in any kind of property whatsoever

from that other by way of inheritance, distribution, devise, or bequest, or shall take any remainder, reversion, or executory interest dependent upon the death of that other; and the estate or interest or property to which the person so convicted would have succeeded or would have taken in any way from or after the death of the person so killed by him shall go as if the person so convicted had died before the person whom he shall be convicted of killing. And every policy of insurance procured, directly or indirectly, by the person so convicted for his own benefit or payable to him upon the life of the person so killed shall be void. This section shall not affect the rights of bona fide purchasers of any such property for value without notice. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 961.)

§ 18-110. Descent through alien ancestor no bar.

In making title by descent it shall be no bar to a party claiming as heir that any ancestor, whether living or dead, through whom he derives his descent from the intestate is or has been an alien. (Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 960.)

§ 18-111. Repealed. Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 4 (e).

Section, Comp. Stat. D.C., p. 497, § 38; acts Mar. 3, 1901, 31 Stat. 1344, ch. 854, § 962; June 30, 1902, 32 Stat. 537, ch. 1329, provided that any lands in the District of Columbia of which any person shall die seized in fee simple intestate, without any heir capable of inheriting, shall escheat to the United States, and is now covered by section 18-717.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 90 days after Aug. 31, 1957, see note under section 18-101.

Chapter 2.—DOWER AND CURTESY RIGHTS

Sec.

18-201. Dower—Right of quarantine.

18-201a. Right of dower abolished—Exception—Intestate share—Right of spouse to encumber real property.

18-202. Dower in equitable titles.

18-203. Forfeiture of dower by desertion and adultery of wife.

18-204. Release of dower when wife is insane or has been absent for seven years.

18-205. Jointure after marriage—Election to take dower.

18-206. Legal jointure.

18-207. Dower not to be defeated by default or fraudulent judgment against husband—Fraudulent assignment by guardian of heir.

18-208. Assignment by guardian.

18-209. Restoration to dower upon eviction from jointure.

18-210. Devisé or bequest to spouse.

18-211. Renunciation of devises and bequests to spouse—Form—Limitation—Interest to be taken by widow or widower upon such renunciation.

18-212. Rights of surviving spouse if there is no renunciation.

18-213 to 18-215. Repealed.

18-215a. Estate by the curtesy abolished.

§ 18-201. Dower—Right of quarantine.

A widow, after the death of her husband, incontinent, and without any difficulty, shall have her marriage and her inheritance and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her

husband, within which days her dower shall be assigned her (if it were not assigned her before) or that the house be a castle; and if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid; and she shall have in the meantime her reasonable estovers of the common; and for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the church door. (9 Henry 3, ch. 7, § 1, 1225; Kilty's Rept., p. 205; Alex. Brit. Stat., p. 1; Comp. Stat. D. C., p. 36, § 164.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

CROSS REFERENCES

Abolition of right of dower, see § 18-201a.
Assignment of dower in partition proceedings, see § 16-1301 et seq.
Release of dower, see §§ 21-301, 30-216.
Sale of real estate to pay debts or legacies, assignment of dower, sale subject to dower, see § 18-610.

§ 18-201a. Right of dower abolished—Exception—Intestate share—Right of spouse to encumber real property.

(a) The right of dower, and its incidents, are hereby abolished; except that with respect to parties who intermarried prior to the effective date of this Act, the wife shall retain her dower rights in all real estate whereof the husband, prior to the effective date of this Act, was seized of an estate of inheritance at any time during the marriage. As to any such real estate of which the husband dies seized, the share of the wife therein, as provided in section 18-101, shall be in lieu of her dower rights unless she elects to take the same in similar manner and within the period as authorized in section 18-211, providing for renunciation of devises and bequests under wills.

(b) The intestate share as provided by section 18-101, shall attach to all real property owned by husband or wife during coverture: *Provided*, That neither husband nor wife hereafter shall have the right to convey, transfer or encumber his or her real property free of the surviving spouse's interest in case of intestacy, as provided in sections 18-101, 18-201a, 18-210 to 18-212, 18-215a, 18-714 to 18-717, and 30-201, without joinder of the other spouse. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 3.)

EFFECTIVE DATE

Section effective 90 days after Aug. 31, 1957, see section 11 of act Aug. 31, 1957, set out as a note under section 18-101.

NOTES TO DECISIONS

Construction with other laws 1
Purpose 2
Retroactive effect 3
Rights of incompetent wife 4

1. Construction with other laws

Section 18-204 depriving wife who has been adjudged incompetent of her rights of dower in any real property acquired by husband subsequent to adjudication of incompetency and while adjudication is in force, and this section providing that husband or wife does not have right to convey his or her property free of surviving spouse's interest in case of intestacy without joinder of other spouse, are not repugnant or inconsistent, and

this section did not repeal section 18-204. *Vito v. Bonart and Vito* (1958, 163 F. Supp. 747).

2. Purpose

Purpose of this section providing that neither husband nor wife shall have right to convey, transfer or encumber his or her real property free of surviving spouse's interest in case of intestacy without joinder of other spouse is to prevent the destruction of the intestate share of one spouse by a conveyance made by other spouse during lifetime of the former. *Vito v. Bonart and Vito* (1958, 163 F. Supp. 747).

3. Retroactive effect

A retrospective operation will not be given to a statute which interferes with antecedent rights, or by which human action is regulated, unless such be the unequivocal and inflexible import of the terms, and the manifest intention of the legislature. *Vito v. Vito and Bonart* (1959, 272 F. 2d 555, 106 U.S. App. D.C. 326).

4. Rights of incompetent wife

Where before the effective date of this section providing that an intestate share would attach to all realty owned by husband or wife during coverture, husband entered into a contract to convey certain realty acquired subsequent to his wife's adjudication of incompetency, husband was authorized to convey the realty without his wife's signature, as fully as if he were unmarried, under section 18-204 providing for such a conveyance where a married woman has been found upon inquisition to be a lunatic or insane. *Vito v. Vito and Bonart* (1959, 272 F. 2d 555, 106 U.S. App. D.C. 326).

§ 18-202. Dower in equitable titles.

A widow shall be entitled to dower in lands held by equitable as well as legal title in the husband at any time during the coverture, whether held by him at the time of his death or not, but such right of dower shall not operate to the prejudice of any claim for the purchase money of such lands or other lien on the same. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1158.)

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

NOTES TO DECISIONS

Common law rule 2
Decisions under prior law 1
Equitable lien 3
Refusal to release dower 4

1. Decisions under prior law

Appellant was entitled to a decree declaring a deed of trust to be without legal effect or operation to bar her of her right to dower in the premises therein mentioned and described; and her right and title to dower should, in all respects, be and remain as if said appellant had never joined in said deed; and she was entitled to an assignment of dower, and to an account for rents and profits for the time they have been wrongfully withheld from her. *Follansbee v. Follansbee* (1 App. D. C. 326).

When dower was not specifically assigned, the widow of the former owner and mother of the children would not be a proper party. *Baltimore & P. R. Co. v. Taylor* (6 App. D. C. 259).

Inchoate right of dower could not be broader than the estate of the husband upon which it depended. *Sis v. Boarman* (11 App. D. C. 116).

A widow being in possession of the only piece of property in which her dower could be assigned, her right thereto ought to confer upon her such continuing right of possession as to bar ejectment by the heirs at law, whose duty it was to make the proper assignment. *Wilkes v. Wilkes* (18 App. D. C. 90).

2. Common law rule

At common law the wife had no dower in an equity of redemption. *Follansbee v. Follansbee* (1 App. D. C. 326).

The common law rule that a widow is not entitled to dower in lands to which the husband has a remainder in fee if the remainderman predecease the life tenant is not

modified by 1901 Code, § 1158 (this section). *Talty v. Talty* (40 App. D. C. 587).

"Prior to 1896, there was no statute giving a wife dower in the equitable estate of her husband, and she was not entitled to any under the common law." *Waggaman v. Dulaney* (48 App. D. C. 14).

3. Equitable lien

Equitable lien was superior to dower right. *Waggaman v. Dulaney* (48 App. D.C. 14).

4. Refusal to release dower

Equity would not at instance of vendee decree specific performance of a contract for the sale of land when the wife of the vendor refused to relinquish her right of dower to the vendor. *Barbour v. Hickey* (2 App. D. C. 207, 24 L. R. A. 763).

Where wife of vendor is entitled to dower in the lands, conveyance of good title can not be made without her consent, and where she refuses to release her dower, equity will not enforce specific performance of husband's contract to sell. *Reilly v. Cullinane* (1923, 287 F. 994, 58 App. D.C. 17).

§ 18-203. Forfeiture of dower by desertion and adultery of wife.

If a wife willingly leave her husband, and go away, and continue with her advouterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coercion reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action. (13 Edw. I, ch. 34, § 4, 1285; *Kilty's Rept.*, p. 213; *Alex. Brit. Stat.*, p. 138; *Comp. Stat. D. C.*, p. 36, § 165.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

§ 18-204. Release of dower when wife is insane or has been absent for seven years.

Where any married woman is a lunatic or insane, and has been so found upon inquisition, and the said finding remains in force, or where any married woman has been absent or unheard of for seven years, the husband of such lunatic or insane or absent person may grant and convey by his separate deed, whether the same be absolute or by way of lease or mortgage, as fully as if he were unmarried, any real estate which he may have acquired since the finding of such inquisition or since the beginning of such absence. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1165.)

CROSS REFERENCES

Abolition of right of dower, see § 18-201a.

Release of dower generally, see § 30-216.

Release of dower of insane person, see § 21-301.

NOTES TO DECISIONS

Construction with other laws 1

Rights of incompetent wife 2

1. Construction with other laws

This section depriving wife who has been adjudged incompetent of her rights of dower in any real property acquired by husband subsequent to adjudication of incompetency and while adjudication is in force, and section 18-201a providing that husband or wife does not have right to convey his or her property free of surviving spouse's interest in case of intestacy without joinder of other spouse, are not repugnant or inconsistent, and section 18-201a did not repeal this section. *Vito v. Bonart and Vito* (1958, 163 F. Supp. 747).

2. Rights of incompetent wife

Where before the effective date of section 18-201a providing that an intestate share would attach to all realty owned by husband or wife during coverture, husband entered into a contract to convey certain realty acquired subsequent to his wife's adjudication of incompetency, husband was authorized to convey the realty without his wife's signature, as fully as if he were unmarried, under this section providing for such a conveyance where a married woman has been found upon inquisition to be a lunatic or insane. *Vito v. Vito and Bonart* (1959, 272 F. 2d 555, 106 U.S. App. D.C. 326).

§ 18-205. Jointure after marriage—Election to take dower.

If any wife have, or hereafter shall have any manors, lands, tenements, or hereditaments unto her given and assured after marriage, for term of her life, or otherwise in jointer, and the said wife after that fortune to overlive her said husband, in whose time the said jointer was made or assured unto her, that then the same wife so overliving shall and may at her liberty, after the death of her said husband, refuse to have and take the lands and tenements so to her given, appointed, or assured during the coverture, for term of her life, or otherwise in jointer, and thereupon to have, ask, demand, and take her dower by writ of dower, or otherwise, according to the common law, of and in all such lands, tenements, and hereditaments as her husband was and stood seized of any state of inheritance at any time during the coverture. (27 Henry 8, ch. 10, § 9, 1535; *Kilty's Rept.*, p. 231; *Alex. Brit. Stat.*, p. 297; *Comp. Stat. D. C.*, p. 40, § 175.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

§ 18-206. Legal jointure.

Whereas divers persons have purchased, or have estate made and conveyed of and in divers lands, tenements, and hereditaments unto them and to their wives, and to the heirs of the husband, or to the husband, and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband, and to the wife for term of their lives, or for term of life of the said wife; or where any such estate, or purchase of any lands, tenements, hereditaments, hath been, or hereafter shall be made to any husband, and to his wife, in manner and form above expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointer of the wife; that then in every such case, every woman married, having such jointer made, or hereafter to be made, shall not claim, nor have title to have any dower of the residue of the lands, tenements, or hereditaments, that at any time were her said husbands, by whom she hath any such jointer, nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband; but if she have no such jointer, then she shall be admitted and enabled to pursue, have, and demand her dower by writ of dower, after the due course and order of the common laws. (27

Henry 8, ch. 10, § 6, 1535; Kilty's Rept., p. 231; Alex. Brit. Stat., p. 296; Comp. Stat. D. C., p. 39, § 173.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

§ 18-207. Dower not to be defeated by default or fraudulent judgment against husband—Fraudulent assignment by guardian of heir.

In case where the husband, being impleaded for land, giveth up the land demanded unto his adversary by covin; after the death of the husband, the justices shall award the wife her dower, if it be demanded. In case the husband loseth the land by default, if the wife, after the death of her husband, demandeth her dower, and if it be alledged, that her husband lost the land, by judgment, and it be found that it was by default, the tenant must answer; then it behoveth the tenant to answer further, and to shew that he had right, and hath in the aforesaid land, according to the form of the writ that the tenant before purchased against the husband. And if he can shew that the husband of such wife had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the wife shall recover nothing of her dower; which thing if he can not shew, the wife shall recover her dower. Where it chanceth that a woman not having right to demand dower, the heir being within age, doth purchase a writ of dower against a gardian, and the gardian endoweth the woman by favour, or maketh default, or by collusion defendeth the plea so faintly, whereby the woman is awarded her dower in prejudice of the heir; it is provided, that the heir, when he cometh to full age, shall have an action to demand the seisin of his ancestor against such a woman, like as he should have against any other deforceor; yet so, that the woman shall have her exception saved against the demandant, to shew that she had right to her dower, which if she can shew, she shall go quit and retain her dower, and the heir shall be grievously amerced, according to the discretion of the justices; and if not, the heir shall recover his demand, &c. In like manner the woman shall be aided, if the heir or any other do implead her for her dower, or if she lose her dower by default, in which case the default shall not be so prejudicial to her, but that she shall recover her dower, if she have right thereto. (13 Edw. 1, ch. 4, 1285; Kilty's Rept., p. 212; Alex. Brit. Stat., p. 106; Comp. Stat. D. C., p. 37, § 169.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

§ 18-208. Assignment by guardian.

A writ of admeasurement of dower shall be granted to a gardian; neither shall the heir, when he cometh to full age, be barred by the suit of such a gardian, that sueth against the tenant in dower feignedly, and by collusion, but that he may admeasure the dower after, as it ought to be admeas-

ured by the law. (13 Edw. 1, ch. 7, 1285; Kilty's Rept., p. 212; Alex. Brit. Stat., p. 111; Comp. Stat. D. C., p. 38, § 170.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

§ 18-209. Restoration to dower upon eviction from jointure.

If any woman be lawfully expelled or evicted from her jointer, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expelled shall amount or extend unto. (27 Henry 8, ch. 10, § 7, 1535; Kilty's Rept., p. 231; Alex. Brit. Stat., p. 296; Comp. Stat. D. C., p. 39, § 173.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

§ 18-210. Devise or bequest to spouse.

Subject to the provisions of section 18-212, every devise of real estate or any interest therein, and every bequest of personal estate or any interest therein, to the surviving spouse shall be construed to be intended in bar of his or her share in decedent's estate (including dower rights, if any) unless it be otherwise expressed in the will. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1172; Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 5.)

AMENDMENT

1957—Act Aug. 31, 1957, amended section generally. Prior to such amendment section read as follows: "Every devise of land or of any estate therein, or bequest of personal estate to the wife of the testator, shall be construed to be intended in bar of her dower in lands or share of the personal estate, respectively, unless it be otherwise expressed in the will."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Aug. 31, 1957, effective 90 days after Aug. 31, 1957, see note under section 18-101.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

NOTES TO DECISIONS

Common law 1
Construction 2
Purpose 3

1. Common law

Under common law existing in Maryland prior to creation of District of Columbia, a husband was not permitted to deprive his wife of her reasonable share of his estate, either directly or indirectly, and a bequest to wife was not considered in lieu of her legal interest, but instead she took both. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

2. Construction

The statutory provision for widows in District of Columbia constitutes a recognition and, in part, a restatement of her rights at common law, and it is not to be regarded as an abrogation of common law, but instead, to extent that § 18-210 fails to cover the entire subject, the common law is to be looked to for amplification and

definition. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D. C. 365, 147 A. L. R. 322)

3. Purpose

This section and § 18-211 requiring widow to elect between husband's will and her legal interests were enacted to avoid result reached by early cases permitting widow to take both under the will and her legal interest, but it was not their purpose to deprive a widow of her common-law rights. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D. C. 365, 147 A. L. R. 322).

§ 18-211. Renunciation of devises and bequests to spouse—Form—Limitation—Interest to be taken by widow or widower upon such renunciation.

Subject to the provisions of section 18-212, a widow or widower shall be barred of any rights or interest she or he may have in real or personal estate by any such devise or bequest unless within six months after administration may be granted on the deceased spouse's estate she or he shall file in the probate court a written renunciation to the following effect:

I, A. B., widow or widower of ----- late of -----, deceased, do hereby renounce and quit all claim to any devise or bequest made to me by the last will of my husband or wife exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal estate of my said spouse.

If, during said period of six months, a suit should be instituted to construe the will of the husband or wife, the period of six months for the filing of such renunciation shall commence to run from the date when such suit shall be finally determined, by appeal or otherwise.

By renouncing all claim to any and all devises and bequests, made to her or him by the will of her husband or his wife, the surviving spouse shall be entitled to such share or interest in the real and personal estate which she or he would have taken had the deceased spouse died intestate. Except in cases of valid antenuptial or postnuptial agreements, and except in cases when it is expressly waived in a writing filed with the probate court within said six months period, this provision for the surviving spouse shall apply with like effect (without formal renunciation) to cases where the wife or husband has made no devise or bequest to her husband or his wife, and also to cases where nothing passes by such devise or bequest. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1173; Apr. 19, 1920, 41 Stat. 567, ch. 153; Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 6.)

AMENDMENTS

1957—Act Aug. 31, 1957, made section applicable to widowers.

1920—Act Apr. 19, 1920, inserted provisions requiring the period of six months for the filing of the renunciation to commence to run from the date when the suit construing the will of the husband shall be finally determined, by appeal or otherwise, and substituted "shall be entitled, in addition to her dower, to the distributive share of his personal property, which she would have taken had he died intestate, and, except in cases of valid antenuptial or postnuptial agreements, this provision for the wife shall apply with the effect (without formal renunciation) to cases where the husband has made no devise or bequest to his wife" for "shall be entitled to one-third part of the personal estate of her husband which shall remain after payment of his debts and claims against him, and no more."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Aug. 31, 1957, effective 90 days after Aug. 31, 1957, see note under section 18-101.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

NOTES TO DECISIONS

Acceptance of terms of will 1
Caveat 2
Common law 3
Construction 4
Defective bequest 5
Gift 6
Deprivation of rights 7
Election by court 8
Insane or incompetent widow 9
Laches 10
Petition, right to 11
Presumptions 12
Purpose 13
Renunciation required 14
Representative of widow 15
Trust property 16

1. Acceptance of terms of will

When widow was aware of her rights within the six-months' period, and did not so renounce them, for the reason that she accepted an annuity instead of her right of dower, she could not make an election later for the purpose of getting refund of income tax. *Semmes v. United States* (Ct. Cl. 1934, 6 F. Supp. 119).

A widow may not defeat the general purpose of the will by a sale of the property and a division of its proceeds four years after she has elected, by acquiescence and by conduct, to take the provision the will makes for her. *Evans v. Evans* (1932, 55 F. 2d 533, 60 App. D.C. 371).

2. Caveat

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months allowed by statute as to personalty, and alleged widower had filed a renunciation of provisions of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient to entitle him to maintain caveat. *In re Phillips' Estate* (1953, 111 F. Supp. 453).

3. Common law

Under common law existing in Maryland prior to creation of District of Columbia, a husband was not permitted to deprive his wife of her reasonable share of his estate, either directly or indirectly, and a bequest to wife was not considered in lieu of her legal interest, but instead she took both. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

The common-law rights of widow, as restated and recognized in this section barring widow's common-law rights in husband's estate unless within time specified she files written renunciation of bequests contained in her husband's will, remain intact until a valid election has been made by her, or in her behalf, against those interests. *Id.*

4. Construction

Under District of Columbia Code, where testator left no child, parent, grandchild, brother or sister or child of a brother or sister, widow who renounced will made by her husband, was entitled to the whole of her husband's personal estate. *Wegenast v. Pheylan* (1952, 195 F. 2d 776, 90 U.S. App. D.C. 277).

The statutory requirement of an election by widow between her husband's will and her common-law rights is not a "privilege" bestowed by this section but is a "limitation" upon the common-law rights of the widow and must be so construed. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

This section barring widow's common-law rights in husband's estate unless within specified time she files written renunciation of bequest contained in her husband's will is not a "statute of limitations". *Id.*

The statutory provision for widows in District of Columbia constitutes a recognition and, in part, a restatement of her rights at common law, and it is not to be regarded as an abrogation of common law, but instead,

to extent that sections 18-210 et seq. fail to cover the entire subject, the common law is to be looked to for amplification and definition. *Id.*

5. Defective bequest

If husband's bequest in favor of widow is defective, there is no requirement that widow make an election. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A. L. R. 322).

6. Defective gift

Addition of name of depositor's brother to bank account under circumstances not amounting to a gift and for purpose of permitting brother to obtain money in event of depositor's death was ineffective as amounting to an attempted testamentary disposition without compliance with testamentary requirements and as evading this section permitting widow to claim distributive share of personal estate of husband when will makes no devise in her favor. *Gibson v. Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

7. Deprivation of rights

The common-law rights of dower in land and of "thirds" in personal property depended, not alone on the welfare of the widow, but of her children as well, and therefore to interpret a statutory limitation on the common-law rights in such manner as to cut them off arbitrarily, upon death of an incompetent widow, would be to disregard one of the two primary purposes of this section. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A. L. R. 322).

8. Election by court

Upon request, an equity court can act on behalf of, and in interest of, an insane widow in making election between widow's common-law rights and bequest in her husband's will. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U. S. App. D. C. 365, 147 A. L. R. 322).

An incompetent widow cannot, personally, make an election to renounce husband's will, but court of competent jurisdiction can exercise the power, in her behalf, during statutory period or thereafter, prior to her death. *Id.*

Where widow's privilege of renouncing bequest contained in husband's will is not exercised on behalf of incompetent widow during her lifetime and matter is brought to attention of equity court, it is court's duty to make election, weighing, in doing so, the various considerations including provision which was made for care and comfort of widow, prior to her death, and the court's determination should be made as of time when widow was living, in light of circumstances then existing. *Id.*

9. Insane or incompetent widow

Where widow was incompetent at time of death of her husband, widow had no right to elect whether to accept or renounce husband's will, and upon death of widow her administrator had no such authority. *Boyer, Administrator C.T.A. etc., v. Bealor Executrix etc.* (1959, 271 F. 2d 845, 106 U.S. App. D.C. 262).

Where widow was incompetent and unable to exercise privilege of renouncing bequest contained in her husband's will, if determination was not made of rights of the widow and of her estate, the husband's will would be inoperative as to her and his estate would be distributed, as to her, in the same manner as if he had died intestate. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A. L. R. 322).

Where widow is incompetent, the welfare of widow is not sole consideration in determining whether bequest contained in her husband's will should be renounced on behalf of widow, but welfare of her heirs or other dependents may be considered. *Id.*

The policy of District of Columbia in regard to application to insane widow of this section barring widow of common-law rights in husband's estate unless within time specified she files a renunciation of bequest in husband's will is clearly manifested in section 12-201 governing limitation of actions, which contains a blanket exemption in favor of infants and insane persons. *Id.*

Where widow's privilege of renouncing bequest contained in husband's will was not exercised on behalf of incompetent widow during her lifetime, complaint of administratrix of widow's estate to recover widow's share

of husband's estate and to recover widow's property and damages from trustee of the incompetent widow stated a cause of action. *Id.*

10. Laches

Where trustee of insane widow was also beneficiary and representative of the husband's estate, trustee's "laches" in protecting interests of widow could not deprive equity court of power to act in widow's interest in making an election between widow's common-law rights and bequest contained in her husband's will. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A. L. R. 322).

Where an equity court acts in interest of an insane widow in determining whether bequest in husband's will should be renounced, bad faith or laches of heirs or representatives may become proper considerations, along with others, to guide court, but such considerations provide no basis for concluding that an equity court has no power to act in interest of an insane widow or that inaction of her trustee constitutes an election solely by reason of lapse of time. *Id.*

11. Petition, right to

If heirs or representatives of insane widow delay in petitioning equity court to act on behalf of insane widow in making an election between widow's common-law rights and bequest in husband's will, those interested in the husband's estate can petition the court to act. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A. L. R. 322).

12. Presumptions

The fact that money was expended under husband's will for care and comfort of his insane widow did not authorize a presumption that the widow had elected to abide by the provisions of her husband's will. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A. L. R. 322).

13. Purpose

The purpose of this section barring widow's common-law rights in husband's estate unless within time specified she files written renunciation of bequest contained in husband's will is that renunciation shall constitute an "election to reject", and a failure to renounce shall constitute an "election to accept" the offer. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D.C. 365, 147 A. L. R. 322).

The widow's privilege of renouncing bequest contained in her husband's will and electing to enjoy her dower or statutory rights is intended to permit her to decide whether her interests will be better served by another arrangement. *Id.*

This section and § 18-210 requiring widow to elect between husband's will and her legal interests were enacted to avoid result reached by early cases permitting widow to take both under the will and her legal interest, but it was not their purpose to deprive a widow of her common-law rights. *Id.*

14. Renunciation required

A widow must file a renunciation of her rights under the will in order to take under the law; inadequate provisions under the will do not relieve her of this duty. *Cahill v. Eberly* (1930, 38 F. 2d 539, 59 App. D.C. 228).

Mere oral declarations privately made by the widow can not take the place of a written renunciation. *Id.*

15. Representative of widow

A widow's representative cannot act in her behalf to make renunciation of husband's will, except with permission of court, or unless a statute confers the power. *Mead v. Phillips* (1943, 135 F. 2d 819, 77 U.S. App. D. C. 365, 147 A. L. R. 322).

Where guardian ad litem of incompetent widow made no suggestion concerning an election in widow's behalf to renounce bequest in husband's will, it was duty of trustee to request promptly a determination by equity court of the widow's interest and where trustee had failed to act it became the duty of the widow's representative to request proper action. *Id.*

Where widow was incompetent, guardian ad litem made no suggestion concerning an election in widow's behalf to renounce bequest contained in her husband's will and widow's trustee who was also beneficiary and representa-

tive of the husband's estate failed to act for protection of interests of widow, court of equity could exercise power of renunciation after expiration of statutory period and after widow's death. *Id.*

16. Trust property

Where wife has vested remainder interest in trust property, but interest of wife was divested because she predeceased life tenant, husband had no estate of curtesy in the trust property on death of wife and death of life tenant. *Noreen et al. v. Sparks et al.* (1952, 103 F. Supp. 588, motion denied 104 F. Supp. 675, cause remanded 204 F. 2d 56, 92 U.S. App. D.C. 164).

§ 18-212. Rights of surviving spouse if there is no renunciation.

If the surviving spouse does not renounce as provided in section 18-211, she or he shall be entitled to receive the benefit of all provisions in her or his favor in the will of the deceased spouse and shall share, in accordance with sections 18-101, 18-701, 18-702, 18-703 and 18-704, in any estate of the deceased spouse undisposed of by the will. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1174; Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 7.)

AMENDMENT

1957—Act Aug. 31, 1957, amended section generally. Prior to such amendment section read as follows: "If the will of the husband devise and bequeath a part of both real and personal estate to the wife, she shall renounce the whole or be otherwise barred of her right to both real and personal estate."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Aug. 31, 1957, effective 90 days after Aug. 31, 1957, see note under section 18-101.

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

§§ 18-213 to 18-215. Repealed. Aug. 31, 1957, 71 Stat. 561, Pub. L. 85-244, § 4 (f-h).

Section 18-213, act Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1175, related to devise of part of real estate or bequest of part of personal estate as bar.

Section 18-214, act Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1176, related to effect of a devise on a widow, when nothing passed to her under such devise.

Section 18-215, act Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1159, created estate by the curtesy, which was abolished by section 18-215a.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective 90 days after Aug. 31, 1957, see note under section 18-101.

§ 18-215a. Estate by the curtesy abolished.

The estate by the curtesy in the real estate of a wife dying after the effective date of this section, and its incidents, are hereby abolished. (Aug. 31, 1957, 71 Stat. 560, Pub. L. 85-244, § 2.)

EFFECTIVE DATE

Section effective 90 days after Aug. 31, 1957, see note under section 18-101.

Chapter 3.—ASSETS OF ESTATE

Sec.

18-301. Assets to be included in inventory and administered.

18-302. Discharge or bequest of debt or demand not valid against creditors—Included as asset.

18-303. Claims of testator against executor not discharged—Included as assets—Liability of surety.

18-304. Failure of executor to include claims of testator against executor in inventory—Remedy.

18-305. Debt due by administrator or collector.

§ 18-301. Assets to be included in inventory and administered.

Leases for years, estates for the life of another person or other persons, and all goods, wares, merchandise, utensils, furniture, things annexed to the freehold which may be removed without prejudice thereto, the growing crop on the land of the deceased, and every other species of personal property, not including the clothing of the widow and minor children of the deceased and personal ornaments suitable to their station, and not including the property exempted by section 18-406, shall be included in the inventory, and, together with the proceeds of any real estate sold for the payment of debts, shall be considered assets to be administered by an executor or administrator. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 317; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted provisions excluding the property exempted by section 18-406.

CROSS REFERENCES

Criminal penalty for concealing or converting assets of estate, see § 22-1404.

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

Proceeds of group life insurance policies, see § 35-718.

NOTES TO DECISIONS

Effect of solvency 1
Gifts causa mortis 2
Option to purchase real estate 3
Rents 4

1. Effect of solvency

Where it is substantially stated in the bill that decedent's estate will be solvent, plaintiff's remedy may best be sought in the probate court rather than in court of equity. *Street v. Stubblefield* (1927, 20 F. 2d 1017, 57 App. D. C. 276, certiorari denied 48 S. Ct. 121, 275 U.S. 564, 72 L. Ed. 428).

2. Gifts causa mortis

Money paid defendant by his brother shortly before the latter's death, at a time when his illness was expected to result in death at any time, was a valid gift causa mortis, where decedent was of sound mind at the time of the gift, the defendant cared for him during his last illness and paid the final expenses, and there was sufficient personality remaining to satisfy the widow's claim. *Railey v. Railey* (1940, 30 F. Supp. 121).

3. Option to purchase real estate

Ninety-nine-year lease, with option to purchase, is personality. *Bean v. Reynolds* (15 App. D. C. 125).

4. Rents

If there is enough personality to pay debts, the rents accruing after death of testator need not be used. *Brosnan v. Fox* (1923, 284 F. 923, 52 App. D. C. 143).

§ 18-302. Discharge or bequest of debt or demand not valid against creditors—Included as asset.

The discharge or bequest, in a will, of any debt or demand of a testator against any executor named in a will, or against any other person, shall not be valid as against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory of the effects of the deceased and be assets for the payment of his debts, if necessary for that purpose, and, if not so necessary, shall be paid in the same manner and proportion as other specific legacies. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 318.)

§ 18-303. Claims of testator against executor not discharged—Included as assets—Liability of surety.

The naming of any person as executor in a will shall not operate as a discharge or bequest of any just claim which the testator had against such executor; but such claim shall be included among the credits and effects of the deceased in the inventory, and the executor shall be liable for the same, as for so much money in his hands, at the time such debt or demand becomes due; and he shall apply and distribute the same, in the payment of debts and legacies and among the next of kin, as part of the personal estate of the deceased: *Provided*, That in such cases the sureties of the executor shall not be liable if the claim against the executor would have been uncollectible if some other person had been executor. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 319; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added the proviso.

§ 18-304. Failure of executor to include claims of testator against executor in inventory—Remedy.

On the failure of the executor to give in such claim in the list of debts due the deceased, any person interested in the administration may allege the same by petition to said probate court, and the said court, with consent of the parties, may decide on the same, or it may be referred by the parties, with the court's approval; or at the instance of either party the court may direct an issue to be tried by a jury; and if said claim shall in any of such proceedings be decided to be a just claim of the decedent against the executor, said executor shall be charged with the amount thereof as aforesaid. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 320.)

§ 18-305. Debt due by administrator or collector.

In like manner it shall be the duty of every administrator and collector to give in a claim against himself, and on his giving it, or failure so to do, there shall be the same proceeding as above described with regard to an executor; and the same rule shall apply to his sureties. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 321; June 30, 1902, 32 Stat. 529, ch. 1329; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENTS

1920—Act Apr. 19, 1920, added the words "and collector."
1902—Act June 30, 1902, added the words "and the same shall apply to his sureties" at the end.

Chapter 4.—INVENTORY OF ASSETS

Sec.

- 18-401. Inventory—When made—Contents—Exceptions.
- 18-402. Appraisers.
- 18-403. Appraisers—Refusal to act or death of.
- 18-404. Appraisement—Notice—Return.
- 18-405. Contents of inventory.
- 18-406. Exceptions to inventory.
- 18-407. Collector's inventory.
- 18-408. Co-executor or administrator may file inventory if others neglect to do so.

§ 18-401. Inventory—When made—Contents—Exceptions.

Every executor, administrator, or collector shall, within two months after his appointment, or such longer time as the court may allow, make and return, upon oath, into court a true inventory of all

the goods, chattels, moneys, and credits of the deceased which are by law to be administered and which shall have come to his possession or knowledge; and if the court shall think fit it may also order him to include in the inventory all the real estate of the deceased: *Provided*, That this section shall not apply to the cases provided for in sections 20-203 and 20-303. (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 309; June 24, 1949, 63 Stat. 268, ch. 242, § 3.)

AMENDMENT

1949—Act June 24, 1949, struck out the words "three months" and inserted in lieu thereof the words "two months".

CROSS REFERENCES

Assets of estate, see §§ 18-301 to 18-305.
Jurisdiction, pleading, and practice in probate court, see §§ 11-501 to 11-520.

§ 18-402. Appraisers.

On the granting of letters testamentary or of administration or letters of collection, except in the aforesaid excepted cases, a warrant shall issue to two suitable persons not interested in the estate to appraise the estate of the deceased, known to them or shown to them by the executor, administrator, or collector, and they shall severally take and subscribe an oath well and truly, without partiality or prejudice, to value the goods, chattels, and personal estate and real estate (if so directed) of the deceased, as far as the same shall come to their knowledge, to the best of their skill and judgment. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 310; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or collector."

§ 18-403. Appraisers—Refusal to act or death of.

On the death, refusal, or neglect of any appraiser to act, another person may be appointed in his stead. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 311.)

§ 18-404. Appraisement—Notice—Return.

It shall be the duty of the executor, administrator, or collector or of the appraisers to give notice to the persons immediately interested in the administration, or at least two of them, if they are numerous, of the time and place of making said appraisement, and thereupon they shall proceed at said time and place to value said property and estate, setting down each article or item separately, with the value thereof, in dollars and cents, and when such appraisement shall have been completed they shall certify the same under their hands and seals, and the same shall be returned with the inventory. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 312; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted the word "and" and inserted in lieu thereof the word "or" after the word "collector."

§ 18-405. Contents of inventory.

The inventory shall contain a particular statement of all bonds, mortgages, notes, and other securities for the payment of moneys belonging to the deceased, and of all other debts and accounts due him, which are known to the executor, administrator, or collector, who shall designate those debts which he considers sperate and those which he considers

desperate, and also an account of all moneys belonging to the deceased which shall come to his hands. And whenever, after an inventory has been returned, assets not therein included shall come to the knowledge of the executor, administrator, or collector an additional inventory and appraisal shall be promptly prepared and filed in the manner aforesaid. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 313.)

§ 18-406. Exceptions to inventory.

There shall be excepted from the inventory the wearing apparel of the deceased, family pictures, the family Bible, and schoolbooks used in the family, and provisions for the support of the family on hand at the time of decedent's death. But if said decedent shall have been at the head of a family, or a householder, the property exempt under sections 15-401 to 15-403, as therein stated, shall so continue exempt from all claims against said decedent, and shall be distributed by the court to such members of the family or household as in the judgment of the court the necessity and exigencies of the particular case may require. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 314.)

CROSS REFERENCE

Damages recovered in action for wrongful death exempted from claims of creditors, see § 16-1203.

NOTES TO DECISIONS

Family portraits 1
Sale of exempted property 2

1. Family portraits

Family portraits "seem to have been recognized as heirlooms at common law, and as such went to the heirs at law, and not to the executor * * *." By custom they are not included in the inventories in the District. *Brown v. Easterhazy* (25 W. L. R. 478).

2. Sale of exempted property

Exemption follows proceeds of sale. *Howard v. Howard* (38 App. D. C. 575).

§ 18-407. Collector's inventory.

In case an inventory shall be returned by a collector, duly appointed, the executor or administrator thereafter administering shall, within two months after his appointment, either return a new inventory in place of the collector's inventory or an acknowledgment in writing that he has received from the collector the articles contained in the first inventory, and consents to be answerable for the same, as if said inventory had been made out by him as administrator, unless it shall appear that he has been prevented from making such return by the improper detention of the personal estate of the deceased by the collector. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 315; June 24, 1949, 63 Stat. 268, ch. 242, § 4.)

AMENDMENT

1949—Act June 24, 1949, struck out the words "three months" and inserted in lieu thereof the words "two months".

§ 18-408. Co-executor or administrator may file inventory if others neglect to do so.

If there be more than one executor or administrator, any one or more of them, on the neglect of the rest, may, if authorized by the court, return an inventory. (Mar. 3, 1901, 31 Stat. 1239, ch. 854, § 316.)

Chapter 5.—CLAIMS OF CREDITORS

Sec.

- 18-501. Creditors' rights against property of nonresident decedent—Limitation.
- 18-502. No claim to be noticed unless legally authenticated.
- 18-503. Debts to be proved.
- 18-504. Judgment or decree—Voucher or proof of.
- 18-505. Bond, note, check, protested bill of exchange—Original or copy of instrument to constitute voucher.
- 18-506. Proof by assignee.
- 18-507. Commercial papers—Proof.
- 18-508. Claims for rent—Proof.
- 18-509. Open account—Proof.
- 18-510. Claims outside of District—How proved.
- 18-511. Executor or administrator's claim must be under oath.
- 18-512. Claims of executors and administrators to be passed by probate court.
- 18-513. Docket of claims.
- 18-514. Filed claim no evidence of correctness if disputed—Filing as tolling limitations.
- 18-515. Plea of limitations within discretion of executor or administrator.
- 18-516. Claims may be rejected and disputed.
- 18-517. Passing of claims not conclusive.
- 18-518. Period during which creditors may file suit after claim is contested.
- 18-519. Payment of claims.
- 18-520. Priorities.
- 18-521. Meeting of creditors.
- 18-522. Notice of distribution.
- 18-523. Retaining for claims.
- 18-524. Executor or administrator to withhold amount claimed pending litigation.
- 18-525. Executor or administrator not responsible for claims made after distribution.
- 18-526. Notice to creditors to file claims.
- 18-527. Report and proof of notice.
- 18-528. Report of notice to be prima facie evidence.
- 18-529. Copy of report of notice as legal evidence.
- 18-530. Distribution of residue.

§ 18-501. Creditors' rights against property of nonresident decedent—Limitation.

On the death of any person not domiciled in the District of Columbia at the time of his death so much of his real and personal estate in the District of Columbia as may be necessary for the payment and discharge of just claims against him of creditors and persons domiciled in the District of Columbia shall also be the subject of administration under authority and direction of the probate court, irrespective of the personal estate of such decedent at his place of domicile or elsewhere: *Provided*, The prosecution of such claims is begun in said court within six months after the death of such decedent. (Mar. 3, 1901, 31 Stat. 1231, ch. 854, § 260; June 30, 1902, 32 Stat. 528, ch. 1329; June 24, 1949, 63 Stat. 268, ch. 242, § 1.)

AMENDMENTS

1949—Act June 24, 1949, struck out the words "one year" and inserted in lieu thereof the words "six months".

1902—Act June 30, 1902, inserted the words "and personal" after the word "real," and the words "at his place of domicile or elsewhere" after the word "decedent."

CROSS REFERENCES

Discharge of debt by will construed to be a specific bequest and invalid as to creditors, see § 18-302.

Duty to file schedule of personal property for taxation, distraint of property for nonpayment, see §§ 47-1203, 47-1301.

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

Liability as stockholder of business corporation, see § 29-220.

Liability for income taxes, duty to file return, see §§ 47-1523, 47-1524.

Liability of estate for public property held by decedent as officer in the army, see §§ 39-505, 39-511.

Priorities, see § 18-520.

NOTES TO DECISIONS

Constitutionality 1
Insolvent estates 2
Law governing interest 3
Liability for non-payment 4
Measure of tax on encumbered property 5
Participating creditors 6
Purpose 7
Remedy 8
Time for assertion of claims 9
Transmission of funds 10

1. Constitutionality

This section properly construed does not give an unconstitutional preference to local creditors over non-resident creditors. *Duehay v. Acacia Mut. Life Ins. Co.* (1939, 105 F. 2d 768, 70 App. D.C. 245, 124 A. L. R. 1268).

2. Insolvent estates

The correct rule in the administration of an insolvent estate is to marshal the assets and distribute them ratably among creditors of the same class, irrespective of their source. *Sackett, Chapman, Brown & Cross v. Osgood* (1945, 149 F. 2d 825, 80 U.S. App. D.C. 99).

3. Law governing interest

In ancillary administration proceedings in estate of a Maryland resident, question as to rate of interest allowable on claims against estate was to be determined under District of Columbia law. *Hightstown Rug Co. v. National Sav. & Trust Co.* (1947, 162 F. 2d 10, 82 U.S. App. D.C. 204).

4. Liability for non-payment

Fact that voluntary payment by local debtor of local assets to a foreign domiciliary executor or administrator might afford a valid acquittance of the debt under some circumstances does not establish that a debtor who refuses to pay such assets voluntarily to such foreign representative should be held liable in damages. *Cameron v. Riggs Nat. Bank of Washington, D.C.* (1944, 53 F. Supp. 56).

A bank which refused to make payment to foreign domiciliary executor of testatrix's funds held by bank in checking and savings accounts until elapse of period of one year within which local debtors could assert their claims against the assets, unless otherwise protected against such claims, was not liable for interest on the funds withheld, as damages. *Id.*

5. Measure of tax on encumbered property

While a tax on inheritance or succession is not a property tax but a duty or excise laid on the privilege of taking property by descent, it is measured by the market value of the transferred property at the time the owner died. *Hyman v. District of Columbia* (1957, 247 F. 2d 585, 101 U.S. App. D.C. 179).

Where an unqualified devise transfers legal title, if it is encumbered at the date of death, the then market value of the property transferred is the gross value, less the encumbrance for inheritance tax purposes. *Id.*

Where decedent owed her brother a large sum of money and her will provided that if he had a claim on her realty interest, devise thereof should be "subject to such claim or lien" District of Columbia Inheritance Tax should have been computed not on the gross value of the realty received by the brother, but on the value thereof after the brother's claim thereon had been deducted. *Id.*

6. Participating creditors

Where insolvent nonresident died possessed of property in the District of Columbia, ancillary administrator was appointed, but no claims were filed by local creditors, and only two nonresident creditors presented claims, the District Probate Court had discretionary power to require that other creditors, who had filed claims in the domiciliary estate, be given notice and allowed to participate with creditors who had filed claims in ancillary estate. *Sackett, Chapman, Brown & Cross v. Osgood* (1945, 149 F. 2d 825, 80 U.S. App. D.C. 99).

7. Purpose

This section is intended for the protection of local creditors. *Sackett, Chapman, Brown & Cross v. Osgood* (1945, 149 F. 2d 825, 80 U.S. App. D.C. 99).

8. Remedy

Under this section, local creditors are given an opportunity to assert their claims against local assets of a decedent domiciled elsewhere. *Cameron v. Riggs Nat. Bank of Washington, D.C.* (1944, 53 F. Supp. 56).

9. Time for assertion of claims

Section 18-518 reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where section was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 188 F. 2d 633, 88 U.S. App. D.C. 166, certiorari denied 71 S. Ct. 797, 341 U.S. 926, 95 L. Ed. 1358).

This section providing that District of Columbia assets of a nonresident decedent are subject to claims of persons domiciled in District, and subject to administration in District, provided prosecution of claims is begun within six months after death of decedent, was intended to extend protection to local creditors for six months only, and where no claims were filed against bank account of a nonresident decedent within six months of death bank was required to honor demand of nonresident representative. *Gearheart, Jr., Administrator, v. Bank of Commerce & Savings* (1956, 138 F. Supp. 472).

Ordinarily, the period of one year fixed by this section is period that local debtor may reasonably await assertion of claims of local creditors before making payment to a foreign domiciliary executor or administrator, unless otherwise protected against such claims. *Cameron v. Riggs Nat. Bank of Washington, D.C.* (1944, 53 F. Supp. 56).

TIME FOR ACTION AGAINST ANCILLARY

This section, making property of nonresident decedent subject of administration in District of Columbia " * * * Provided, The prosecution of such claims is begun in said court within six months after the death of such decedent", does not place time limitation on filing of action by local creditor against ancillary administrator. *Stitt v. Simpson Admt'x etc.* (D.C. Mun. App. 1959, 154 A. 2d 719).

10. Transmission of funds

Where there were no locally domiciled creditors, the probate court might, in its discretion, order the funds in hands of ancillary administrator to be transmitted to the domiciliary administrator, even though some creditors from other states had presented their claims locally. *Sackett, Chapman, Brown & Cross v. Osgood* (1945, 149 F. 2d 825, 80 U.S. App. D.C. 99).

§ 18-502. No claim to be noticed unless legally authenticated.

No executor or administrator shall be bound to discharge any claim against his decedent unless the same shall be exhibited to him, legally authenticated, or unless such claim shall have been passed by the probate court and entered by the register of wills upon his docket. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 357.)

NOTES TO DECISIONS

1. Construction

The meaning of this section is to be deduced from the language of its heading as well as from the language of the body thereof. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

The phrase "To be noticed" and the words "To discharge" must be read together to determine the meaning of the statute. *Id.*

§ 18-503. Debts to be proved.

No executor or administrator shall discharge any claim against his decedent (otherwise than at his own risk) unless the same be first passed by the probate court, or unless the said claim shall be proved according to the following rules: (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 330.)

NOTES TO DECISIONS

Disputed claims 1
 Liability of executor or administrator 2
 Suit 3

1. Disputed claims

"Under section 330 of the code (this section) the approval of a claim properly proved relieves the executor or administrator from liability if he elects to pay it; but, by section 342 (§ 18-516) he may contest it at law, and in such action the approval of the probate court is deprived of even evidentiary value * * *. It is settled in this District that the probate court is without jurisdiction to compel an executor or administrator to pay a claim asserted against a decedent's estate." *Miniggio v. Hutchins* (43 App. D.C. 117).

2. Liability of executor or administrator

This section was designed to relieve the executor or administrator from liability if he should elect to pay claims passed upon by the court, or properly proved. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

3. Suit

There is nothing in this section which prevents suit on a claim which has neither been exhibited to the executor legally authenticated nor passed by the probate court. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

§18-504. Judgment or decree—Voucher or proof of.

The voucher or proof of a judgment or decree shall be a short copy thereof under seal, attested by the clerk of the court where it was obtained, who shall certify that the said judgment or decree hath not been satisfied. There shall likewise be a certificate of some person authorized to administer an oath, indorsed on or annexed to a statement of the debt due on such judgment or decree, that the creditor or his agent since the death of the deceased hath taken before him the following oath, to wit: "That the creditor hath not received any part of the sum for which the judgment or decree was passed except such part (if any) as is credited"; and if the creditor on the judgment or decree be an assignee of the person who obtained it, the oath shall go on and say further, "and that to the best of his knowledge or belief no other person hath received any parcel of the said sum except such part (if any) as is credited," and an assignee shall also produce the assignment under the hand of the assignor; and if there be more than one assignment, each assignment shall be produced under the hand of the party assigning. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 331.)

§18-505. Bond, note, check, protested bill of exchange—Original or copy of instrument to constitute voucher.

In case of a specialty, bond, note, check, or protested bill of exchange, the vouchers shall be the instrument of writing itself, or a proved copy in case it be lost, with a certificate of the oath made as aforesaid since the death and indorsed on or annexed to the instrument, or a statement of the claim "that no part of the money intended to be secured by such instrument hath been received or any security or satisfaction given for the same except what (if any) is credited." (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 332.)

§ 18-506. Proof by assignee.

If the creditor in such instrument be an assignee, there shall be the same oath of the creditor or agent, according to the best of his knowledge and belief, with respect to any payments prior to the time of

the assignment. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 333.)

§ 18-507. Commercial papers—Proof.

In case of a bill of exchange or other commercial paper, the protest or other things which would be required (if the deceased were alive) shall be necessary to justify an executor or administrator in making payment or distribution. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 334.)

§ 18-508. Claims for rent—Proof.

If the claim be for rent, there shall be produced the lease itself, or the deposition of some credible witness or witnesses, or an acknowledgment in writing of the deceased, establishing the contract and the time which hath elapsed during which rent was chargeable, and a statement of the sum due for such rent, with an oath of the creditor or agent indorsed thereon "that no part of the sum due for said rent or any security or satisfaction for the same hath been received except what (if any) is credited."

The proof of a claim for rent in arrear, so as to render the same a preferred claim, shall be the proofs and vouchers for rent aforesaid, and proof that the claim is such that an attachment therefor might be levied on said deceased's goods and chattels in the hands of the administrator, but the preference given for rent is not to impair the landlord's right of attachment if he thinks proper to exercise it. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 335.)

§ 18-509. Open account—Proof.

The vouchers or proofs of any claim on open account shall be a certificate of an oath taken by the creditor or agent since the death, indorsed on or annexed to the account, that the account as stated is just and true, and that he, the creditor, or any one for him, hath not received any part of the money stated to be due or any security or satisfaction for the same except what (if any) is credited. (Mar. 3, 1901, 31 Stat. 1243, ch. 854, § 336.)

NOTE TO DECISION

1. Statute of limitations

Proof and presentation of claim under this section would operate to suspend the running of the statute of limitations. *Berry & Whitman Co. v. Dante* (43 App. D. C. 110).

§ 18-510. Claims outside of District—How proved.

When an affidavit or deposition to prove claims shall have been taken out of the District, the same shall be good if taken and certified as aforesaid by a notary public, or by some person there authorized to administer an oath, and certified to be such under the seal of the clerk of any court of record, or by any officer having official cognizance of the fact, and the said oath shall be as available as if taken before an officer authorized to administer an oath within this District: *Provided*, That such additional certificate shall not be required as to notaries public within the United States or any place under the jurisdiction thereof when the seal of such notary is attached. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 337; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added the proviso.

§ 18-511. Executor or administrator's claim must be under oath.

If the creditor be an executor or an administrator the claim shall not be received, although vouched and approved as aforesaid, unless he make oath, to be certified as aforesaid, "that it does not appear from any book or writing of his decedent that any part of the said claim hath been discharged except what (if any) is credited, and that to the best of the deponent's knowledge and belief no part of the said claim hath been discharged and no security or satisfaction given for the same except what (if any) is credited." (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 338.)

§ 18-512. Claims of executors and administrators to be passed by probate court.

In no case shall an executor or administrator be allowed to retain for his own claim against the decedent, unless the same be passed by the probate court, and every such claim shall stand on an equal footing with other claims of the same nature. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 339.)

NOTE TO DECISION

1. Examination by court

Administratrix' claims against estate will be critically examined by probate court and will not be allowed unless the court is satisfied that they are good. *Perkins v. Berger* (1945, 145 F. 2d 856, 79 U.S. App. D.C. 286).

§ 18-513. Docket of claims.

The register of wills shall enter in a suitable book, to be provided by him for that purpose, all claims against a decedent as they are regularly passed by the probate court, giving the date of the passage, the name of the creditor, the character of such claim, whether on note or open account, bond, bill, obligation, judgment, or other evidence of debt, and the amount thereof, and the entry of a claim upon such docket shall be taken as notice to the executor or administrator of its existence. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 354.)

NOTE TO DECISION

1. Notice of claim

The executor is charged with notice of claims only in case they shall be exhibited to him, legally, and then treated, or shall have been passed by the probate court and entered by the register of wills upon his docket. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

§ 18-514. Filed claim no evidence of correctness if disputed—Filing as tolling limitations.

The claim thus entered (as provided in section 18-513) shall not afford any evidence as to the justice or correctness of any debt therein entered whenever the same shall be controverted by an executor or administrator in any suit instituted for the recovery of such debt; nor shall the same be construed to take any debt out of the operation of a plea of limitations. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 355.)

CROSS REFERENCES

Provisions in will as tolling statute of limitations, see § 12-207.

Statute of limitations, see § 18-515.

§ 18-515. Plea of limitations within discretion of executor or administrator.

It shall not be considered as the duty of an executor or administrator to avail himself of the act of

limitations to bar what he supposes to be a just claim, but the same shall be left to his honesty and discretion. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 341.)

CROSS REFERENCE

Limitation of actions generally, see notes to § 12-201 et seq.

NOTE TO DECISION

1. Approval of court

Under this section providing that it shall not be duty of executor or administrator to avail himself of act of limitations to bar what he supposes to be just claim but matter shall be left to his honesty and discretion, administrator first passes upon justice of barred claims then, such claims must be critically examined by probate court and they may not be allowed unless court is satisfied that they are just. *Helen Rothenberg, Caveator, etc. v. Rothenberg* (1959, 273 F. 2d 825, 107 U.S. App. D.C. 11).

§ 18-516. Claims may be rejected and disputed.

No executor or administrator shall be obliged to discharge any claim of which vouchers and proofs shall be exhibited as aforesaid, but may reject and at law dispute the same in case he shall have reason to believe that the deceased never owed the debt, or had discharged the same, or a part thereof, or had a claim in bar. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 342.)

NOTES TO DECISIONS

In general 1.

Executors special undertaking 2

1. In general

An executor or administrator may contest a claim properly proved at law. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

2. Executors special undertaking

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *Selby and Fuller v. McNeill* (D.C. Mun. App. 1955, 116 A. 2d 160).

§ 18-517. Passing of claims not conclusive.

In no case shall the order made by the probate court that an account or claim will pass when paid be deemed of validity to establish such claim or account; but in case the executor or administrator thinks fit to contest the same such account or claim shall derive no validity from the order aforesaid, but shall be proved in the same manner as if no such order had been made. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 343.)

NOTE TO DECISION

1. Effect of passing claim

An executor or administrator may contest at law a claim properly proved, and, in such action, the approval of the probate court by this section is deprived of even evidentiary effect. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

§ 18-518. Period during which creditors may file suit after claim is contested.

If a claim be exhibited against an executor or administrator which he shall think it his duty to dispute or reject, he may retain in his hands assets proportioned to the amount of the claim, which assets shall be liable to other claims, or to be delivered up or distributed in case the claim be not established; and if on any claims exhibited and disputed as aforesaid the creditor or claimant shall not,

within three months after such dispute or rejection, commence a suit for recovery the creditor shall be forever barred; and the executor or administrator may plead this section in bar, together with the general issue or other plea proper to bring the merits of the cause to trial; and on any dividend to be made three months after such dispute or rejection and failure to bring suit the executor or administrator may proceed to pay or distribute as if he had not knowledge or notice of such claim or as if it did not exist; but if the claim be put in suit within the three months it may be ascertained by verdict or otherwise, and the court shall proceed as herein directed, regard being had to the rules herein laid down as to the notice to be given by the executor or administrator and distribution or payment be made after such notice. (Mar. 3, 1901, 31 Stat. 1245, ch. 854, § 348; June 24, 1949, 63 Stat. 268, ch. 242, § 5.)

AMENDMENT

1949—Act June 24, 1949, substituted "three months" for "nine months" wherever appearing.

NOTES TO DECISIONS

Action against devisee 2
Claim in process of administration 3
Computation of time 4
Construction 5
Decisions under prior law 1

1. Decisions under prior law

Prior to enactment of the Code, law of Maryland as to limitations was in force in the District. *Glover v. Patten* (1897, 17 S. Ct. 411, 165 U.S. 394, 41 L. Ed. 760).

2. Action against devisee

A right of action by decedent's creditors to subject decedent's property in hands of devisee under decedent's will to payment of plaintiffs' claims was not extinguished by their failure to institute action against executor of decedent's estate within three months, limited by this section, after executor's rejection of claims. *Robinson v. Henderson* (1956, 145 F. Supp. 463).

3. Claim in process of administration

The 1949 amendment to this section reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment of statute, and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where this section was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 188 F. 2d 633, 88 U.S. App. D.C. 166, certiorari denied 71 S. Ct. 797, 341 U.S. 926, 95 L. Ed. 1358).

4. Computation of time

A claim so exhibited and disputed is specifically barred, unless suit for its recovery is commenced within nine months after its rejection. *National Sav. & Trust Co. v. Ryan* (1920, 262 F. 613, 49 App. D.C. 159). See, also, *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

If a claim is exhibited to the executor, legally authenticated, and the executor rejects it, his rejection sets in motion the running of the three-month statute of limitations, and any claim sued upon more than three months after rejection is barred. *Lewis v. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *Id.*

Action on claim against testator's estate filed more than two years and 11 months after rejection of claim by executrix was barred. *McNeill and Fuller v. Selby* (D.C. Mun. App. 1955, 116 A. 2d 160).

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just

claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *Id.*

5. Construction

This section is designed to facilitate the administration and distribution of estate, but since it is an exceptional abbreviation of the general statute of limitations, it must be given a construction almost penal in its strictness, and hence if an executor rejects a claim which has not been exhibited to him, legally authenticated, his attempted rejection does not start the running of the short statute of limitations. *Lewis v. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

§ 18-519. Payment of claims.

An executor or administrator shall, within thirteen months from the date of his letters, or within such further time, not exceeding four months longer, as shall be allowed by the probate court on his making oath that he has reason to apprehend that the personal estate and assets which are or shall be in his hands will be insufficient to discharge the just debts of and claims against the deceased, discharge all such claims known to him or pay each claimant his just proportion of the money then in his hands (retaining as herein directed); it shall likewise be his duty once in every term of six months after the first distribution to make a distribution of the money which hath since come to his hands until he shall have fully administered, and on failure his administration bond may be put in suit. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 344.)

§ 18-520. Priorities.

In paying the debts of a decedent, after the payment of funeral expenses according to the condition and circumstances of the deceased, not exceeding six hundred dollars, an executor or administrator shall observe the following rules: Claims for rent in arrear against deceased persons, for which an attachment might be levied by law, shall have preference. Judgments and decrees of courts in the District of Columbia shall next be wholly discharged. After such claims for rent, judgments, and decrees shall be satisfied, all other just claims shall be on an equal footing without priority or preference. If there be not sufficient to discharge all such judgments and decrees, a proportionate dividend shall be made between the judgment and decree creditors. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 356.)

CROSS REFERENCES

Blind assistance granted under Social Security Act preferred claim, see § 46-112.

Old age assistance granted decedent under Social Security Act preferred claim, see, also, § 46-212.

Order of payment, see, also, § 20-605.

Priority of taxes, see §§ 47-1301, 47-1402, 47-1527.

NOTES TO DECISIONS

Application of statutes 1
Funeral expenses 2
Judgment not docketed 3
Monument 4

1. Application of statutes

The statutes are equally applicable to the administration of all estates in the District, whether domiciliary or ancillary. *Duehay v. Acacia Mut. Life Ins. Co.* (1939, 105 F. 2d 768, 70 App. D.C. 245, 124 A.L.R. 1268).

2. Funeral expenses

This section and section 11-605 limiting the amount for funeral expenses to \$600 merely provide for a limitation on the amount which may be given priority

over claims of other creditors and beneficiaries, and not an invariable maximum that must always be observed, and therefore claim for funeral expenses in amount of \$3,863 was properly ordered to be paid pro rata with other general claims lawfully payable out of deceased's estate. *National Metropolitan Bank of Washington v. Joseph Gawler's Sons* (D.C. Mun. App. 1947, 52 A. 2d 280).

Executors were not controlled by limitation of this section and § 20-605 in view of discretionary authority granted them by will empowering executors to pay funeral expenses in such amount as they deemed proper, but they were bound to act in good faith and expend only such amount as in their discretion they deemed proper. *National Metropolitan Bank of Washington v. Joseph Gawler's Sons* (1948, 168 F. 2d 571, 83 U.S. App. D.C. 307, 4 A.L.R. 2d 930).

Executors did not have burden to establish good faith and sound discretionary action under provision of will empowering them to pay funeral expenses in such amount as they deemed proper, and burden was on funeral establishment which attacked their action, to prove the charge. *Id.*

This section and § 20-605 relating to funeral expenses limit amount allowable for funeral expenses in absence of authority by testator to contrary and even then such sections should control where estate is insolvent. *Id.*

3. Judgment not docketed

Judgment of municipal court not docketed in Supreme Court is not entitled to preference. *In re Neuland's Estate* (44 W. L. R. 378).

4. Monument

An allowance to executrix for purchase of monument placed over grave of deceased is proper, where the rights of creditors have not been prejudiced. *Sinnott v. Kenaday* (14 App. D.C. 1, reversed on other grounds 21 S. Ct. 233, 179 U.S. 606, 45 L. Ed. 339).

§ 18-521. Meeting of creditors.

Any executor or administrator shall be entitled to appoint a meeting of creditors on some day by the court approved, and passage of claims, payment, or distribution may be there made under the court's direction and control. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 358.)

§ 18-522. Notice of distribution.

In all cases where an executor or administrator is to make payment or distribution among the creditors of his decedent, he may give notice three successive weeks previously in some convenient newspaper of the time and place for making it; and in case the creditor shall not attend in person or by agent or attorney to receive the amount or proportionable part of his claim, all interest on such claim or proportionable part shall cease from that time: *Provided*, That the executor or administrator shall at any time thereafter on demand pay the said claims, or a proportionable part, to the party, his agent, or attorney duly authorized; and whenever the executor or administrator shall proceed to make an additional payment or dividend he may advertise as aforesaid, and interest shall stop as aforesaid; and if at the time for the making of any additional dividend a just claim, established as hereinbefore directed, shall be exhibited, the creditor shall be entitled to such sum as will place him on an equal footing with those who have already received a dividend. (Mar. 3, 1901, 31 Stat. 1244, ch. 854, § 345.)

§ 18-523. Retaining for claims.

It shall be the duty of an executor or administrator to pay all just claims against his decedent exhibited to him, or a just proportionable part thereof,

according to the assets; and if any claim be known to him (although the same be not exhibited) he shall retain the same, or a just proportionable part, for the benefit of the creditor: *Provided*, That if any executor or administrator shall have actual knowledge of a claim which has not been exhibited or passed he shall give notice in writing to the creditor, requiring the claim to be either exhibited or passed, as herein provided, within thirty days if such creditor be a resident and within ninety days if he be a nonresident of said District, and after the expiration of such period, and after the expiration of the period for distribution provided by section 18-519 the executor or administrator shall not be required to retain any part of the estate for the benefit of such creditor, unless in the meantime such claim shall have been so exhibited or passed. (Mar. 3, 1901, 31 Stat. 1245, ch. 854, § 346.)

NOTES TO DECISIONS

Basis for rejection 1
Failure to exhibit 2
Sufficiency of exhibition 3

1. Basis for rejection

Where claimant filed a duly authenticated claim with the office of the register of wills and the claim was entered on the claims docket, ruling that the executor could take notice of the claim from the court's records, and effectively reject it, was erroneous, since the only way in which the executor could reject the claim was if there was an actual exhibition of the claim to him, legally authenticated. *Lewis v. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

2. Failure to exhibit

This section does not provide that failure to exhibit in response to the notice will bar the claim. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

3. Sufficiency of exhibition

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *Lewis v. Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

§ 18-524. Executor or administrator to withhold amount claimed pending litigation.

And if any action shall be commenced against an executor or administrator for the recovery of a larger debt or damages than he shall think due, so that the same can not be ascertained before verdict, the executor or administrator shall be allowed to retain such sum to meet the said debt or damages as the probate court shall allow, and if more than enough be allowed, the party shall afterwards account for it, but nothing shall be retained on account of such further debt or damages where the court shall be satisfied that there will be money sufficient coming in after such dividend to meet the said damages, or a just proportion thereof, regard being had to other claims. (Mar. 3, 1901, 31 Stat. 1245, ch. 854, § 347.)

§ 18-525. Executor or administrator not responsible for claims made after distribution.

In case all the assets have been paid away, delivered, or distributed as herein directed, and a claim shall afterwards be exhibited of which the executor or administrator hath not knowledge or notice by the exhibition of the claim legally authenticated, as herein required, he shall not be answerable for the same; and if he be sued for any claim and shall

make it appear to the court in which suit is brought that he hath so paid away, delivered, or distributed, and the plaintiff can not prove that the defendant had notice as aforesaid before such payment, delivery, or distribution, the court shall not proceed to give judgment (although the amount of the claim against the deceased may be ascertained) until the plaintiff shall be able to show further assets coming into the defendant's hands, but if the plaintiff shall prove notice, as aforesaid, of the said claim against the defendant, judgment may be immediately given for such sum as the plaintiff ought to have received at the dividend, and fieri facias may issue and have effect, and further judgment may be given on coming in of further assets. (Mar. 3, 1901, 31 Stat. 1245, ch. 854, § 349.)

NOTE TO DECISION

1. In general

An executor is exonerated as to any claims as to which he had not legal notice prior to distribution. *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

§ 18-526. Notice to creditors to file claims.

No executor or administrator who shall, after the lapse of six months after the date of his letters, have paid away assets to the discharge of just claims shall be answerable for any claim of which he had no knowledge or notice by an exhibition of the claim legally authenticated: *Provided*, That at least three months before he shall make distribution he shall have caused to be inserted in so many newspapers as the probate court may direct an advertisement as follows, or fully to the following effect, namely: "This is to give notice that the subscriber, of ———, hath obtained from the probate court of the District of Columbia letters testamentary (or of administration) on the personal estate of ———, late of ———, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the ——— day of ——— next; they may otherwise by law be excluded from all benefit of said estate.

"Given under my hand this ——— day of ———." (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 350; June 24, 1949, 63 Stat. 268, ch. 242, § 6.)

AMENDMENT

1949—Act June 24, 1949, substituted "six months" for words "one year", and "at least three months" for "at least six months".

NOTES TO DECISIONS

Claim in process of administration 2

Historical 1

Necessity of exhibit 3

1. Historical

This section is similar to the Maryland Act of 1798 as amended (Acts 1828, ch. 131, § 2). *Clawans v. Sheetz* (1937, 92 F. 2d 517, 67 App. D.C. 366).

2. Claim in process of administration

The 1949 amendment to section 18-518 reducing from nine to three months the period for bringing suit on rejected claim against estate was not intended to apply to claim against estate in process of administration at time of enactment and hence action for services rendered deceased and not compensated for in deceased's will as promised by deceased could be instituted within nine months after rejection of claim, where section 18-518 was amended after administration of estate had begun. *Kalis v. Leahy* (1951, 188 F. 2d 633, 88 U.S. App. D.C. 166, certiorari denied 71 S. Ct. 797, 341 U.S. 926, 95 L. Ed. 1358).

3. Necessity of exhibit

Knowledge or notice of a claim to an executor must be by an exhibition of the claim, legally authenticated. *Parish v. Hedges* (34 App. D. C. 21).

§ 18-527. Report and proof of notice.

The executor or administrator may report to the court, with an affidavit of the proof thereof annexed, the fact of having given such notice, and the court, on being satisfied that its order has been complied with and the said notice has been given, shall indorse on said report its certificate that it has been proven to its satisfaction that said notice hath been given as therein reported, and shall order said report and certificate to be recorded among the records of the court. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 351; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out the word "their" and inserted in lieu thereof the word "its," following the words "satisfied that" and "proven to."

§ 18-528. Report of notice to be prima facie evidence.

The said report and certificates shall be prima facie evidence, in all cases whatever, of the giving of such notice as therein stated. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 352.)

§ 18-529. Copy of report of notice as legal evidence.

A copy of said report, certificate, and order, under the seal of the register of wills, shall be legal and competent evidence. (Mar. 3, 1901, 31 Stat. 1246, ch. 854, § 353.)

§ 18-530. Distribution of residue.

Whenever it shall appear by the first or other account of an executor or administrator that all the claims against, or debts of, the decedent which have been known by or notified to him have been discharged or allowed for in his account, it shall be his duty to deliver up and distribute the surplus or residue of the personal estate not disposed of by any will, as hereinafter directed: *Provided*, That his power and duty with respect to future assets shall not cease; and after such delivery he shall not be liable for any debts afterwards notified to him, provided he shall have advertised as hereinbefore directed, unless assets shall afterwards come into his hands which shall be answerable for such debts. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 359.)

Chapter 6.—SALE OF ASSETS

Sec.

- 18-601. Sale of personal estate.
- 18-602. Order for sale.
- 18-603. Power of sale in will.
- 18-604. Sale of real estate directed in will—Procedure.
- 18-605. Power of co-executors to sell under power in will.
- 18-606. Survivor of several trustees.
- 18-607. Sale of real estate.
- 18-608. Bond to prevent sale of real estate.
- 18-609. Sale of real estate to satisfy debts and legacies.
- 18-610. Sale of property subject to dower.
- 18-611. Appointment of trustee to sell real estate—Bond of trustee.
- 18-612. Proceeding by creditors to have real estate sold.

§ 18-601. Sale of personal estate.

In case any executor or administrator shall not have money sufficient to discharge the just debts of and claims against the decedent, the probate court

shall, on his application, made after the return of an inventory, direct a sale of the personal property therein contained, or of such part as the court may think proper, and in such manner and on such terms as the court may direct. The court shall have power to direct a sale as aforesaid, if deemed by the court advantageous to the persons interested in the administration, on the application of any of the said persons. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 322.)

CROSS REFERENCES

Exemption from operation of Bulk Sales Law, see § 28-1704.

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

Sale of property to make distribution, see §§ 18-718, 18-719.

§ 18-602. Order for sale.

No executor or administrator shall sell any property of his decedent without an order of the probate court authorizing such sale; and any such sale made without a previous order authorizing it shall be void and pass no title to the purchaser. If any executor or administrator shall sell, pledge, or dispose of any property without such previous order, his letters may be revoked and an administrator appointed, whose duty it shall be immediately to recover possession of said property, and such removed executor or administrator may be proceeded against by attachment; but where there are two or more executors or administrators, and a sale, pledge, or disposition of property has been made without the consent of all, the revocation shall only extend to the person or persons so offending, and the remaining executors or administrators shall have power to discharge the duties of their office and institute proceedings for the recovery of the property and attachment as aforesaid. (Mar. 3, 1901, 31 Stat. 1240, ch. 854, § 323.)

NOTES TO DECISIONS

Application of section 1
Common law 2
Construction 3
Jurisdiction 4

1. Application of section

This section should be applied where an administrator not only has become actively a party to an arrangement by which another makes an appropriation of estate assets such as a business before his appointment but during the course of his administration confirms it by refusing to include the property within his inventory, to report, or to account for the profits of the business, and to take steps to secure its recovery or legal disposition after full warning that that might be required. *Burke v. Canfield* (1941, 121 F. 2d 877, 74 App. D.C. 6).

2. Common law

"At common law an executor or administrator had absolute power of disposal over all personal property coming into his hands, including choses in action, and such sales protected purchasers, except where fraud appeared." *Phoenix Mut. Life Ins. Co. v. Harris* (45 App. D. C. 474).

3. Construction

"Owing to this rule of the common law, statutes providing for the granting of decrees of court as to sales generally are construed to be for the protection of the administrator and not as a limitation of his power." *Phoenix Mut. Life Ins. Co. v. Harris* (45 App. D. C. 474).

"The provisions of section 323 (this section) of our code were intended to apply merely to local executors and administrators dealing with property within this jurisdiction. The section declares, * * *, his letters may be revoked, clearly indicating, we think, that the prohibition was not intended to extend to contracts made

by executors and administrators of other jurisdictions. In other words, this statute was addressed to the constituent elements or validity of a local contract by executors and administrators, rather than to the procedure to be followed in establishing all contracts by executors and administrators, wherever made." *Id.*

4. Jurisdiction

District court, in an action for construction of a will, had no authority to order sale of testatrix' realty, such matter being one to be determined by probate court in accordance with applicable sections of District of Columbia. *Littlepage et al. v. Hart and Littlepage Jr.* (1958, 250 F. 2d 774, 102 U.S. App. D.C. 111).

§ 18-603. Power of sale in will.

Section 18-602 shall not be construed to apply to any case where an executor shall be authorized by will of his testator to make sale of any property. (Mar. 3, 1901, 31 Stat. 1241, ch. 854, § 324.)

§ 18-604. Sale of real estate directed in will—Procedure.

In all cases in which a testator has directed his real estate to be sold for the payment of his debts or legacies, the executor may sell and convey the same, and shall account for the proceeds thereof to the probate court in the same manner that he is bound to account for the proceeds of personal estate; but such sale shall not be valid unless ratified by said court after notice given by publication according to the practice in equity. In case the executor shall refuse or decline to act, or shall die without executing the power vested in him, it shall be lawful for the court, on the application of any person interested, to appoint an administrator de bonis non with the will annexed to execute such power in the same manner in which the executor appointed by the will might have done. (Mar. 3, 1901, 31 Stat. 1241, ch. 854, § 325.)

CROSS REFERENCE

Provisions of will as tolling statute of limitations, see § 12-207.

NOTES TO DECISIONS

Approval of court 1
Price of bid 2
Rejection of offer or bid 3

1. Approval of court

Where executor was empowered by will to sell real estate at his discretion, court's refusal to approve sale by executor because of a higher bid would not be disturbed, except that before accepting the higher bid the court should afford the original bidder, and other bidders, opportunity to submit further bids if desired. *De Marco v. Kertz* (1945, 151 F. 2d 305, 80 U.S. App. D.C. 204).

The Judicial Sales Act, 28 U. S. C. §§ 847-849, and the local civil rules of the District Court for the District of Columbia adopted thereunder are applicable only to sales which are required or authorized by court order, and not those under a power created by will; hence, for sales made by executor under terms of a will, ratification by the probate court according to the practice in equity is required, and not in accordance with provisions of said sections. *Id.*

2. Price of bid

Where a will authorizes executor to sell real estate at his discretion, the bidder makes his offer to the executor subject to the approval of the court, as required by this section, and in selling the property the court is acting as trustee for the parties in interest and must exercise a wise, judicial discretion to secure for the estate the highest price consistent with a just regard for the rights of the bidder. *De Marco v. Kertz* (1945, 151 F. 2d 305, 80 U.S. App. D.C. 204).

The general rule applicable to public judicial sales of property, that the court will not ordinarily set aside a sale made in the manner prescribed by law because of

mere inadequacy of price, grew out of the necessity of encouraging free bidding at public sales, and rule is not applicable to a private sale. *Id.*

3. Rejection of offer or bid

Where a will authorizes executor at his discretion to sell real estate, a private offer, which is made subject to ratification by the court under this section, may be rejected when a higher bid is made at any time prior to ratification. *De Marco v. Kertz* (1945, 151 F. 2d 305, 80 U.S. App. D.C. 204).

§ 18-605. Power of co-executors to sell under power in will.

Where part of the executors named in any testament of any person so making or declaring any will of any lands, tenements, or other hereditaments to be sold by his executors, after the death of any such testator, do refuse to take upon him or them the administration and charge of the same testament and last will wherein they be so named to be executors, and the residue of the same executors do accept and take upon them the cure and charge of the same testament and last will; then all bargains and sales of such lands, tenements, or other hereditaments, so willed to be sold by the executors of any such testator, as well heretofore made, as hereafter to be made by him or them, only of the said executors that so doth accept, or that heretofore hath accepted and taken upon him or them any such cure or charge of administration of any such will or testament, shall be as good and as effectual in the law, as if all the residue of the same executors named in the said testament, so refusing the administration of the same testament, had joined with him or them in the making of the bargain and sale of such lands, tenements, or other hereditaments so willed to be sold by the executors of any such testators, which heretofore hath made or declared, or that hereafter shall make or declare any such will, of any such lands, tenements, or other hereditaments after his decease, to be sold by his executors. (21 Henry VIII, ch. 4, § 1, 1529; Kilty's Rept. p. 230; Alex. Br. Stat., p. 280; Comp. Stat. D. C., p. 20, § 85.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

§ 18-606. Survivor of several trustees.

In all cases where two or more trustees shall be appointed by last will to execute a trust, or shall be empowered to sell, dispose of, or convey lands or other property devised to them jointly, upon the death of any one or more of them the survivor or survivors shall be held authorized to execute such trust or power; and if any one of such trustees shall in writing, signed by him and attested by a witness, relinquish or disclaim said trust or refuse to act under said will, and shall deliver such writing to the probate court of the District for record, the right of such trustee to act shall cease, and the remaining trustee or trustees appointed by said will shall be authorized to execute the trusts of said will and make all sales and execute all conveyances and other acts necessary for that purpose. (Mar. 3, 1901, 31 Stat. 1241, ch. 854, § 326.)

NOTES TO DECISIONS

1. Effect of death

A trust charged upon the executors, as such, does not become extinct by the death of one of them, and if the executors were authorized to sell real estate, the survivor can sell it. *Kennedy v. Mangan* (1922, 278 F. 1009, 51 App. D.C. 296).

When will devised real property in trust for missing brother and if not heard from in seven years to have trustees sell, in such case the trustees had power to sell the property after seven years for the benefit of legatees, and equity would limit power to sell only if required by express terms of the will. *Id.*

§ 18-607. Sale of real estate.

The probate court shall have plenary authority to administer also the real estate situated in the District of Columbia of decedents so far as may be necessary for the payment of debts and legacies, and to distribute among those entitled thereto any surplus proceeds of any sale of real estate made in the course of such administration, and the bonds of all executors and administrators shall be responsible for the proceeds of sale of all real estate sold by them under the order of the said justice for such purposes of administration: *Provided, however*, That no such sale shall be made unless the same be required for the purposes of paying debts and such legacies as are chargeable upon the real estate, nor until the auditor of the court shall have ascertained and reported such debts and legacies, the deficiency of personal assets, and the real estate necessary to be sold for the payment of debts and legacies; and such report shall be subject to exception. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 146; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out the words "a deficiency of personal assets for such purposes" and inserted in lieu thereof the words "such debts and legacies, the deficiency of personal assets, and the real estate necessary to be sold for the payment of debts and legacies."

CROSS REFERENCES

Bond to sell real estate, see § 20-202.

Exemption from operation of law requiring license to deal in real estate, see § 45-1402.

Form of executor's deed, see § 45-301.

NOTES TO DECISIONS

Allowance of litigation costs 2
Collateral attack 3
Decisions under prior law 1
Distribution after payment of debts 4
Executors' expenses 5
Jurisdiction 6
Personal property must be found to be insufficient 7

1. Decisions under prior law

Prior to the enactment of the Code, the Supreme Court of this District had "jurisdiction and power to decree the sale of the real estate of a deceased debtor, whether the title be legal or equitable, for the payment of debts; and upon the allegation that the deceased was seized * * * and died indebted, there would be furnished a foundation for a decree of sale of such real estate." *Duncanson v. Manson* (3 App. D.C. 260, affirmed 17 S. Ct. 647, 166 U.S. 533, 41 L. Ed. 1105).

2. Allowance of litigation costs

Where testator, prior to his second marriage, had made will giving his property to his stepchildren, but shortly after testator's death a child was born of the second marriage, resulting in litigation and a holding that the will was revoked by the marriage and birth of the child, and the personal estate was insufficient to pay all costs of litigation, the court properly charged against the real estate an allowance to executors for services of their attorneys and an allowance to the infant's guardian ad

item. *Pascucci v. Hart* (1947, 160 F. 2d 255, 82 U.S. App. D.C. 12).

The authority of the probate court to sell real estate to pay debts and legacies includes the right to sell to pay the ordinary and necessary administration costs, and where litigation was necessary in the establishment of an infant's right to title to realty, the costs of such litigation would be entitled to priority over debts and legacies. *Id.*

3. Collateral attack

If the court had jurisdiction, the sale cannot be attacked collaterally. *Duncanson v. Manson* (3 App. D.C. 260, affirmed 17 S. Ct. 166, U.S. 533, 41 L. Ed. 1105).

4. Distribution after payment of debts

When the real estate of an intestate is sold in administration proceeding in the District of Columbia for the payment of his debts, there can be no distribution of any part of the proceeds until after payment of all of the estate's debts, and this provision is not limited to debts payable to residents of the District. *Wiggins v. Mayer* (1928, 22 F. 2d 869, 57 App. D.C. 293).

5. Executors' expenses

Where a suit to cancel a deed was not for the purpose contemplated by §§ 18-607 to 18-609 and consequently compliance with the terms of these sections was not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

6. Jurisdiction

District court, in an action for construction of a will, had no authority to order sale of testatrix' realty, such matter being one to be determined by probate court in accordance with applicable sections of District of Columbia. *Littlepage et al. v. Hart and Littlepage Jr.* (1958, 250 F. 2d 774, 102 U.S. App. D.C. 111).

7. Personal property must be found to be insufficient

The statute contemplates a prior determination of the insufficiency of the personal property before an administrator can claim rents. *Shields v. Shields* (1940, 101 F. 2d 255, 69 App. D.C. 331).

§ 18-608. Bond to prevent sale of real estate.

An order for the sale of the real estate shall not be granted if any of the persons interested in the estate shall give bond to the United States, with security to be approved by said probate court, conditioned to pay all the debts or legacies, or both, as the case may be, that shall eventually be found due, and the costs of administration. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 147.)

NOTE TO DECISION

1. Executors' expenses

Where a suit to cancel a deed was not for the purpose contemplated by §§ 18-607 to 18-609 and consequently compliance with the terms of these sections was not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

§ 18-609. Sale of real estate to satisfy debts and legacies.

If the said probate court shall be satisfied, upon a report of the auditor, that it is necessary to sell said real estate, or part thereof, it shall authorize the same, or so much thereof as may be necessary for the payment of the debts or legacies, or both, to be sold by the executor or administrator, on such terms as the court may direct. Any surplus of the proceeds of such sale, after payment of debts and legacies and costs of administration, shall be deemed real estate, and shall be distributed among the heirs or devisees as the right may appear. (Mar. 3, 1901, 31 Stat. 1214, ch. 854, § 148.)

NOTES TO DECISIONS

Effect of directions in will 1 Executors' expenses 2

1. Effect of directions in will

A conveyance of real estate to trustees with specific directions to sell as soon as possible, converted such property into personalty, by the doctrine of equitable conversion, and was therefore subject to federal estate tax. *Tait v. Dante* (C.C.A. 4, 1935, 78 F. 2d 303, certiorari denied 56 S. Ct. 134, 296 U.S. 614, 80 L. Ed. 436).

2. Executors' expenses

Where a suit to cancel a deed was not for the purpose contemplated by §§ 18-607 to 18-609 and consequently compliance with the terms of these sections was not a condition precedent to executors' right to institute action, court erred in disallowing their expenses. *Ramsey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

§ 18-610. Sale of property subject to dower.

Where there shall be a widow entitled to dower in the real estate of the decedent, the probate court, before authorizing a sale of said real estate, shall issue a commission to one or more suitable persons to set off and assign her dower out of such estate, and her dower shall be assigned to her; or, if the court shall find the widow's dower can not be set off without injury to the property, if she shall consent thereto by her answer to the petition, the real estate may be sold free of her dower, and she shall receive out of the proceeds a commutation of her dower according to the practice in equity. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 149.)

CROSS REFERENCE

Abolition of right of dower, see § 18-201a.

§ 18-611. Appointment of trustee to sell real estate—Bond of trustee.

If any person shall die having devised real estate to be sold for the payment of debts or other purposes without having appointed a trustee to sell or convey the property, or if the person so appointed shall neglect or refuse to execute the trust, or shall die before the execution of such trust, the equity court shall have authority, on the application of any person interested, to appoint a trustee to sell and convey said property and apply the proceeds of sale to the purposes intended. And in all cases where a trustee shall be appointed by last will and testament to execute any trust, and any person interested in the execution of such trust shall make it appear that it is necessary for the safety of those interested therein that the trustee should give bond and security for the due execution of the trust, the said court may order and direct that such bond be given by the trustee by a day named, and on failure of the trustee to give such bond, with security to be approved by the court as directed, the court may displace such trustee and appoint another in his stead, who shall give such bond; and such bond shall be given to the United States and may be sued on for the use of any person interested. (Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 94.)

NOTE TO DECISION

1. Removal of trustee

Where testator devised realty in trust to cotrustees, and the trustees were incompatible, and one trustee had employed obstructionist tactics to hinder execution of trust by the other, and had taken no steps himself to execute the trust, under District of Columbia Code, court would appoint other trustee as sole trustee. *Hughes et al. v. Hughes* (1953, 112 F. Supp. 899).

§ 18-612. Proceeding by creditors to have real estate sold.

When any person shall die leaving any real estate in possession, remainder, or reversion, and not leaving personal estate sufficient to pay his debts, the said equity court, on any suit instituted by any of his creditors, may decree that all the real estate left by such person, or so much thereof as may be necessary, shall be sold to pay his debts; and this section shall apply to cases where the heirs or devisees are residents or nonresidents, are of full age or infants, are of sound mind or non compos mentis, and also to cases where the deceased left no heirs or it is not known whether he left heirs or devisees or the heirs or devisees be unknown; and if there be no known heirs the attorney of the United States for the District of Columbia shall be notified of said suit and appear thereto. (Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 96.)

NOTES TO DECISIONS

Collateral attack 1
Parties 2
Personal estate insufficient 3

1. Collateral attack

If sale of real estate is made under a decree, an infant cannot successfully in later proceeding, collaterally attack the decree when he was present in person and did not object to appointment of guardian for him. *Duncanson v. Manson* (3 App. D.C. 260, affirmed 17 S. Ct. 647, 166 U.S. 533, 41 L. Ed. 1105).

2. Parties

In a creditors' bill filed for purpose of subjecting real estate of a deceased person as assets to payment of his debts, the executor or administrator is a necessary party, but if there are no personal assets, and consequently no qualified executor or administrator, a creditors' bill may be maintained without executor or administrator. *Plumb v. Bateman* (2 App. D.C. 156).

3. Personal estate insufficient

Allegation and proof of deficiency in personal assets is jurisdictional in proceedings under this section. *Dahlgren v. National Sav. & Trust Co.* (41 App. D.C. 201).

In suit brought under this section by creditors of a decedent, a decree ordering the sale of decedent's real estate for payment of creditors' claims was affirmed, the personal estate being insufficient to pay them. *West v. McLaughlin* (1927, 18 F. 2d 813, 57 App. D.C. 163).

Chapter 7.—DISTRIBUTION OF SURPLUS—BENEFICIARIES

Sec.

- 18-701. Distribution—When to be made.
- 18-702. When surviving spouse entitled to whole.
- 18-703. When surviving spouse entitled to one-third.
- 18-704. When surviving spouse entitled to one-half.
- 18-705. Distribution of surplus after payment to surviving spouse.
- 18-706. Children to share equally.
- 18-707. Grandchildren's share—Advancements.
- 18-708. Share of father and mother.
- 18-709. Share of brother or sister or their descendants.
- 18-710. Brothers and sisters to share equally.
- 18-711. Share of collateral relations.
- 18-712. Share of grandfather and grandmother.
- 18-713. Death of distributee before distribution.
- 18-714. Share of posthumous children.
- 18-715. No distinction between whole and half-blood.
- 18-716. Share of illegitimate children—Their issue—Mother.
- 18-717. Escheatment.
- 18-718. Distribution of specific property.
- 18-719. Distribution of specific articles, how to be made.
- 18-720. Partial distribution.
- 18-721. Distribution of specific bequests.
- 18-722. Bequest to female.
- 18-723. Meeting of legatees or next of kin.

§ 18-701. Distribution—When to be made.

When the debts of an intestate, exhibited and proved or notified and not barred, shall have been discharged or settled, or allowed to be retained for as herein directed, the administrator shall proceed to make distribution of the surplus as provided in this chapter. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 373.)

CODIFICATION

Words "as provided in this chapter" were substituted for "as follows."

CROSS REFERENCES

Descent of real estate, see § 18-101 et seq.

Distribution before discovery of will or before will is declared invalid, see § 20-106.

Distribution of death benefits of fraternal benefit associations, see § 35-901.

Distribution of proceeds of action for wrongful death, see § 16-1203.

Interest of widow who renounces under will, see § 18-211.

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

Life insurance for benefit of wife and children, see §§ 30-213, 30-214.

NOTES TO DECISIONS

1. In general

"It is not the full and complete administration of the estate that marks the period for distribution, but the payment of or allowance for all debts and claims made known against the estate, after notice given, and when that is done it at once becomes the duty of the administrator to deliver up and distribute the residue of the estate to those entitled thereto." *Sterrett v. National Safe Deposit, Sav. & Trust Co.* (10 App. D.C. 131).

Distribution of property of persons dying in common disaster. *Young Womens Christian Home v. French* (1903, 23 S. Ct. 184, 187 U.S. 401, 47 L. Ed. 233).

"An executor or administrator may make distribution of the surplus in his hands, after discharging the debts of the estate, without waiting for an order of the probate court." *Miller-Shoemaker Real Estate Co. v. Sturgeon* (31 App. D.C. 406).

§ 18-702. When surviving spouse entitled to whole.

If the intestate leave a widow or surviving husband and no child, parent, grandchild, brother, or sister, or the child of a brother or sister of the said intestate, the said widow or surviving husband shall be entitled to the whole. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 374; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

NOTE TO DECISION

1. Renunciation of will

Under District of Columbia Code, where testator left no child, parent, grandchild, brother or sister or child of a brother or sister, widow who renounced will made by her husband, was entitled to the whole of her husband's personal estate. *Wegenast v. Pheylan* (1952, 195 F. 2d 776, 90 U. S. App. D. C. 277).

§ 18-703. When surviving spouse entitled to one-third.

If there be a widow or surviving husband and a child or children, or a descendant or descendants from a child, the widow or surviving husband shall have one-third only. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 375; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

NOTES TO DECISIONS

Causa mortis gifts 1
Decedent's earned income 2
Life estate 3

1. Causa mortis gifts

The United States Supreme Court has held in cases involving a gift causa mortis that title to the property passes at the time of delivery, subject to a condition subsequent that the grantor may revoke the transfer if he lives and that it cannot, therefore, be considered as property of which the grantor dies possessed. *Wilkins v. Woodruff* (D. C. Mun. App. 1950, 74 A. 2d 59).

2. Decedent's earned income

Code subdivision, providing for compensation for period between discharge and reinstatement and that reinstated employee shall "for all purposes" be deemed to have rendered service during such period, must be read in its entirety with all of Code provisions for payment of compensation "due" deceased employee, and under the Code provisions, so read, widow, rather than estate, of deceased employee who had not designated beneficiary was entitled to amount paid in settlement of deceased employee's claim for back salary even though it had not yet been determined at time of death that he was entitled to reinstatement and back pay. *Joyce v. Scott* (1959, 265 F. 2d 369, 105 U.S. App. D.C. 177).

3. Life estate

Will construed to give wife life estate in realty during widowhood, consent of devisees necessary to sale. *Evans v. Evans* (1932, 55 F. 2d 533, 60 App. D.C. 371).

§ 18-704. When surviving spouse entitled to one-half.

If there be a widow or surviving husband and no child or descendants of the intestate, but the said intestate shall leave a father or mother, or brother or sister, or child of a brother or sister, the widow or surviving husband shall have one-half. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 376; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

NOTES TO DECISIONS

War-risk insurance 1
Widow's preference 2
Wrongful death 3

1. War-risk insurance

Distributees of war-risk insurance policy after death of the widow were to be determined as of the date of the death of the insured, under this section and § 385 of the Code (§ 18-713). *Condon v. Mallan* (1929, 30 F. 2d 995, 58 App. D.C. 371).

Where decedent's estate consisted of proceeds from war risk insurance policy and decedent was resident of District of Columbia at the date of death, the law of the District is controlling. *Id.*

2. Widow's preference

Under District of Columbia law, a widow has a statutory preference to letters of administration, but this preference is subject to court's discretion. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

Where District Court revoked letters of administration granted to decedent's sister, and it appeared that decedent's widow had a claim against major portion of estate, had been long separated from decedent and had delayed a year after death before seeking to be appointed administratrix, district court should have considered an alternative to appointment of widow as administratrix. *Id.*

3. Wrongful death

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman v. Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

§ 18-705. Distribution of surplus after payment to surviving spouse.

The surplus, exclusive of the widow's or surviving husband's share, or the whole surplus (if there be no widow or surviving husband), shall go as follows: (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 377; Apr. 19, 1920, 41 Stat. 563, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

NOTE TO DECISION

1. Wrongful death

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman v. Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

§ 18-706. Children to share equally.

If there be children and no other descendants, the surplus shall be divided equally among them. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 378.)

NOTES TO DECISIONS

1. Indebtedness to children

When mother dies indebted to children and bequeaths to them a portion of her own estate which is more than the indebtedness, such bequest is not in satisfaction for they would inherit the entire estate if no will had been made. *Patton v. Glover* (1 App. D.C. 466, affirmed 17 S. Ct. 411, 165 U.S. 394, 41 L. Ed. 760).

When mother borrowed money on real estate and gave it to son to establish him in business, taking no security therefor but under agreement that it would be deducted from his share of estate, such advancement operates as an ademption of a legacy. *Miller v. Payne* (28 App. D. C. 396).

§ 18-707. Grandchildren's share—Advancements.

If there be a child or children and a child or children of a deceased child, the child or children of such deceased child shall take such share as his, her or their deceased parent would, if living, be entitled to, and every other descendant or descendants in existence at the death of the intestate shall stand in the place of his, her, or their deceased ancestor: *Provided*, That if any child or descendant shall have been advanced by the intestate, by settlement or portion, the same shall be reckoned in the surplus, and, if it be equal or superior to a share, such child or descendant shall be excluded, but the widow shall have no advantage by bringing such advancement into reckoning: *And provided further*, That, if any child or descendant shall have received from the intestate any real estate by way of advancement, which shall not be equalized under the provisions of section 18-108, the value of any such advancement shall be treated as personality for the purposes of this section; but maintenance or education or money or realty, given without a view to a portion or settlement in life, shall not be deemed advancement; and in all cases those in equal degree claiming in the place of an ancestor shall take equal shares. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 379; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out the word "personality" and inserted in lieu thereof the word "personalty."

CROSS REFERENCE

Advancement as satisfaction of legacy, see § 19-109.

§ 18-708. Share of father and mother.

If there be no child, or descendant, the whole shall go to the father and mother in equal shares, or to the survivor of them. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 380; Mar. 6, 1935, 49 Stat. 39, ch. 28, § 1.)

AMENDMENT

1935—Act Mar. 6, 1935, amended section generally. Prior to such amendment, section read as follows: "If there be a father and no child or descendant, the father shall have the whole; if there be a mother and no father, child or descendant, the mother shall have the whole."

NOTE TO DECISION

1. Wrongful death

Under the Wrongful Death Act, § 3, the proceeds of the recovery are required to be distributed among the next of kin, which includes both the widow and father, where the decedent leaves no surviving child. *Doleman v. Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

§ 18-709. Share of brother or sister or their descendants.

If there be a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father or mother of the intestate, the said brother, sister, or child or descendant of a brother or sister shall have the whole. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 381.)

NOTE TO DECISION

1. Construction

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson v. Charlent* (1949, 81 F. Supp. 690).

§ 18-710. Brothers and sisters to share equally.

Every brother and sister of the intestate shall be entitled to an equal share, and the child or children, or descendants of a brother or sister of the intestate, shall stand in the place of their deceased parents respectively. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 382.)

NOTES TO DECISIONS

Construction 1
Per stirpes or per capita 2

1. Construction

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson v. Charlent* (1949, 81 F. Supp. 690).

2. Per stirpes or per capita

In construing an illiterate will children of testator's brothers held to take per capita rather than per stirpes under residuary clause, although testator had used the words "divided between my Brother Edwin and Charles children." *McIntire v. McIntire* (1933, 24 S. Ct. 196, 192 U.S. 116, 48 L. Ed. 369).

§ 18-711. Share of collateral relations.

After children, descendants, father, mother, brothers, and sisters of the deceased and their descendants, all collateral relations in equal degree shall take, and no representation among such collaterals shall be allowed. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 383; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted words "and there shall be no distinction between the whole and half-blood" which followed "shall be allowed."

NOTE TO DECISION

1. Cousins

Where will devised the residue consisting of personal property to heirs at law and next of kin in accordance with existing laws of the District, the surviving next of kin, who were first cousins, are entitled to take all the personality as against second cousins who would have been heirs had realty been devised. *Binford v. Diller* (1949, 177 F. 2d 731, 85 U.S. App. D.C. 365).

§ 18-712. Share of grandfather and grandmother.

If there be no collaterals, the grandfathers and grandmothers, or such of them as survive, shall take alike. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 384; Mar. 6, 1935, 49 Stat. 39, ch. 28, § 2.)

AMENDMENT

1935—Act Mar. 6, 1935, amended section generally. Prior to such amendment, section read as follows: "If there be no collaterals, a grandfather may take, and if there be two grandfathers they shall take alike; and a grandmother, in case of the death of her husband, the grandfather, shall take as he might have done."

§ 18-713. Death of distributee before distribution.

If any person entitled to distribution shall die before the same shall be made, his or her share shall go to his or her representatives. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 385.)

NOTE TO DECISION

1. In general

The widow on the death of her husband was a distributee of one-half of his personal estate. Owing to her being the beneficiary, this portion could not be ascertained until her death. Her estate then became entitled to her share, and her next of kin, her daughter, inherited her estate. *Condon v. Mallan* (1929, 30 F. 2d 995, 58 App. D.C. 371).

§ 18-714. Share of posthumous children.

No right in the inheritance to real or personal property shall accrue to or vest in any person other than the children of the intestate and their descendants, unless such person is in being and capable in law to take as heir or distributee at the time of the intestate's death; but any child or descendant of the intestate born after the death of the intestate shall have the same right of inheritance as if born before his death. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 386; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 9 (a).)

AMENDMENT

1957—Act Aug. 31, 1957, amended section generally. Prior to such amendment, section read as follows: "Posthumous children of intestates shall take in the same manner as if they had been born before the decease of the intestate, but no other posthumous relation shall be considered as entitled to distribution in his or her own right."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Aug. 31, 1957, effective 90 days after Aug. 31, 1957, see note under section 18-101.

NOTE TO DECISION

1. In general

"A child en ventre sa mere is deemed to be in esse for the purpose of taking a remainder, or any other estate or interest which is for his benefit, whether by descent, by devise, or under the statute of distribution." *Craig v. Rowland* (10 App. D. C. 402).

§ 18-715. No distinction between whole and half-blood.

In no case shall there be any distinction between the kindred of the whole and the half-blood. (June 30, 1902, 32 Stat. 530, ch. 1329; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 9(b).)

AMENDMENT

1957—Act Aug. 31, 1957, substituted "In no case shall there be any distinction between the kindred of the whole and the half-blood" for "In the distribution of personal estate there shall be no distinction between the whole and half-blood."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Aug. 31, 1957, effective 90 days after Aug. 31, 1957, see note under section 18-101.

§ 18-716. Share of illegitimate children—Their issue—Mother.

The illegitimate child or children of any female and the issue of any such illegitimate child or children shall be capable to take real and personal estate by inheritance from their mother, or from each other, or from the descendants of each other, as the case may be, in like manner as if born in lawful wedlock.

When such illegitimate child or children shall die leaving no descendants, or brothers or sisters, or the descendants of such brothers or sisters, then and in that case the mother of such illegitimate child or children shall be entitled to the real and personal estate of such illegitimate child or children, and if the mother be dead, the heirs or distributees of the mother shall take in like manner as if such illegitimate child or children had been born in lawful wedlock. (Mar. 3, 1901, 31 Stat. 1250, ch. 854, § 387; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 9(c).)

AMENDMENT

1957—Act Aug. 31, 1957, specified that the share of the illegitimate children or their mother shall consist of the real and personal estate.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Aug. 31, 1957, effective 90 days after Aug. 31, 1957, see note under section 18-101.

CROSS REFERENCES

Antenuptial children, see § 18-106.

NOTES TO DECISIONS

Construction 1
Of terms 2
Legislative intent 3
Proceeds of insurance policy 4

1. Construction

A decision of the Maryland court, though not binding in this jurisdiction, should be given great weight in interpreting a statute of the District of Columbia which was presumably derived from the same source as the Maryland statute. *Wilson v. Charlent* (1949, 81 F. Supp. 690).

2. Construction of terms

"The mother of illegitimate children may be their next of kin, and illegitimate children of any female are next of kin to each other," and the phrase "next of kin" in section 1301 of the Code (§ 16-1201) is used in the same sense. *Southern R. Co. v. Hawkins* (35 App. D.C. 313, 21 Ann. Cas. 926).

3. Legislative intent

"It was evidently the intent of Congress in enacting this statute to remove the common-law disability of inheritance through the maternal line, and to that extent places illegitimates upon the same basis as legitimates. This amounted to a declaration of public policy." *Southern R. Co. v. Hawkins* (35 App. D.C. 313, 21 Ann. Cas. 926).

Congress intended that an illegitimate child, insofar as inheritance is concerned, is to be considered in all respects as the child of its mother. It would be highly artificial to draw a distinction between property of which the mother was seized and possessed at the time of her death and the property of which she should have become seized and possessed had she lived. *Wilson v. Charlent* (1949, 81 Supp. 690).

4. Proceeds of insurance policy

Where claim under Federal Employees' Group Life Insurance Act arose in District of Columbia, wherein, with regard to descent of personality, illegitimate children are on equal standing with those born in lawful wedlock insofar as mother's estate is concerned, illegitimate children of insured were entitled to share proportionately with her legitimate children in proceeds of policy. *Brantley and Mathis v. Skeens, Guardian ad litem* (1959, 266 F. 2d 447, 105 U.S. App. D.C. 246).

§ 18-717. Escheatment.

If there be no widow or widower or relations of the intestate within the fifth degree, which shall be reckoned by counting down from the common ancestor to the more remote, the surplus of real and personal property shall escheat to the District of Columbia to be used by the Commissioners of the District of Columbia for the benefit of the poor. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 388; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 9(d).)

AMENDMENT

1957—Act Aug. 31, 1957, inserted words "or widower" following "no widow", and substituted "the surplus of real and personal property shall escheat" for "the whole surplus shall belong."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Aug. 31, 1957, effective 90 days after Aug. 31, 1957, see note under section 18-101.

NOTES TO DECISIONS

Conversion of property 1
Power of court 2
Presumptions 3
Remand for further proof 5
Remoteness of relationship 4
Time when title vests 6
Veterans Administration payments 7

1. Conversion of property

Where, in 1879, one died without known heirs or next of kin and a sum of money was found on his person which the authorities turned over to the policemen's pension fund, an administrator appointed in 1886 could recover such fund in tort for conversion since there was no authority in law for turning the money over to the pension fund. *Tucker v. Nebeker* (2 App. D.C. 326).

2. Power of court

The probate court, upon a finding that there are no heirs of deceased intestate, has power to decree distribution to District of Columbia as escheatee. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

The probate court's jurisdiction to hear, determine and decree upon all claims between executors and administrators and legatees or persons entitled to a distributive share of an intestate estate includes duty of finding that there are or that there are not statutory heirs, and upon the finding to make distribution as this section requires. *Id.*

The probate court has power, in absence of next of kin, to order in a proper case the payment of residuum of intestate's estate to an escheatee, as this section provides. *Id.*

3. Presumptions

There is a presumption that an intestate left heirs and the presumption obtains until claimant by escheat overcomes it by strong and convincing evidence. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

4. Remoteness of relationship

A bequest to each one of testatrix's cousins living at the time of testatrix's death, irrespective of the remoteness of

relationship, and of whether his or her parent cousin should be living, was not intended to incorporate this section, which provides that intestate property shall pass to the District, when there are no relations within the fifth degree. *Dalton v. White* (1942, 129 F. 2d 55, 76 U.S. App. D. C. 93).

5. Remand for further proof

Where creditor filed petition for administration of deceased's estate stating that after diligent search, creditor was satisfied that deceased died intestate and without surviving relation, and District of Columbia relied upon allegations of creditor's petition, pleadings and evidence were insufficient to authorize probate court to determine whether the District was entitled to distribution under this section, and case was remanded for determination of question whether intestate died without heirs. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D. C. 241).

6. Time when title vests

If on death of an intestate there were no kin within classes named in this section, property after payment of debts *eo instante* vested in and became property of the District of Columbia as statutory escheatee. *Frazier v. Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

7. Veterans Administration payments

Estate of decedent derived from payments made by Veterans Administration for benefit of decedent, who was not survived by next of kin, and whose last legal residence was in the District of Columbia escheated, under express terms of statute, to the Government and not to the District of Columbia. *In re Germanovich's Estate* (1954, 122 F. Supp. 169).

§ 18-718. Distribution of specific property.

In case the surplus remaining in the administrator's hands after payment of all just debts exhibited and proved or notified and not barred, or after retaining for the same, shall consist of specific property or articles mentioned in the inventory or inventories, the administrator, if he can not satisfy the parties, may apply to the court to make distribution, and the court may appoint a day for making distribution and by summons call on the said parties to appear; and the said court may, at the appointed time, proceed to distribute. But if a majority in point of value shall neglect to appear, or appearing shall object to the distribution of the articles, or if the court shall deem a sale of the said articles or any part of them more advantageous, a sale shall be directed accordingly, and the rules herein laid down relative to a sale by order of the said court shall be observed. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 389.)

§ 18-719. Distribution of specific articles, how to be made.

Whenever a distribution of specific articles is to be made the probate court may appoint two disinterested persons, not in any way related to the parties concerned, to make such distribution among the persons entitled as to them shall seem meet and proper; or if, in their opinion, upon a view of such articles, no distribution among the persons entitled could be by them made which would operate equally, but a sale thereof would be more advantageous to such persons, they shall return to the probate court their opinion in writing, and the court shall thereupon order a sale of such articles, upon reasonable notice, and cause the proceeds of such sale to be equally distributed among the parties entitled. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 390.)

§ 18-720. Partial distribution.

When any person entitled, after payment of debts, shall be in want of subsistence or greatly straitened in his circumstances, and shall apply to the probate court by petition, and satisfy the court that he is in want of subsistence or greatly straitened in circumstances, and that it probably will not require more than one-half of the assets to discharge the debts, the court may direct the administrator to deliver to the petitioner any part of what the court shall suppose will be his distributive share, or any part of a legacy or bequest in money not exceeding one-third part, the said petitioner giving bond, with security approved by the court, to the administrator for returning the same or an equivalent, with interest, whenever so directed by the court; and the court shall have power to determine in a summary way on any such petition, after summons against such administrator duly returned "summoned" or "non est." (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 391.)

NOTES TO DECISIONS

In general ¹
Collectors ²
Trustees ³

1. In general

"Section 391 (this section) authorizes the court to deliver any part of what the court shall suppose will be the distributive share," and the requirement of a bond is sufficient protection in the event that the beneficiary should subsequently be divested of her interest in the estate. *Hutchins v. Hutchins* (41 App. D. C. 122).

2. Collectors

Collector may be authorized to make partial distribution under this section. *Hutchins v. Hutchins* (41 App. D. C. 122).

3. Trustees

This section confers no jurisdiction on an equity court to order partial distribution of a fund administered by a trustee under its supervision. *Hutchins v. Dante* (40 App. D. C. 262).

§ 18-721. Distribution of specific bequests.

The court, in like manner, on any petition by a person in such circumstances to whom a specific legacy or bequest has been made, being satisfied that the assets, exclusive of all specific legacies, will not be nearly exhausted by debts, may direct the executor or administrator with the will annexed to deliver to the petitioner the said specific legacy or bequest on his giving bond as aforesaid. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 392.)

§ 18-722. Bequest to female.

Where a bequest of personal property or money is made to a female and directed by the will to be paid on her attaining to full, mature, or to a lawful age, such female shall be entitled to receive and demand such personal property or money on her arriving at the age of eighteen years or being married. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 393.)

CROSS REFERENCES

Appointment of guardian, see §§ 21-109, 21-110.

General provisions concerning infant married woman's separate estate, see § 30-201 et seq.

NOTES TO DECISIONS

1. In general

Under a will directing the payment of income from an estate to a female "when she shall reach the age of eighteen years," she is entitled to receive it on attaining

that age, and it should not be paid to her guardian. *Perin v. Perin* (41 W. L. R. 265).

This section provides an exception to the general rule under common law that infants, whether male or female, attain their majority at the age of 21 years. *Jones v. Jones* (1934, 72 F. 2d 829, 63 App. D.C. 373, 95 A.L.R. 352).

§ 18-723. Meeting of legatees or next of kin.

Any administrator shall be entitled to appoint a meeting of persons entitled to distributive shares or legacies or a residue, on some day by the court approved, and payment or distribution may be there made under the court's direction and control. (Mar. 3, 1901, 31 Stat. 1251, ch. 854, § 394.)

NOTES TO DECISIONS

1. In general

"Ordinarily it would be safer for an administrator to pursue the course pointed out by this latter section (this section), but there is no express command of the law that he should do so." *Miller-Shoemaker Real Estate Co. v. Sturgeon* (31 App. D.C. 406).

"This provision merely gives expression to the well-settled rule that a legacy is payable in cash, unless some other form of payment is authorized by the person entitled. In the present case the distributee was a non-resident, and the executors, waiving their right to make payment here under the direction of the court, assumed the risk of sending the money by check to California. To absolve themselves from responsibility to the distributee, it must appear that he expressly or impliedly authorized them so to act, and, unless he did, in contemplation of law the money still is in their hands and they must respond to the order of the court" directing them to pay it. In this case the check was received and cashed by an imposter, and the executors were directed to pay the legatee his distributive share. *Moore v. Moore* (47 App. D. C. 23).

Settlement of administrator's first and final accounts was not to be given the effect of an adjudication of distributee's rights. *Claudy v. Duvall* (1925, 5 F. 2d 381, 55 App. D.C. 319).

Chapter 8.—FAMILY ALLOWANCE AND ADMINISTRATION OF SMALL ESTATES

Sec.

18-801. Family allowance for surviving spouse and minor children.

18-802. Petition for distribution of small estate—Order.

18-803. Waiver of administration—Publication of notice to creditors—Final order.

18-804. Exemptions from liability.

18-805. Waiver of bond and commissions.

18-806. Forms to be furnished—Fees.

18-807. Discovery of additional property.

18-808. False affidavits and other violations—Penalty.

18-809. Repeal of inconsistent laws.

18-810. Application of chapter.

§ 18-801. Family allowance for surviving spouse and minor children.

Upon the death of any person leaving a surviving spouse the said surviving spouse shall be entitled to an allowance out of the personal estate of said decedent of the sum of \$500 for his or her use, and that of any minor children, to be paid in money or in specific property at its fair value as may be elected, and which allowance shall be exempt from any and all debts and obligations of the decedent, and subject only to payment of funeral expenses not exceeding \$200; and, if there be no surviving spouse, the surviving minor children if any there be shall be entitled to a like allowance, and which shall be payable, in the discretion of the probate court, to the person having their custody or to such other person as it shall designate, and shall be used by such person solely for said minor's

care and maintenance. Said family allowance shall be in addition to the respective share or shares of the surviving spouse and children. (Mar. 3, 1901, ch. 854, § 394 (a), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-802. Petition for distribution of small estate—Order.

When any person dies, leaving a small estate consisting only of personal property of a value not in excess of \$500, and there be a surviving spouse or minor children entitled to the family allowance authorized in section 18-801, if such surviving spouse or minor children (acting through the person having their custody or a next friend) file in the probate court a petition, under oath, declaring: The time and place of decedent's death; the known next of kin; the known assets and by whom held; that petitioner has made a diligent search to discover all assets of the deceased; the amount of funeral expenses and to whom due; and that said assets do not exceed \$500 in value, the probate court, if satisfied that the allegations in the petition are true, shall pass a final order (1) declaring that no formal administration is necessary and no probate is required of any will; (2) fixing the amount of funeral expenses allowable, to whom due, and out of what property to be paid; (3) vesting title to the remainder of the property in the surviving spouse or minor children, as the case may be, in satisfaction of his, her, or their family allowance; and (4) directing the person or persons having possession of said property to pay over, transfer, and deliver the same as allotted. The probate court may also authorize in said order, or by further order, the sale of any of said property as the exigencies of the situation require. (Mar. 3, 1901, ch. 854, § 394 (b), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-803. Waiver of administration—Publication of notice of creditors—Final order.

(1) When anyone dies intestate, leaving a small estate consisting only of personal property of a value not in excess of \$500, and there be no spouse or minor children surviving, if the person entitled to be preferred in the appointment of an administrator files in the probate court a petition, under oath, declaring: The time and place of decedent's death; the known next of kin; that diligent search has been made for a will; the known creditors, together with the amount of each claim, including contingent and disputed claims; and funeral expenses; the known assets and by whom held; that petitioner has made a diligent search to discover all assets and debts of the deceased; that said assets do not exceed \$500 in value; and that there are no known legal proceedings pending in which the decedent is a party; the probate court, if satisfied that the allegations in said petition are true, shall pass a preliminary order declaring that no formal administration is necessary and instructing the petitioner to publish once in substantially the usual form notice to creditors to exhibit their claims duly authenticated, within thirty days after such notice, and which notice shall be inserted in one newspaper of general circulation in the District of Columbia as said court shall direct.

(2) Whenever such a preliminary order has been passed and the notice has been published and the time provided in such notice has expired, the petitioner shall file, under oath, a statement, with the usual proof of publication attached, that the notice has been published, and that the said time has expired, and listing all then known creditors, including contingent and disputed claims, and the amount of each claim. If satisfied that said statement is true, and after hearing and disposing of any objections filed in the probate court by any one interested in the estate, the probate court shall pass a final order (1) directing the petitioner to pay from the estate all of said claims, in the order of priority provided by law, and (2) authorizing any person having possession of any property of the decedent's estate to transfer, pay over, and deliver the same in accordance with petitioner's directions, and (3) decreeing that, after the Register of Wills certifies upon said final order that he has seen the vouchers for the payment of said claims and is satisfied that said claims, as well as the fees herein-after provided for, have been paid, then the remaining balance of the estate, if any, shall be vested as follows: First, in the adult surviving children equally, and, secondly, if there be no adult surviving children, then in those persons who would be entitled thereto under the statute of distributions (the share of any minor shall be payable, in the discretion of the probate court, to the person having custody or to such other person as it shall designate, to be used solely for the care and maintenance of such minor).

(3) The probate court may also provide in its final order for sale of any property, upon such terms as it deems advisable, and for the distribution of the proceeds in accordance with its final order. (Mar. 3, 1901, ch. 854, § 394 (c), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-804. Exemptions from liability.

In the absence of fraud, no person who pays over, transfers, or delivers any property pursuant to the provisions of a final order entered under section 18-802, or to the directions of a petitioner acting under authority of a final order under section 18-803, shall be liable for the application thereof, nor shall any such person, nor any person who receives any property pursuant to the provisions of a final order entered under section 18-802, or to the directions of a petitioner acting under authority of a final order under section 18-803, be responsible for any claims on account of the payment, transfer, delivery, or receipt of such property; and the property distributed pursuant to a final order in either case shall be and become the absolute property of the respective distributees thereof. (Mar. 3, 1901, ch. 854, § 394 (d), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-805. Waiver of bond and commissions.

No petitioner under this chapter shall be required to be represented by an attorney, or to give bond, nor receive any commission for performing any work or services hereunder. (Mar. 3, 1901, ch. 854, § 394 (e), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-806. Forms to be furnished—Fees.

The Register of Wills shall prepare, and make available, forms whereby the petition and final order under section 18-802, and the petition, preliminary order, the statement, the final order, and the certificate of payment under section 18-803, shall constitute in each case one connected instrument. In lieu of all other fees, costs, or charges, the Register of Wills shall receive a fee of \$5 for all services and work administered under this chapter, including the taking of all affidavits plus a fee of 25 cents for each certified copy of the aforesaid instruments. (Mar. 3, 1901, ch. 854, § 394 (f), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-807. Discovery of additional property.

The discovery of any additional property of the decedent, after the filing of a petition in either case provided for in this chapter, shall be reported by the petitioner to the probate court as soon as discovered by him. The existence of said additional property shall not invalidate any proceedings under this chapter except when the additional property is discovered before the passage of the final order provided for, and either (1) is real estate or (2) increases the total value of the estate to more than \$500, in which case no final order shall be passed under this chapter and the court shall require regular administration. Where additional property is discovered after passage of the final order, if said property is entirely personal and does not increase the value of the total estate to more than \$500, then such additional property may be distributed pursuant to a new petition under the appropriate section of this chapter; in all other cases such additional property may not be distributed under this chapter. (Mar. 3, 1901, ch. 854, § 394 (g), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-808. False affidavits and other violations—Penalties.

Any person who makes a false affidavit under this chapter, or who willfully violates any order of the probate court under this chapter or any other provision of this chapter, shall be liable to a fine of not exceeding \$500 for each offense. (Mar. 3, 1901, ch. 854, § 394 (h), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-809. Repeal of inconsistent laws.

All Acts or parts of Acts inconsistent with the provisions of this chapter shall be, and they are hereby, repealed to the extent of such inconsistency but only to such extent. (Mar. 3, 1901, ch. 854, § 394 (i), as added June 24, 1949, 63 Stat. 269, ch. 244.)

§ 18-810. Application of chapter.

This chapter shall apply to the estates of all persons dying after June 24, 1949. (Mar. 3, 1901, ch. 854, § 394 (j), as added June 24, 1949, 63 Stat. 269, ch. 244.)

Chapter 9.—UNIFORM SIMULTANEOUS DEATH

Sec.

18-901. Purpose—Effective date.

18-902. No sufficient evidence of survivorship.

18-903. Survival of beneficiaries.

Sec.

- 18-904. Joint tenants or tenants by the entirety.
- 18-905. Insurance policies.
- 18-906. Chapter does not apply if decedent provides otherwise.
- 18-907. Chapter not retroactive.
- 18-908. Uniformity of interpretation.
- 18-909. Repeal.
- 18-910. Separability of provisions.

§ 18-901. Purpose—Effective date.

This chapter, providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously and to make uniform the law with reference thereto, shall be in effect in the District of Columbia on and after March 28, 1958. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 1.)

SHORT TITLE

Section 9 of act Mar. 28, 1958, provided that: "This Act [adding this chapter] may be cited as the 'District of Columbia Uniform Simultaneous Death Act'."

CROSS REFERENCES

Descent and distribution generally, see Title 18, chapters 1 to 8.

Joint contracts, see 16-901 et seq.

Joint tenants action for accounting, see § 16-101.

Negligence causing death, see §§ 16-1201, 16-1202.

§ 18-902. No sufficient evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 2.)

§ 18-903. Survival of beneficiaries.

If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 3.)

§ 18-904. Joint tenants or tenants by the entirety.

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall

be distributed, or descend as the case may be, one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed or descended shall be in the proportion that one bears to the whole number of joint tenants.

The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 4.)

§ 18-905. Insurance policies.

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 5.)

§ 18-906. Chapter does not apply if decedent provides otherwise.

This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this chapter, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided. (Mar. 28, 1958, 72 Stat. 67, Pub. L. 85-356, § 6.)

§ 18-907. Chapter not retroactive.

This chapter shall not apply to the distribution of the property of a person who has died before it takes effect. (Mar. 28, 1958, 72 Stat. 68, Pub. L. 85-356, § 7.)

§ 18-908. Uniformity of interpretation.

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those States which enact it. (Mar. 28, 1958, 72 Stat. 68, Pub. L. 85-356, § 8.)

§ 18-909. Repeal.

All laws or parts of laws inconsistent with the provisions of this chapter are hereby repealed. (Mar. 28, 1958, 72 Stat. 68, Pub. L. 85-356, § 10.)

§ 18-910. Separability of provisions.

If any of the provisions of this chapter or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are declared to be severable. (Mar. 28, 1958, 72 Stat. 68, Pub. L. 85-356, § 11.)

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22

TITLE 19.—WILLS

Chap.	Sec.
1. Wills in General.....	19-101
2. Devises by Will.....	19-201
3. Probate of Wills.....	19-301
4. Register of Wills.....	19-401

Chapter 1.—WILLS IN GENERAL

Sec.
19-101. Capacity to make will.
19-102. Nuncupative wills invalid—Exception—Proof.
19-103. Form of will—Witnesses—Alteration—Revocation.
19-104. Devises to attesting witnesses void.
19-105. Attesting devisee not to retain nor demand any property under will or codicil.
19-106. Attestation by creditor valid.
19-107. Execution of power by will.
19-108. Revival of will after revocation.
19-109. Advancement as satisfaction of legacy.
19-110. Lapsed or void devises.
19-111. Opening will before delivery to probate court.

§ 19-101. Capacity to make will.

No will, testament, or codicil shall be good and effectual for any purpose whatever unless the person making the same be, if a male, of the full age of twenty-one years, and if a female, of the full age of eighteen years, and be at the time of executing or acknowledging it, as hereinafter directed, of sound and disposing mind and capable of executing a valid deed or contract. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1625.)

CROSS REFERENCE

Stealing, destroying, secreting, or withholding will, penalty, see § 22-1403.

NOTES TO DECISIONS

Evidence 1
Fraud and undue influence 2
Incorporation of document 3
Law governing 4
Nature of proceedings 5
Sound and disposing mind 6
Status as married woman 7

1. Evidence

Any degree of importunity or undue influence which deprives the testator of his free agency, and which is such as he is too weak to resist, and in effect renders the instrument not his free and unconstrained act, is sufficient to and will invalidate the will or testament of the party. *Barbour v. Moore* (4 App. D. C. 535).

Declarations of testator and his relations with the parties are competent circumstances tending to throw light upon his state of mind and disposition. The only limitation is that it shall not be received as proof of the independent fact or the truth of the things declared, but as supplementary only to direct proof of the alleged fraud and undue influence. *Manogue v. Herrell* (13 App. D. C. 455).

Testimony plainly of a hearsay character, including the certificates of the physicians for the commitment of testator to insane asylum is inadmissible, especially when testimony of physicians themselves was not taken. *Keely v. Moore* (22 App. D.C. 9, affirmed 25 S. Ct. 169, 196 U.S. 38, 49 L. Ed. 376).

In Federal courts a will is not set aside on evidence showing only suspicion or possibility of undue influence. *Robinson v. Duvall* (27 App. D.C. 535, affirmed 28 S. Ct. 260, 207 U.S. 583, 52 L. Ed. 351).

It was proper to submit question to jury to determine testamentary capacity of testatrix, a woman of about

eighty-two years, when she executed will during a decline of her physical and mental condition. *Morgan v. Adams* (29 App. D.C. 198, error dismissed 213 S. Ct. 213, 211 U.S. 627, 53 L. Ed. 362).

Trial court did not err when it excluded evidence which tended to show a delusion affecting person more than thirty years before the making of the will and codicils. *Turner v. American Security & Trust Co.* (29 App. D. C. 460, affirmed 29 S. Ct. 420, 213 U.S. 257, 53 L. Ed. 788).

Testimony of testatrix's brother, who had made his home with her for 36 years, that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her was admissible on issues of undue influence and testamentary capacity in opposition to probate of will naming testatrix's sister sole beneficiary. *Duckett v. Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

2. Fraud and undue influence

If sole beneficiary of will, after taking sole charge of testatrix, first made false statements to other relatives with purpose of inducing them not to visit testatrix and then allowed her to suppose, contrary to fact, that the other relatives were making no effort to see testatrix, doing nothing for her and showing no interest in her welfare, such conduct would constitute both "fraud" and "undue influence" which would vitiate the will. *Duckett v. Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

3. Incorporation of document

Testator may so construct disposition of his property as to have recourse to some paper or document in order to explain his intention and to apply provisions of his will to the subject matter thereof. This doctrine of incorporation by reference must clearly identify the instrument to which will refers and must be in existence at the date of the will. *Vestry of St. John's Parish v. Bostwick* (8 App. D. C. 452).

4. Law governing

The law of wills and of probate as existing in Maryland on February 27, 1801, was and is the law of the District of Columbia, except as since altered by Congress. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987). See, also, *In re Allen's Estate* (1946, 64 F. Supp. 107).

5. Nature of proceedings

Proceedings for the probate of wills are statutory and are substantially in rem. The proceeding is upon the will itself and to determine its status. The judgment runs against no person, but is, simply, that the instrument before the court is, or is not, the will of the testator. *Cruit v. Owen* (21 App. D. C. 378).

6. Sound and disposing mind

Where trial judge thought testatrix was not in a condition to execute a serious document, such as a will or deed or contract, with judgment and understanding at time she signed will which had been written for her, direction of verdict upholding the will was error, and judgment would be reversed and cause remanded for new trial. *Collins v. Dobbins* (1952, 198 F. 2d 763, 70 U.S. App. D.C. 287).

Fact to be found by the jury is not that the testator was demented at the particular time or that he was victim of insane delusions, but whether from any one of these conditions that he was not of sound and disposing mind and of capacity to make a valid deed or contract. *National Safe Deposit, Sav. & Trust Co. v. Heiberger* (19 App. D. C. 506).

If person of sound mind executes a will, and the same is his voluntary act, the law presumes knowledge on his part of its contents and such presumption also applies

to illiterates. *Lipphard v. Humphrey* (28 App. D. C. 355, affirmed 28 S. Ct. 561, 209 U.S. 264, 52 L. Ed. 783, 14 Ann. Cas. 872).

An insane delusion exists when a person conceives the existence of something fanciful and extravagant, something having no foundation in reason or fact, and is dominated and controlled by such imagination, and therefore acts as he would not otherwise have acted. *Riddle v. Gibson* (29 App. D. C. 237).

If one acts under a delusion superinduced by false testimony, of the falsity of which he has no knowledge, it cannot be said that he is the victim of an insane delusion. *Morgan v. Morgan* (30 App. D. C. 436, 13 Ann. Cas. 1037).

The test is whether the testator, at the time of executing the paper purporting to be his will, was capable of making a valid deed or contract. *Lewis v. American Security & Trust Co.* (1923, 289 F. 916, 53 App. D.C. 258). See, also, *Thompson v. Smith* (1939, 103 F. 2d 936, 70 App. D.C. 65, 123 A.L.R. 76).

7. Status as married woman

Will made by married woman while separated from husband, from whom she is later divorced, was not revoked although she subsequently remarried. *Chapman v. Dismer* (14 App. D. C. 446).

§ 19-102. Nuncupative wills invalid—Exception—Proof.

No nuncupative will made after Jan. 1, 1902, shall be valid in the District; but any soldier being in actual military service, or mariner being at sea, may dispose of his movables, wages, and personal estate by word of mouth: *Provided*, That such disposition shall be proved by at least two witnesses who were present at the making thereof and were requested by the testator to bear witness that such was his last will, nor unless such will were made in the time of the last sickness of the deceased, and the substance thereof reduced to writing within ten days after the making thereof. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1634.)

§ 19-103. Form of will—Witnesses—Alteration—Revocation.

All wills and testaments shall be in writing and signed by the testator, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said testator by at least two credible witnesses, or else they shall be utterly void and of no effect; and, moreover, no devise or bequest, or any clause thereof, shall be revocable otherwise than by some other will or codicil in writing or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same by the testator himself or in his presence and by his direction and consent; but all devises and bequests shall remain and continue in force until the same be burned, canceled, torn, or obliterated by the testator or by his direction in the manner aforesaid, or unless the same be altered or revoked by some other will, testament, or codicil in writing, or other writing of the testator signed in the presence of at least two witnesses attesting the same, any former law or usage to the contrary notwithstanding. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1626.)

NOTES TO DECISIONS

- Alteration 1
- Birth of child 2
- Cancellation 3
- Construction 4
- Dependent relative revocation 5
- Evidence 6
- Formalities 7
- Law governing 16
- Marriage 8
- Order of signatures 9
- Partial cancellation 10

- Presumptions 11
- Revocation 12
- Signature on envelope 13
- Subscription 14
- Transfer effective at death 15
- Witnessing 17

1. Alteration

Where a testator properly executed a will on two sheets of paper, and subsequently attempted to alter the will by substituting another sheet for the first, which was discarded, without notifying witnesses, or signing in the presence of witnesses, it is not entitled to probate. *Henry v. Fraser* (1929, 29 F. 2d 633, 58 App. D.C. 260, 62 A.L.R. 1364).

2. Birth of child

Where testator was unmarried and without children by a former marriage at time he executed will which contained no provision for any child of subsequent marriage, his subsequent marriage and the birth of a child amounted to an implied revocation of the previously executed will, notwithstanding this section specifying with particularity the manner in which will may be revoked. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987).

A will in favor of wife executed by married man without children was not revoked by subsequent birth of a child. *Allen v. Heron* (1946, 157 F. 2d 707, 81 U.S. App. D.C. 298).

Where will was executed after testator's marriage, subsequent birth of a child to the marriage did not operate as a revocation of will. *In re Allen's Estate* (1946, 64 F. Supp. 107).

3. Cancellation

Pencil cross-marks across entire first page of will and large parts of second and third page, and across individual words and attestation clause, constituted "cancellation" of will. *In re Smith's Estate* (1948, 77 F. Supp. 217).

4. Construction

In ascertaining meaning of this section governing revocation of will, court was to be guided by the construction of like provision of statute of frauds by courts of England and like provisions by courts of Maryland, from which jurisdiction, this section had been adopted. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987).

Where this section, specifying with particularity the manner in which a will may be revoked and concluding with words "any former law or usage to the contrary notwithstanding," had been adopted from Maryland which had adopted the English statute of frauds which had been enacted in 1676, it was the "law or usage" prior to 1676 that was affected by those words. *Id.*

Where English statute has been adopted, the known and settled construction of the statute by courts of law is considered as silently incorporated into the statute, or is received with all the weight of authority. *Id.*

In absence of District of Columbia decisions construing this section regarding cancellation of wills, cases from other jurisdictions having similar statutory provisions are persuasive. *In re Smith's Estate* (1948, 77 F. Supp. 217).

5. Dependent relative revocation

Attempted revision of bequest of six thousand eight hundred dollars after execution and attestation of will by writing other numbers and numerals over the word "six" and corresponding but entirely obliterated numeral was ineffective to revoke or revise bequest and hence under doctrine of "dependent relative revocation," original bequest must prevail. *In re Chaconas' Estate* (1948, 80 F. Supp. 549).

Where second will, revoking first will, was cancelled by pencil marks across portions of will and attestation clause, without substituted will being prepared and without clear and convincing showing that testator had determined what disposition to make of property upon revocation, the doctrine of "dependent relative revocation" was inapplicable and second will must be deemed to have been revoked, without reinstating first will. *In re Smith's Estate* (1948, 77 F. Supp. 217).

6. Evidence

In probate proceeding, testimony that, some months after tearing of will, testator had told witness that he had left his wife all his property and wanted his brothers

to have nothing was relevant to issue whether tearing of will by testator and his widow was animo revocandi and its exclusion was prejudicial error. *Savoy v. Savoy et ano.* (1955, 220 F. 2d 364, 94 U.S. App. D.C. 411).

In the absence of other evidence of intent of testatrix in making various cancellations in her own handwriting on the face of original will, unwitnessed holographic writing found after death in writing desk drawer with original will constituted persuasive "evidence" that cancellations on original will were conditional and were dependent upon the consummation of an effective revised testamentary disposition along the lines of uncompleted suggestions in holographic writing. *Wolfe v. Snyder* (1943, 48 F. Supp. 227).

Evidence established that cancellations in testatrix' handwriting on the face of original will were "conditional revocations" dependent upon consummation of an effective revised testamentary disposition in accordance with suggestions in unwitnessed holographic writing found in writing desk drawer with original will, and no such revised disposition having been consummated, the cancellations were ineffective, leaving original will in force. *Id.*

7. Formalities

The re-execution of a will requires the same formalities as required for its original execution. *Notes v. Doyle* (32 App. D. C. 413).

Unless the formalities prescribed are complied with, the instrument is void. *Association Survivors of Seventh Georgia Regiment v. Lerner* (1925, 3 F. 2d 201, 55 App. D.C. 156).

Execution of will—qualification of witnesses—interest, see *Peters v. Peters* (1935, 78 F. 2d 215, 64 App. D.C. 331).

8. Marriage

In the United States, in absence of a statute abolishing the common-law rule and establishing a new rule in its place, the marriage of a man and the birth of a child, capable of inheriting, revoke a prior will, if both occur after the execution thereof, especially where the child is born after the death of its father. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987).

9. Order of signatures

Will was valid even though attesting witnesses signed it before testatrix where all signed at substantially same time and in each other's presence. *Billings v. Woody* (1948, 167 F. 2d 756, 83 U.S. App. D.C. 219, certiorari denied 69 S. Ct. 46, 335 U.S. 822, 93 L. Ed. 377).

10. Partial cancellation

Partial cancellation of will should be regarded as a final act of "revocation" by the testator in the absence of evidence that the act of cancellation was merely a deliberative act performed with the intention of later executing a codicil or a new will. *Wolfe v. Snyder* (1943, 48 F. Supp. 227).

11. Presumptions

Marks amounting to cancellation on face of will are presumed to have been placed on document with intent to revoke. *In re Smith's Estate* (1948, 77 F. Supp. 217).

12. Revocation

In probate proceeding in which widow offered torn will for probate where she testified that she and testator had torn will during argument, if jury found the tearing so occurred, they had to determine whether or not the tearing was animo revocandi, and if tearing of a will is accidental or unaccompanied by necessary intent, it does not constitute revocation. *Savoy v. Savoy et ano.* (1955, 220 F. 2d 364, 94 U.S. App. D.C. 411).

A conveyance of the title subsequently declared void does not operate as a revocation of a previous will. *McGowan v. Elroy* (28 App. D. C. 188).

Subsequent marriage of testatrix and birth of issue does not revoke will. *Morris v. Foster* (1922, 278 F. 321, 51 App. D.C. 238, certiorari denied 42 S. Ct. 586, 259 U.S. 582, 66 L. Ed. 1074).

Where cancellation or destruction of will is connected with the making of another will so as fairly to raise the inference that testator meant revocation of old will to depend upon the efficacy of the new disposition, if the will intended to be substituted is inoperative from defect of attestation or any other cause, the revocation falls and the

original will remains in force. *Wolfe v. Snyder* (1943, 48 F. Supp. 227).

13. Signature on envelope

Writing which purported to be the will of decedent, which was executed by decedent, folded and sealed in an envelope, the face of which envelope was inscribed "my last will and testament" followed by witnesses' signatures under such inscription, was not entitled to probate because paper upon which witnesses affixed their signatures was not physically attached to paper purporting to be the will and witnesses had not affixed their signatures to will itself. *In re Lee's Estate* (1948, 80 F. Supp. 293).

14. Subscription

The evidence would allow an inference that the testator had signed in an adjoining room before he brought the will to the room in which the witnesses were present, and in the absence of clear and convincing testimony to the contrary, the presumption of regularity is not defeated. *Betts v. Lonas* (1949, 172 F. 2d 759, 84 U.S. App. D.C. 206).

15. Transfer effective at death

Generally, where design of owner of bank deposit is to retain sole control during his life and intended transfer or gift is not to take effect until death, arrangement is testamentary in character and void under statute of wills. *Gibson v. Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

16. Law governing

All wills, in their very nature, are ambulatory and revocable during the life of the testator; and, in respect to personal estate, they speak only from and have effect upon the death of the testator; and to say that a will shall have effect and be declared valid in respect to a prior law, which has been repealed and given place to a different rule as a substitute, is to declare valid a testamentary paper without existing law to support it. *Colonna v. Alton* (23 App. D. C. 296).

17. Witnessing

Attesting witnesses need not know the contents of the document; "they may attest it without the presence of each other; they, or any of them, need not see the testator sign the will, provided he acknowledge the signature to each of the witnesses; and they need not even know that the document they have witnessed is a will." *Notes v. Doyle* (32 App. D. C. 413).

It is not necessary that testator should sign his will in the presence of witnesses, but that he shall, before witnesses sign, indicate that the document is his will and that he has signed it. *Bullock v. Morehouse* (1927, 19 F. 2d 705, 57 App. D.C. 231).

§ 19-104. Devises to attesting witnesses void.

If any person shall attest the execution of any will or codicil to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real or personal estate, other than and except charges on lands, tenements or hereditaments for payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment, shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly null and void; and such person shall be admitted as a witness to the execution of such will or codicil; notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will or codicil. (25 Geo. II, ch. 6, § 1, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 781; Comp. Stat., D. C., p. 557, § 5.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

NOTE TO DECISION

1. Intestate share

Although by statutes legacies to persons who are witnesses to will and testify to establish same, are void, a

witness-legatee who was also an heir at law could testify as to the execution of the will and take his bequest thereunder, but in an amount no greater than his intestate share. *Manoukian v. Tomasian* (1956, 237 F. 2d 211, 99 U.S. App. D.C. 57, certiorari denied 77 S. Ct. 588, 352 U.S. 1026, 1 L. Ed. 2d 596).

§ 19-105. Attesting devisee not to retain nor demand any property under will or codicil.

No person to whom any beneficial estate, interest, gift, or appointment shall be given or made, which is null and void under section 19-104, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he shall have been so examined, demand or take possession of or receive any profits or benefit of or from any such estate, interest, gift, or appointment so given or made to him in or by any such will or codicil; or demand, receive, or accept from any person or persons whatsoever, any such legacy or bequest, or any satisfaction or compensation for the same, in any manner, or under any colour or pretence whatsoever. (25 Geo. II, ch. 6, § 7, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 783; Comp. Stat. D. C., p. 558, § 7.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

NOTE TO DECISION

1. Construction

Statutes providing that legacies to persons who are witnesses to a will and testify to establish same are void, are not, unlike most portions of District of Columbia Code, acts of Congress passed for the government of the District, but are part of the law of the District because they are British statutes which were recognized as being in force in Maryland prior to cession of the District in 1801 and maintained in effect by act of Congress retaining all common law in force in Maryland. *Manoukian v. Tomasian* (1956, 237 F. 2d 211, 99 U.S. App. D.C. 57, certiorari denied 77 S. Ct. 588, 352 U.S. 1026, 1 L. Ed. 2d 596).

§ 19-106. Attestation by creditor valid.

In case, by any will or codicil already made or hereafter to be made, any lands, tenements, or hereditaments, are or shall be charged with any debt or debts; and any creditor whose debt is so charged, hath attested or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil. (25 Geo. II, ch. 6, § 2, 1752; Kilty's Rep., p. 253; Alex. Br. Stat., p. 782; Comp. Stat. D. C., p. 558, § 6.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

§ 19-107. Execution of power by will.

No appointment made by will in the exercise of a power shall be valid unless the same be so executed that it would be valid for the disposition of the property to which the power applies if it belonged to the testator. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1629.)

CROSS REFERENCES

General devise, see § 19-203.

Provisions concerning powers to create estates, see §§ 45-1001 to 45-1019.

§ 19-108. Revival of will after revocation.

No will or codicil, or any part thereof, which shall be in any manner revoked shall, after being revoked, be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required, and then only to the extent to which an intention to revive is shown. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1627.)

NOTE TO DECISION

1. Application of statute

Section has no bearing when the doctrine of "dependent relative revocation" is invoked. *In Re Nutting's Estate* (1949, 82 Supp. 689, affirmed 187 F. 2d 357, 87 U.S. App. D.C. 351, 28 A.L.R. 2d 521).

§ 19-109. Advancement as satisfaction of legacy.

A provision for or advancement to any person shall be deemed a satisfaction, in whole or in part of a devise or bequest to such person contained in a previous will if it would be so deemed in case the devisee or legatee were the child of the testator; and, whether he be a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to be so intended. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1630.)

CROSS REFERENCE

Advancements, see, also, §§ 18-108, 18-707.

NOTES TO DECISIONS

Evidence 1
Parent as debtor 2
Presumptions 3

1. Evidence

Evidence established that payments made by testator during lifetime to brother were made in payment of trust obligation arising before execution of will and were not intended to be in partial satisfaction of bequest to brother. *In re Chaconas' Estate* (1948, 80 F. Supp. 549).

2. Parent as debtor

Where parent, who is a debtor to his child, makes an advancement to such child, it is presumed to be a satisfaction pro tanto of the debt. *Glover v. Patten* (1897, 17 S. Ct. 411, 165 U.S. 394, 41 L. Ed. 760).

3. Presumptions

A legacy is never presumed to be in satisfaction of a trust obligation. *In re Chaconas' Estate* (1948, 80 F. Supp. 549).

§ 19-110. Lapsed or void devises.

If a devisee or legatee die before the testator, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed as the devisee or legatee would have done if he had survived the testator, unless a different disposition be made or required by the will. Unless a contrary intention appear by the will, such property as shall be comprised in any devise or bequest in such will which shall fail or be void or otherwise incapable of taking effect shall be deemed included in the residuary devise or bequest, if any, contained in such will. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1631.)

NOTES TO DECISIONS

Charitable bequests 1
Common law 2
Construction 3
Cy pres doctrine 4
Death of legatee 5
Intent 6
Trust funds 7
Vested remainder 8

1. Charitable bequests

Charitable bequest was not void for uncertainty. *Washington Loan & Trust Co. v. Hammond* (1922, 278 F. 569, 51 App. D.C. 260).

2. Common law

The common law still prevails in this District as to devises and bequests contained in the residuum. *George Washington University v. Riggs Nat. Bank of Washington, D.C.* (1937, 88 F. 2d 771, 66 App. D.C. 389).

At common law, a bequest of personalty which failed of distribution would go to the residuum or next of kin, but not so as to devises of realty. *Id.*

3. Construction

Where a bequest was made to a legatee and the legatee predeceased grantor and where the residuary clause distributed the residue including lapsed legacies to four institutions, the special bequest passes into the residuary estate and goes to the institution named. *Bunker v. Jones* (1950, 181 F. 2d 619, 86 U.S. App. D.C. 231).

4. Cy pres doctrine

The doctrine of "judicial cy pres" applies in the District of Columbia. *Noel v. Olds* (1944, 138 F. 2d 581, 78 U. S. App. D. C. 155, certiorari denied 64 S. Ct. 611, 321 U. S. 773, 88 L. Ed. 1067).

The doctrine of judicial cy pres is recognized in the District of Columbia but the facts of the case do not warrant the invocation of such doctrine. *Roberds v. Markham* (1949, 81 F. Supp. 38).

5. Death of legatee

Under will devising half of residuary estate to testatrix' sister who predeceased testatrix, that portion of residue went to sister's children rather than to heirs of the testatrix. *Mitchell v. Merriam et al.* (1951, 188 F. 2d 42, 88 U.S. App. D.C. 213, certiorari denied 71 S. Ct. 855, 341 U.S. 935, 95 L. Ed. 1363).

A sum bequeathed by will to testator's deceased brother's widow, who predeceased testator, goes to her issue on his death. *Second National Bank of Washington v. Spinks* (1954, 122 F. Supp. 153, affirmed 214 F. 2d 853, 94 U.S. App. D.C. 424).

Death of a specific legatee prior to death of the testator will "lapse" the legacy in the absence of a statute otherwise providing. *Wolfe v. Snyder* (1943, 48 F. Supp. 227).

6. Intent

Words of a will cannot be ignored in searching its meaning as the court must look within the four corners of the will for the intention of the testatrix and the language must be given effect. If and when read with other parts of the will such intent can be ascertained, the statute does not apply in this case. *Pace v. Bradley* (1949, 171 F. 2d 350, 84 U.S. App. D.C. 212).

7. Trust funds

Testamentary provision for issue of beneficiary for life of testamentary trust to take the balance of trust fund was a "different disposition made or required by will" within meaning of this section, and hence where beneficiary for life predeceased testatrix his issue took the trust fund outright. *Wolfe v. Snyder* (1943, 48 F. Supp. 227).

8. Vested remainder

Where will bequeathed to niece all household furniture, jewelry and other personal property, except cash, and bequeathed to brother all the rest, residue and remainder of estate except that if brother should predecease testatrix or for any other reason could not personally take residue, then it was to go to niece, testatrix's vested remainder in estate subject to life estate, passed to brother who survived testatrix but who along with niece, predeceased life tenant. *Bank of Galesburg, etc. v. Lawrenson, Jr., etc., and Waters, etc.* (1956, 240 F. 2d 31, 99 U.S. App. D.C. 345).

§ 19-111. Opening will before delivery to probate court.

It shall be lawful for any person in whose possession or custody a will or codicil shall be after the death of the testator or testatrix, to open and read the same in the presence of any near relatives of the deceased, who may conveniently have notice thereof, and of other persons, and immediately thereafter to

deliver such will or codicil to the United States District Court for the District of Columbia, holding a special term as a probate court, or to the register of wills, until due proceedings may be had for proving the same, or until it be demanded by an executor or other person authorized to demand it, for the purpose of having it proved according to law. (Mar. 3, 1901, ch. 854, § 1635a, as added June 30, 1902, 32 Stat. 545, ch. 1329, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127).

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Stealing, destroying, secreting, or withholding will, see § 22-1403.

NOTE TO DECISION

1. Time for probate

While the statutes regulating the probate of wills provides no time within which probate shall be applied for, yet they contemplate that this shall be speedily done. *McGowan v. Elroy* (28 App. D.C. 188).

Chapter 2.—DEVISES BY WILL

Sec.

19-201. What may be devised.

19-202. Bequests for religious purposes.

19-203. General devise of all property.

19-204. Devise of land to include leaseholds.

19-205. After-acquired real estate.

§ 19-201. What may be devised.

All lands, tenements, and hereditaments, and personal estate which might pass by deed or gift, or which would, in case of the proprietor's dying intestate, descend to or devolve on his or her heirs or other representatives, shall be subject to be disposed of, transferred, and passed by his or her last will, testament, or codicil, in accordance with the provisions of this title. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1623.)

CROSS REFERENCES

Bequests payable on majority of female, see § 18-722.

Devise in lieu of dower, see § 18-210.

Devises in trust for use of another, see §§ 45-1201 to 45-1203.

Discharge of debt construed to be a specific bequest and invalid as to creditors, see § 18-302.

Estate which may be created in lands, see §§ 45-801 to 45-819.

Estates which may be created by will, method, requirements, adversely held property, see §§ 45-101 to 45-106.

Estates which may be created in personal property, see § 45-823.

Form and interpretation of devise; words of inheritance unnecessary; rule in Shelley's case abolished; posthumous children, see §§ 45-201 to 45-205.

Naming debtor executor does not discharge debt, see § 18-303.

Order for sale of property unnecessary where will directs such sale, see § 18-602 et seq.

Provisions concerning powers to create estates, see §§ 45-1001 to 45-1019.

Rule against perpetuities, see §§ 45-102, 45-103.

Wife's election in lieu of provisions of will, see §§ 18-211, 18-212.

NOTES TO DECISIONS

Equitable estate 1
Presumption 2
Title, passage of 3

1. Equitable estate

Devise of equitable estate remaining in grantor, after he has created a naked power in one to convey an estate to another upon the performance of a condition. *Mayer v. American Security & Trust Co.* (33 App. D.C. 391, affirmed 32 S. Ct. 222 U.S. 295, 56 L. Ed. 206).

2. Presumption

In determining whether the property of a testator passes by his will, there is a presumption that he did not intend to die intestate, which presumption is greatly strengthened by words of general description in the residuary clause. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

3. Title, passage of

Where property or interest is devisable at the time of testator's death, and testator has sufficiently indicated his testamentary intention to dispose of it, the will is effective to pass the title to the devisee. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

§ 19-202. Bequests for religious purposes.

No devise or bequest of lands, or goods, or chattels to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order, or denomination, or to or for the support, use, or benefit of or in trust for any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, shall be valid unless the same shall be made at least one calendar month before the death of the testator. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1635.)

NOTES TO DECISIONS

Construction 1
Dependent relative revocation 2
Sectarian institutions 3

1. Construction

Statute is to be strictly construed, since its purpose is to prevent improvident testamentary gifts to the exclusion of lawful heirs. Such a construction should be adopted which will prevent intestacy and not one which will render the will invalid. The doctrine of "dependent relative revocation" is to be applied to facts presented. *In Re Nutting's Estate* (1949, 82 F. Supp. 689, affirmed 187 F. 2d 357, 87 U.S. App. D.C. 351, 28 A.L.R. 2d 521).

2. Dependent relative revocation

Where two prior wills contained residuary devises identical with that in latest will, which will was drawn for purpose of correcting formal defects within 30 days of testatrix' death, and provisions in latest will for benefit of two religious institutions were invalid under statute rendering invalid testamentary gifts for benefit of any religious sect made within one month of death, religious institutions would be held entitled to receive devises for them under earlier wills under doctrine of "dependent relative revocation," and notwithstanding revocatory clause in latest will, on ground that testatrix did not intend that revocatory clause should be effective until new devise became effective. *Linkins et al. v. Protestant Episcopal Cathedral Foundation of the District of Columbia et al.* (1951, 187 F. 2d 357, 87 U.S. App. D.C. 351, 28 A.L.R. 2d 521).

3. Sectarian institutions

Georgetown College was not a sectarian institution, so that bequest made to it less than one calendar month before testator's death was not void. *Speer v. Colbert* (1906, 26 S. Ct. 201, 200 U.S. 130, 50 L. Ed. 403).

§ 19-203. General devise of all property.

Every devise and bequest purporting to be of all real or personal property, or both, belonging to the

testator shall be construed to include also all property of either or both kinds, respectively, over which he has a general power of appointment, unless the contrary intention shall appear in the will or codicil containing such devise or bequest. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1633; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted a phrase, "and the legal title of all such property which he holds in trust," following the word "appointment."

§ 19-204. Devise of land to include leaseholds.

A devise of the land of a testator, or of his land in any place, or in the occupation of a person named or otherwise described in a general manner, shall be construed to include his leasehold estates or any of them to which such descriptions shall extend, as well as freehold estates, unless a contrary intention shall appear by the will. (Mar. 3, 1901, 31 Stat. 1434, ch. 854, § 1632.)

§ 19-205. After-acquired real estate.

Any will executed after January 17, 1887, and before the first day of January 1902, devising real estate, from which it shall appear that it was the intention of the testator to devise property acquired after the execution of the will, shall be deemed, taken, and held to operate as a valid devise of all such property; and any will executed after January 1, 1902, which shall by words of general import devise all the estate or all the real estate of the testator shall be deemed, taken, and held to operate as a valid devise of any real estate acquired by said testator after the execution of such will, unless it shall appear therefrom that it was not the intention of the testator to devise such after-acquired property. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1628; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added the first part of the section ending with the words "January 1, 1902."

NOTES TO DECISIONS

Intention 1
Passage by residuary clause 2
Property in entirety 3
Purpose 4
Residuary clause 5
Will, effective date 6

1. Intention

Although a testator may dispose by will of after-purchased lands, it is nevertheless necessary that his intention to make such disposition should clearly appear upon the face of the will. *Bradford v. Matthews* (9 App. D. C. 438).

Under act of June 30, 1902, a will is made to operate and take effect upon all real estate of the testator owned by him at the time of his death, unless it shall appear from the will that it was not the intention of the testator to devise such after-acquired property. *Crenshaw v. McCormick* (19 App. D. C. 494).

2. Passage by residuary clause

Any will containing a general residuary clause, or general devise of all of the testator's real property, sufficient under the old law to pass all real estate possessed at the time of its execution, would pass all after-acquired real estate as well. *Taylor v. Leesnitzer* (37 App. D.C. 356).

3. Property in entirety

A will by either spouse disposing of property held in entirety will be given effect when the other spouse dies first and the will remains unchanged and unrepublished until the death of the survivor. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

4. Purpose

The purpose of this section making wills executed after January 1, 1902, effective as to after-acquired real estate in absence of intention to contrary, was to make general words of devise effective without reference to the time of acquisition of property and not to change the nature of estates from inalienable or nondevisable to devisable ones. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

5. Residuary clause

Where will executed in 1928 stated that testatrix's husband had been excluded from benefits thereunder because all the real estate in which testatrix was interested was held in joint tenancy with husband and all of testatrix's earnings for 25 years had gone into such real estate, and the residuary clause devised all the residue, real, personal, and mixed, to testatrix's brother, and testatrix's husband thereafter died before testatrix whose will was not thereafter republished, the residuary clause was valid, as respects real estate theretofore owned by testatrix in joint tenancy with her husband who had predeceased testatrix. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

6. Will, effective date

Before the Wills Act of 1837 and the after-acquired property statutes, the testator could not devise realty which he did not own at the time he made his will because of the theory that a devise of realty took effect on the date of the execution of the will but so far as it formerly applied to exclude after-acquired property from the effects of the will, this section has overruled such theory and the will is effective as of the date of death. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

Chapter 3.—PROBATE OF WILLS

Sec.

- 19-301. Notice of petition for probate.
- 19-302. Who may appear.
- 19-303. Guardian ad litem for infant or non compos.
- 19-304. Waiver of notice—Proof of execution.
- 19-305. Probate.
- 19-306. Proof of will—Register of wills may take testimony—Witnesses beyond District of Columbia.
- 19-307. Caveat—Will not to be probated while issues pending.
- 19-308. Admission to probate.
- 19-309. Caveat.
- 19-310. No prior will to be probated pending issues.
- 19-311. Plenary proceedings.
- 19-312. Trial of issues as to wills—Trial by jury—Notice—Service to absent parties not essential for jurisdiction—Judgment.
- 19-313. Wills filed prior to June 8, 1898, may be probated as of real estate.

§ 19-301. Notice of petition for probate.

Upon the filing of a petition for probate of a will, notice, as hereinafter provided, shall be issued to all persons who would be entitled to or interested in the estate of the testator in case such will had not been executed to appear in said court on a date named in the notice, and to show cause why the prayer of the petition should not be granted.

(a) Such notice may be by a citation in which the return date named is not earlier than ten days after the filing of said petition, and which citation shall be served in the District of Columbia, by the United States marshal, or deputy marshal, not less than five days before the return day named in said citation.

(b) Such notice may be by a citation in which the return date named is not earlier than twenty days after the filing of said petition, and which

citation shall be served not less than ten days before the return date named in said citation: *Provided*, That such citation may be served only on non-residents of the District of Columbia, and upon residents of said District who have been returned "Not to be found" under paragraph (a) of this section, and such service may be made only by a person not less than eighteen years of age who is not a party to or otherwise interested in the estate of the decedent, and the return in such case must be made under oath in the District of Columbia, unless the person making the service be a sheriff or deputy sheriff, a marshal or deputy marshal, authorized to serve process where service is made, and such return must show the time and place of service.

(c) Such notice, whenever there is proof by the petition for probate or by other affidavit that any or all of such persons, interested as aforesaid, are nonresidents of the District of Columbia, or whenever they or any of them have been returned "Not to be found" under paragraph (a) of this section, may be by a publication in which the return date named is not less than thirty days after the date of the first appearance of the publication, and which shall be published once in each of three successive weeks in some newspaper of general circulation in the District of Columbia, and a copy of this published notice shall be mailed to the last-known address of each of the persons, interested as aforesaid, who is not shown to have been returned served personally under either paragraph (a) or paragraph (b) of this section. The court may by general rule prescribe the form of such notice by publication, and may order such other publication as the case may require.

In all cases where it is made to appear to the satisfaction of the court that all or any of the next of kin or heirs at law of the deceased are unknown, such unknown next of kin or heirs at law may be proceeded against and described in the publication of notice hereinbefore provided for as "the unknown next of kin," or "the unknown heirs at law," as the case may be, of the deceased, and by such publication of such notice under such designation such unknown next of kin and heirs at law shall be as effectually bound and concluded as if known and their names were specifically set forth in said order of publication.

In case any will shall have been admitted to probate prior to June 30, 1902, upon publication against unknown heirs or next of kin, any person interested may file a petition for further probate of such will, alleging that the heirs at law or next of kin of the deceased, or some of them, as the case may be, are unknown, and upon satisfactory showing being made to the court publication of notice may be made against the unknown next of kin or heirs at law of the deceased; and upon such publication being made, as required by the court, a decree may be made confirming such previous probate, and such decree so made shall be as effectual as if the said heirs at law or next of kin were named in the order of publication. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, § 130; June 30, 1902, 32 Stat. 526, ch. 1329; June 24, 1949, 63 Stat. 267, ch. 241, § 1.)

AMENDMENTS

1949—Act June 24, 1949, among other changes in the first paragraph, set out separately paragraphs (a), (b) and (c).

1902—Act June 30, 1902, struck out the following: "If the parties in interest, or any of them, be unknown, upon statement of that fact in the petition under oath, they may be described therein, and in the notice of publication, as the unknown heirs and next of kin of the decedent, with like effect as if known and specifically named in the petition, notice and proceedings," and inserted the last two paragraphs.

CROSS REFERENCE

Jurisdiction, pleading and practice of probate court, see §§ 11-501 to 11-520.

NOTES TO DECISIONS

Jurisdiction of probate court 1
Law governing 2
Voluntary appearance 3
Waiver of citation 4

1. Jurisdiction of probate court

Probate court has been clothed with full and complete jurisdiction to take proof of wills of either personal or real estate, and to admit the same to probate and record, and Congress, having established this special court for this special purpose, intended its jurisdiction to be exclusive. *Gracie v. American Security & Trust Co.* (1922, 277 F. 543, 51 App. D.C. 141).

2. Law governing

The law of wills and of probate as existing in Maryland on February 27, 1801, was and is the law of the District of Columbia, except as since altered by Congress. *Pascucci v. Alsop* (1945, 147 F. 2d 880, 79 U.S. App. D.C. 354, certiorari denied 65 S. Ct. 1406, 325 U.S. 868, 89 L. Ed. 1987). See, also, *In re Allen's Estate* (1946, 64 F. Supp. 107).

3. Voluntary appearance

Where a petition alleged widower as only next of kin, upon whom service was had, and he appeared, filed a caveat, and the will was sustained, and thereafter publication was had for unknown heirs, and the widower moved to vacate the verdict on the ground that court was without jurisdiction because of failure to publish before framing the issues, jurisdiction attached to any person who voluntarily appeared. *Lewis v. Luckett* (32 App. D. C. 188, affirmed 31 S. Ct. 682, 221 U.S. 554, 55 L. Ed. 851).

4. Waiver of citation

Citation may be waived (see § 19-304) and such waiver of citation does not estop the filing of a caveat. *Bowen v. Howenstein* (39 App. D.C. 585, Ann. Cas. 1913E, 1179).

§ 19-302. Who may appear.

Any person, although not cited, who may be interested in sustaining or defeating the will may appear and support or oppose the application to admit the same to probate. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 133.)

NOTE TO DECISION

1. Sufficiency of interest

"Any interest, however slight, is sufficient to entitle a party to oppose a testamentary paper, and for like reason, such interest entitles a party to insist upon probate." *Vestry of St. John's Parish v. Bostwick* (8 App. D. C. 452).

§ 19-303. Guardian ad litem for infant or non compos.

Whenever it shall appear that any party interested as aforesaid is under age, or non compos, the court shall appoint a guardian ad litem to represent said party at the hearing of the application to admit the will to probate, and with authority to file a caveat, as he may be advised, in behalf of said party. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 138.)

NOTE TO DECISION

1. Appearance of incompetency

This section providing that whenever, in a proceeding to probate a will, it shall "appear" that a party interested

is non compos mentis, the court may appoint a guardian with authority to file a caveat, did not authorize the filing of an amendment to a caveat to a will probated in 1953 alleging the incompetency of the son of testatrix in 1955, since the incompetency did not "appear" when the will was probated. *Merchant v. Davies* (1957, 244 F. 2d 347, 100 U.S. App. D.C. 258).

§ 19-304. Waiver of notice—Proof of execution.

If all parties interested adversely to the will shall waive the notice aforesaid and consent that the will be admitted to probate and record, it may be so admitted to probate and record without the proceedings directed as aforesaid: *Provided*, That in no case shall any will or testament be admitted to probate and record save upon formal proof of its proper execution. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 135.)

NOTES TO DECISIONS

Jurisdiction of probate court 1
Proof 2
Waiver of citation 3

1. Jurisdiction of probate court

Probate court has exclusive jurisdiction to take proof of wills and to admit the same to probate and record. *Gracie v. American Security & Trust Co.* (1922, 277 F. 543, 51 App. D.C. 141).

2. Proof

Admission by caveator of formal execution of will does not dispense with necessity for proof thereof. *National Safe Deposit, Sav. & Trust Co. v. Heiberger* (19 App. D. C. 506).

3. Waiver of citation

Waiver of citation does not preclude subsequent filing of caveat. *Bowen v. Howenstein* (39 App. D.C. 585).

Waiver of citation does bring party within jurisdiction of court. *Fardon v. Washington Loan & Trust Co.* (44 App. D.C. 69).

§ 19-305. Probate.

When the notice as prescribed in section 19-301 has been completed in any case, the court shall proceed, if no caveat be filed, to take the proofs, or to consider the proofs theretofore taken, of the execution of the will. All the witnesses to such will who are within the District and competent to testify must be produced and examined, or the absence of any of them satisfactorily accounted for. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, § 131; June 24, 1949, 63 Stat. 267, ch. 241, § 2.)

AMENDMENT

1949—Act June 24, 1949, substituted "When notice as prescribed in section 19-301 has been completed in any case, the court shall proceed, if no caveat be filed, to take the proofs, or to consider the proofs theretofore taken, of the execution of the will" for "On the day appointed as aforesaid, or such subsequent day as the court may appoint, due proof of such publication and mailing being made, the court shall proceed to take proof of the will".

NOTES TO DECISIONS

Illiterate testators 1
Production of witnesses 2
Proof of signature 3

1. Illiterate testators

The same rule applies in cases of illiterate testators. *Lippard v. Humphrey* (28 App. D.C. 355, affirmed 28 S. Ct. 561, 209 U.S. 264, 52 L. Ed. 783, 14 Ann. Cas. 872).

2. Production of witnesses

"In all cases the subscribing witnesses, if living and within the jurisdiction, must be called to prove the fact of execution; and if it appears from their evidence that the will was formally executed and the testator competent, it must be admitted to probate." *Lippard v. Humphrey* (28 App. D.C. 355, affirmed 28 S. Ct. 561, 209 U.S. 264, 52 L. Ed. 783, 14 Ann. Cas. 872).

3. Proof of signature

"When any of the witnesses to a will has died, proof of his signature is sufficient prima facie proof of attestation of the will by him." *Keely v. Moore* (22 App. D. C. 9, affirmed 25 S. Ct. 169, 196 U.S. 38, 49 L. Ed. 376).

§ 19-306. Proof of will—Register of wills may take testimony—Witnesses beyond District of Columbia.

In case the will contains a devise of real estate, and any attesting witness thereto residing in the District is unable, from sickness, age, or other cause, to attend court, the register of wills may, with such will, attend upon said witness and take his testimony. If the testimony of resident attesting witnesses or witness to such will shall have been taken, and any other such witness to said will shall reside out of the District or be temporarily absent therefrom, but within the United States, it shall be sufficient to prove the signature of such witnesses so out of the District.

If the sole witnesses to such will shall be out of said District as aforesaid, or if one or more should be within the United States and one or more be in some foreign country, then it shall be sufficient to take the testimony of any one or all within the United States, as the court may determine, and to prove the signatures of those whose testimony is not required to be taken.

If all such witnesses shall be out of the United States, then it will be sufficient to take the testimony of such of them as the court may require, and to prove the signature or signatures of the others.

The testimony of such witnesses out of the District to be taken hereunder shall be under a commission issued by the court to one or more competent persons, and in such case the original will or codicil shall accompany the commission and be exhibited to the witnesses.

No notice need be given of the time and place of taking such testimony, unless in a case in which probate is opposed. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, § 132.)

NOTES TO DECISIONS

Depositions 1
Evidence 2
Nonresident witness 3
Testimony of witness in foreign country 4

1. Depositions

Depositions can be substituted for oral testimony only by statutory authority. *Hutchins v. Hutchins* (41 App. D. C. 367).

2. Evidence

Declarations of testatrix made after execution of her will showing that she made a different disposition of her property are inadmissible, especially when there is no tendency to show want of mental capacity. *Lipphard v. Humphrey* (28 App. D.C. 355, affirmed 28 S. Ct. 561, 209 U.S. 264, 52 L. Ed. 783, 14 Ann. Cas. 872).

3. Nonresident witness

"Section 132 of the Code (this section) specifically provides that, if the testimony of the resident witness is taken and any other witness resides out of the District, it shall be sufficient to prove the signature of such nonresident witness, and that the will shall thereupon be admitted to probate." *Scott v. Herrell* (31 App. D. C. 45).

4. Testimony of witness in foreign country

D.C. Code 1901, § 1058 (§ 14-201) expressly provides that to take the testimony of a witness in a foreign country, letters rogatory shall issue, addressed to some court of record therein, accompanied by the interrogatories and cross-interrogatories propounded to the witness. *Hutchins v. Hutchins* (41 App. D.C. 367).

§ 19-307. Caveat—Will not to be probated while issues pending.

If, upon or prior to the hearing of the application to admit the will to probate, any party in interest shall file a caveat in opposition, duly verified, and setting forth facts inconsistent with the validity of the will, the said will shall not be admitted to probate until the issues raised by said caveat shall be determined, as hereinafter directed. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 136.)

NOTES TO DECISIONS

Burden of proof 1
Equitable remedies 2
Party in interest 3
Right to administer 4

1. Burden of proof

Under a caveat to a will challenging the mental capacity of the testator, whether before or after the will has been admitted to probate, the burden of proof on the issue whether the testator was of sound and disposing mind and capable of executing a valid deed or contract, is upon the caveator. *Brosnan v. Brosnan* (1923, 44 S. Ct. 117, 263 U.S. 345, 68 L. Ed. 332).

2. Equitable remedies

"Equity furnishes the only complete remedy in the exceptional class of cases * * * where the complex relief sought consists in setting aside a deed and will embracing the same property and the same parties, enjoining the beneficiaries * * * and declaring them trustees * * * with a general order for an accounting. This is true, even though there be * * * an adequate statutory remedy (this section and § 19-309)." *Karrick v. Landon* (41 App. D. C. 416).

3. Party in interest

A widow was a "party in interest" within meaning of this section so as to be permitted to file caveat against will, under circumstances, where will listed debts which were assertedly due testator's children, which might be barred by limitation but which, if allowed as first charge as directed, might depreciate value of widow's share, where there was a substantial issue as to testamentary capacity and named executor whom widow asserted had joined in procuring execution of will so as to list such claims, would, in first instance, pass on debts. *Helen Rothenberg, Caveator, etc. v. A. Rothenberg* (1959, 273 F. 2d 825, 107 U.S. App. D.C. 11).

Interest which caveator must possess to enable him to assail validity of will in District of Columbia is such that, had testator died intestate, caveator would have been entitled to distributive share in estate, and such share would be different from that which caveator would be entitled to if will were held valid. *Kimberland v. Kimberland* (1953, 204 F. 2d 38, 92 U.S. App. D.C. 145).

4. Right to administer

Where testatrix by purported will left her entire estate to her son, and estate included no realty in District of Columbia, and son offered will for probate in District of Columbia, husband of testatrix lacked necessary interest in estate to file a caveat, even though husband might be appointed administrator if will should be set aside, since husband would take same share of estate whether will was or was not sustained. *Kimberland v. Kimberland* (1953, 204 F. 2d 38, 92 U.S. App. D.C. 145).

§ 19-308. Admission to probate.

If, upon hearing the proofs submitted, the court shall be of opinion that the will was duly executed and the testator was competent to execute the same, and no caveat shall be filed against the admission of the same to probate, the court shall decree that the said will be admitted to probate and record. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 134.)

NOTES TO DECISIONS

Sufficiency of interest 1
Time for filing 2

1. Sufficiency of interest

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months allowed by statute as to personalty, and alleged widower had filed a renunciation of provisions of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient to entitle him to maintain caveat. *In re Phillips' Estate* (1953, 111 F. Supp. 453).

2. Time for filing

Where caveat of alleged widower of deceased testatrix was not filed in District of Columbia within three months allowed by statute as to personalty, and alleged widower had filed a renunciation of provisions of will and election to take his legal share as of intestacy under statute, and there were no children born of alleged marriage, so that alleged widower had no interest by curtesy, motion to dismiss caveat would be granted because not timely filed and because alleged widower had no interest sufficient to entitle him to maintain caveat. *In re Phillips' Estate* (1953, 111 F. Supp. 453).

§ 19-309. Caveat.

After a will has been admitted to probate, any person in interest shall have six months from the date of the order of probate in which to file a caveat to said will, praying that the probate thereof be revoked. (Mar. 3, 1901, 31 Stat. 1212, ch. 854, § 137; June 24, 1949, 63 Stat. 268, ch. 243; July 14, 1960, 74 Stat. 553, Pub. L. 86-674, § 1.)

AMENDMENTS

1960—Act July 14, 1960, reduced the time within which a caveat may be filed from one year after the decree to six months from the date of the order of probate.

1949—Act June 24, 1949, eliminated provisions, which, in cases of wills of personal property, required a caveat to be filed within three months after the decree, permitted persons interested and actually served with process or personally appearing, in cases of wills of real estate, to file a caveat within one year of the decree, authorized persons interested who were returned "Not to be found" to file a caveat within two years of the decree, and which empowered minors to file caveats within one year after reaching the age of 21.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of act July 14, 1960, provided that: "The amendment made by the first section of this Act [to this section] shall apply only to wills admitted to probate after the date of enactment of this Act [July 14, 1960]."

NOTES TO DECISIONS

Appeal 1
Appearance 2
Defense to compulsory accounting 3
Estoppel to file 4
Right to file 5
Sufficiency of interest 6
Time for filing 7
Waiver 8

1. Appeal

Appellate court will not reach the question of fraud upon the merits because a caveator cannot raise on appeal an issue which he failed to pose as an issue to be tried in a caveat proceeding. Probate procedure in this jurisdiction gives any person in interest ample opportunity to raise by caveat, prior to the decree of probate, any issue he may wish to raise in respect of the validity of a will. *Langston v. Schwartz* (1949, 174 F. 2d 31, 84 U.S. App. D.C. 329).

2. Appearance

Signing of waiver constitutes appearance, but, by leave of court, same may be withdrawn. *Fardon v. Washington Loan & Trust Co.* (44 App. D. C. 69).

Signing of waiver brings one within one-year limitation, notwithstanding fact that there was a subsequent order of publication. *Id.*

3. Defense to compulsory accounting

After probate of a will and until revocation, executor is required to act in accordance with terms of will, and, in absence of wrongdoing on his part, is fully protected in so doing. *Cashell v. Eslin* (1944, 55 F. Supp. 747).

4. Estoppel to file

Whether receipt of legacy under will works an estoppel to file a caveat and effect of offer to return the same, see *Craighead v. Alexander* (38 App. D.C. 229).

5. Right to file

"The object of the section is to extend to the persons coming within its description a certain period within which to contest a will that has been regularly admitted to probate. As to them the probate is not a finality until the expiration of the prescribed periods. Until then the right to the caveat is absolute." *Craighead v. Alexander* (38 App. D. C. 229).

Waiver and consent does not deprive any person of right to file a caveat. *Fardon v. Washington Loan & Trust Co.* (44 App. D.C. 69).

6. Sufficiency of interest

The interest which a person must possess to enable him to assail the validity of a will is such that, had the testator died intestate, he would have been entitled to a distributive share in the estate. *Angell v. Groff* (42 App. D. C. 198).

Petition for caveat of will must show petitioner to be "next of kin," but also "person in interest." *Naylor v. Mealy* (1934, 67 F. 2d 693, 62 App. D.C. 321).

To be a person interested, a beneficiary under a prior will must show that, except for the effect of the later will, if valid, to revoke the earlier one, the latter remained the last will and testament of the testator until his death. *Werner v. Frederick* (1938, 94 F. 2d 627, 68 App. D.C. 158).

An heir, claiming by intestacy, may caveat a probated will regardless of possible effect of an earlier purported will which has not been proved or put in issue by any one claiming under it. *Lonas v. Betts* (1947, 160 F. 2d 281, 82 U.S. App. D.C. 55).

7. Time for filing

Where caveat to will probated in 1953 alleged that son of testatrix was incompetent when will was probated and proposed amendment alleged that incompetence was known or should have been known to the proponent and was not brought to the attention of the probate court, proposed amendment was properly rejected in view of the one-year statute of limitations on filing caveats, which contains no exceptions giving an incompetent or his committee a longer time than one year in which to file a caveat. *Merchant v. Davies* (1957, 244 F. 2d 347, 100 U.S. App. D.C. 258).

When the caveat was not filed until more than three months after the order of probate, the allegations of fraud, practiced in procuring the waiver of citation and service, were evidently made to excuse their failure to proceed within statutory period, and when further delayed for year and day, it was of no effect. *Craighead v. Alexander* (38 App. D. C. 229).

When person was legally alive for more than two years after the probate of his father's will, he was barred from caveating the will, and his heirs, having no rights which they could assert during his lifetime, are likewise barred. *Angell v. Groff* (42 App. D. C. 198).

The dismissal of a caveat to a will, which involved real and personal property, in so far as caveat was a caveat to a will of personal property, was proper where will was admitted to probate on July 5, 1938, and caveat was not filed until June 30, 1939. *Hengesbach v. Hengesbach* (1940, 114 F. 2d 845, 73 App. D.C. 1).

8. Waiver

Beneficiary of will of testator, by affixing her signature to document entitled "consent to probate and letters testamentary" did not unequivocally waive her statutory right to file a caveat on the ground that the waiver was founded upon consideration because of benefit conferred upon the beneficiary and by detriment incurred by the executors. *McNamara v. Miller, Sr. et al.* (1959, 269 F. 2d 511, 106 U.S. App. D.C. 64).

Beneficiary of will by affixing her signature to document entitled "consent to probate and letters testa-

mentary" did not unequivocally waive her statutory right to file a caveat based on estoppel where the executors failed to demonstrate that damage would have resulted to them had the caveat been entertained. *Id.*

Beneficiary, by affixing her signature to document entitled "consent to probate and letters testamentary" did not unequivocally waive her statutory right to file a caveat on the ground that such waiver constituted a judicial admission, where the waiver was a statement of assertion or concession made for an independent purpose, thus not coming within the requirements of a judicial admission insofar as any issue pending before the court was concerned, and where there was no issue as to which the judicial admission could apply. *Id.*

§ 19-310. No prior will to be probated pending issues.

While issues raised by a caveat are pending, either for trial or on appeal, no prior will shall be admitted to probate. (Mar. 3, 1901, ch. 854, § 137a, as added Apr. 19, 1920, 41 Stat. 557, ch. 153.)

§ 19-311. Plenary proceedings.

The court may, in all cases of controversy therein, direct a plenary proceeding to be had, by bill or petition, to which there shall be answer under oath, which may be compelled by the usual process, and all the depositions shall be taken down in writing and filed; or, if either party shall require it, the court shall direct an issue to be made up to be tried by a jury. (Mar. 3, 1901, 31 Stat. 1213, ch. 854, § 139.)

§ 19-312. Trial of issues as to wills—Trial by jury—Notice—Service to absent parties not essential for jurisdiction—Judgment.

Whenever any caveat shall be filed, issues shall be framed under the direction of the court for trial by jury: *Provided*, That in all cases in which all persons interested are sui juris and before the court the issues may be tried and determined by the court, without a jury, upon the written consent of all such parties. If they are to be tried by a jury, they shall be triable in said probate court by petit jurors drawn for service in the United States District Court for the District of Columbia; and at least ten days prior to the time of trial all of the heirs at law or next of kin of the decedent, or both together, as the case may require, and all persons claiming under the will in question, or any other instrument on file purporting to be a will of the decedent, shall be each served with a copy of said issues and a notification of the time and place of the trial thereof. If any one of them be an infant or of unsound mind he shall have a guardian ad litem appointed for him by the court before such trial shall proceed. If, as to any party in interest, the notification shall be returned "not to be found," the court shall assign a new day for such trial, and shall order publication, at least twice a week for a period of not less than four weeks, of the substance of the issues and of the date fixed for the trial thereof in some newspaper of general circulation in the District, and may order such further publication as the case may require. And the United States District Court for the District of Columbia may from time to time prescribe and revise rules and regulations for service personally upon such party outside of the District of Columbia of a copy of such issues and notification. Personal service on absent parties shall not be essential to the jurisdiction of the court. The proceeding for impaneling a jury for the trial of said issues shall

be the same as if they were being tried in the court of appeals. In all cases in which such issues shall be tried the verdict of the jury and the judgment of the court thereupon shall, subject to proceedings in error and to such revision as the common law provides, be res judicata as to all persons; nor shall the validity of such judgment be impeached or examined collaterally. (Mar. 3, 1901, 31 Stat. 1213, ch. 854, § 140; June 30, 1902, 32 Stat. 526, ch. 1329; Apr. 19, 1920, 41 Stat. 557, ch. 153; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1920—Act Apr. 19, 1920, provided for service in the Supreme Court of the District of Columbia, and struck out a sentence following the sentence ending "of the court" and provisions which related.

1902—Act June 30, 1902, substituted "the substance of the issues and of the date fixed for trial thereof" for "a copy of the issues and notification of trial."

CHANGE OF NAME

Section 32(a) of act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "Circuit Court."

Section 32(b) of act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

Burden of proof 1
Construction 2
Directed verdict 3
Discretion of court 4
Evidence 5
Harmless or prejudicial error 6
Instructions 7
Questions for jury 8
Review 9
Stay by prohibition 10
Trial 11

1. Burden of proof

"In the District of Columbia, under a caveat to a will challenging the mental capacity of the testator, whether before or after the will has been admitted to probate, the burden of proof on the issue whether the testator * * * was of sound and disposing mind and capable of executing a valid deed or contract, is upon the caveator." *Brosnan v. Brosnan* (1923, 44 S. Ct. 117, 263 U.S. 345, 68 L. Ed. 332).

2. Construction

Under § 6 of the act of Congress of June 8, 1898, the word "week" was not intended to mean the conventional week beginning with Sunday and ending with Saturday, but a period of seven consecutive days. *Leach v. Burr* (17 App. D.C. 128, affirmed 23 S. Ct. 393, 188 U.S. 510, 47 L. Ed. 567).

This section is still in force, notwithstanding Rule 38, U.S. Code, title 28, Appendix, relating to jury trials, demand therefor, and waiver thereof, in view of rule 81 following said section providing that rules do not apply to probate proceedings in the District Court of the United States for the District of Columbia except to appeals therein, and hence the failure to demand jury trial in a will contest was not a "waiver" of the right thereto. *In re Cottrill's Estate* (1941, 39 F. Supp. 689).

Rule 1, § 2, of the District Court of the United States for the District of Columbia providing that in determining contested issues of law or fact or of law and fact in probate proceedings, District Court rules and federal procedural rules shall also govern procedure on motions, depositions, discovery and testimony and at hearing or trial of issues, does not purport to modify this section. *Id.*

Under 28 U. S. Code, former § 723b [now covered by 28 U. S. Code § 2072] providing that all laws in conflict with procedural rules shall be of no further force

or effect, Rule 38, U.S. Code, title 28, Appendix, relating to jury trials, demand therefor, and waiver thereof is not applicable as such to will contests in the District of Columbia, and does not in effect repeal this section in view of Rule 82 providing that rules do not apply to probate proceedings in the District Court of the United States for the District of Columbia except to appeals therein. *Id.*

3. Directed verdict

In proceeding to probate will, where there was no evidence of fraud sufficient to justify submission of such issue to jury the trial judge properly directed a verdict against caveators on such issue. *Pollard v. Hawfield* (1948, 170 F. 2d 170, 83 U.S. App. D.C. 374, certiorari denied 69 S. Ct. 514, 336 U.S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U.S. 929, 93 L. Ed. 1089).

4. Discretion of court

In proceeding to probate will where it did not appear that physician had had any experience or training in mental illnesses or that he had ever treated or observed any paralytic case which had resulted in impairment of the mind and there was but little if any evidence in the record to indicate that either partial paralysis of the testatrix with its resultant confinement or advanced age of testatrix caused any impairment of mind, limiting testimony of physician as to paralysis and refusing to permit him to testify to effect of paralysis on mental faculties was not an abuse of discretion. *Pollard v. Hawfield* (1948, 170 F. 2d 170, 83 U.S. App. D.C. 374, certiorari denied 69 S. Ct. 514, 336 U.S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U.S. 929, 93 L. Ed. 1089).

5. Evidence

Where probate of will naming testatrix's sister sole beneficiary was opposed on ground of undue influence and want of testamentary capacity, § 14-302 providing that if one of original parties to transaction or contract has died, the other party thereto shall not be allowed to testify to any declaration of the deceased in suit against personal representative of deceased did not require exclusion of testimony of testatrix's brother that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her. *Duckett v. Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

The persons named as executors and legatees in an alleged will cannot, in order to probate the will, be permitted to utilize § 14-302 providing that if one of original parties to transaction or contract has died the other party thereto shall not be allowed to testify to any declaration of deceased in suit against personal representative of deceased. *Id.*

Testimony of testatrix' brother, who had made his home with her for 36 years, that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her was admissible on issues of undue influence and testamentary capacity in opposition to probate of will naming testatrix's sister sole beneficiary. *Id.*

Where probate of will is opposed on ground of fraud and undue influence, it is not necessary that there be direct proof of undue influence. *Id.*

A finding that testator's subscription to purported will was procured by fraud, coercion, misrepresentation, undue influence, and pretension, executed by the sole beneficiary named in will, or some other person, was supported by sufficient evidence. *Duckett v. Duckett* (1945, 150 F. 2d 985, 80 U.S. App. D.C. 195).

Evidence supported finding that will had been procured by undue influence, duress or coercion by beneficiary, so that it should be denied probate. *Martin v. Staples* (1947, 164 F. 2d 106, 82 U.S. App. D.C. 370).

6. Harmless or prejudicial error

In will contest, refusal to permit attorney for testatrix to testify concerning instruction given him by testatrix on ground that communication was privileged was error. *Sorrels v. Alexander* (1944, 142 F. 2d 769, 79 U.S. App. D. C. 112).

Where witness was permitted to use notes to refresh her memory, refusal to strike out testimony of witness when it developed on cross-examination that some of notes were not made until two years after event about which witness testified was not reversible error where

counsel failed to object to use of notes when witness asked if she might use them, and later when it developed that they had not been made contemporaneously, counsel not only failed to move that her testimony be stricken from record, but used her notes in argument to jury. *Id.*

In will contest, erroneous refusal to permit attorney for testatrix to testify concerning instructions given him by testatrix did not authorize reversal, where record did not show what was intended to be elicited from witness or time when the instructions were received. *Id.*

In will contest, where it was developed when counsel for testatrix was on witness stand that he had held in his possession, and not offered for probate for a period of two weeks wills of testatrix's brother-in-law and sister, remark of court that when will is left with an attorney to be filed "it ought to be filed immediately" was not prejudicial where judge in subsequent charge left jury free to determine, without comment on his part, weight to be given to the evidence. *Id.*

7. Instructions

In proceeding to probate will, refusal of requested prayers on presumption of undue influence and on testamentary capacity was not error where the charge given properly informed the jury as to the law. *Pollard v. Hawfield* (1948, 170 F. 2d 170, 83 U.S. App. D.C. 374, certiorari denied 69 S. Ct. 514, 336 U.S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U.S. 929, 93 L. Ed. 1039).

8. Questions for jury

In proceeding for probate of will, where there was evidence that testatrix' sister, who was named sole beneficiary, after taking sole charge of testatrix first made false statements to other relatives with purpose and effect of inducing them not to visit testatrix and then allowed her to suppose, contrary to fact, that the other relatives were making no effort to see testatrix, doing nothing for her and showing no interest in her welfare, issues of fraud and undue influence were for the jury. *Duckett v. Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

In will contest, evidence on question whether testatrix at time of making and signing the will was of sound and capable mind was sufficient for jury. *Sorrels v. Alexander* (1944, 142 F. 2d 769, 79 U.S. App. D.C. 112).

In will contest, evidence on question whether will was obtained or procured by undue influence, duress or coercion was sufficient for jury. *Id.*

In will contest, evidence of fraud in procurement of will was sufficient for jury. *Frene v. Muratori* (1944, 142 F. 2d 768, 79 U. S. App. D. C. 101).

9. Review

Order framing issues is interlocutory only, and reviewable only by special appeal. *Hutchins v. Hutchins* (40 App. D.C. 180).

In proceeding to probate will where no exceptions were taken to the charge on undue influence and testamentary capacity, charge on such matters could not be attacked on appeal. *Pollard v. Hawfield* (1948, 170 F. 2d 170, 83 U.S. App. D.C. 374, certiorari denied 69 S. Ct. 514, 336 U.S. 909, 93 L. Ed. 1073, rehearing denied 69 S. Ct. 654, 336 U.S. 929, 93 L. Ed. 1039).

10. Stay by prohibition

Prohibition will not lie to stay proceedings under an order framing issue for trial by jury. *In re Dahlgren* (30 App. D. C. 588).

11. Trial

The trial proceeded when it was shown by the record that at the time the issues were framed and the trial fixed, and at the trial the caveatees were present in person and by their attorneys. *Storey v. Storey* (30 App. D. C. 41).

§ 19-313. Wills filed prior to June 8, 1898, may be probated as of real estate.

Any person interested under any will filed in the office of the register of wills for the District of Columbia prior to June 8, 1898, may offer the same for probate as a will of real estate, whereupon such proceedings shall be had as by this Code are authorized in regard to wills offered for probate after said date. (Mar. 3, 1901, 31 Stat. 1213, ch. 854, § 141.)

NOTES TO DECISIONS

In general 1
Effect of probate of wills 2
Equity jurisdiction 3
Jurisdiction 4

1. In general

This section is permissive and not mandatory. *Young v. Norris Peters Co.* (27 App. D. C. 140).

2. Effect of probate of wills

Stepgrandchildren of a decedent lacked standing to maintain action to annul marriage of decedent and to set aside conveyance of interest in realty to decedent's wife after marriage, since stepgrandchildren as such could not contest marriage alone, and their claim to realty rested upon will of decedent which devised realty to decedent's stepgrandchildren, but will was not probated so that stepgrandchildren could not take realty even if conveyance and marriage were voided. *Norris v. Harrison* (1952, 198 F. 2d 953, 91 U.S. App. D.C. 103).

3. Equity jurisdiction

Determination of title to real estate devised by will is within the general jurisdiction of a court of equity. *Beyer v. Le Fevre* (1902, 22 S. Ct. 765, 186 U.S. 114, 46 L. Ed. 1080).

4. Jurisdiction

By act of June 8, 1898, 30 Stat. 434, ch. 394, plenary jurisdiction was given the District Supreme Court of all questions as to wills devising real estate in the District of Columbia. *Leach v. Burr* (1903, 23 S. Ct. 393, 188 U.S. 510, 47 L. Ed. 567).

Chapter 4.—REGISTER OF WILLS

Sec.

- 19-401. Appointment—Oath of office.
- 19-402. Bond.
- 19-403. Powers.
- 19-404. Repealed.
- 19-404a. Payment of fees, costs and other moneys.
- 19-405. Repealed.
- 19-406. Required to post table of fees.
- 19-407. Penalty for failure to post table of fees.
- 19-408. Penalty for charging greater fees.
- 19-409. To act as clerk of probate court.
- 19-410. Not to practice law.
- 19-411. Penalty for charging for advice.

§ 19-401. Appointment—Oath of office.

There shall be appointed for the District a register of wills, who shall take an oath for the faithful and impartial discharge of the duties of his office. The register of wills shall be appointed by the United States District Court for the District of Columbia and shall be subject to removal by that court. (R. S., D. C., § 929; Aug. 2, 1949, 63 Stat. 491, ch. 383, § 3.)

AMENDMENT

1949—Act Aug. 2, 1949, added the last sentence.

EFFECTIVE DATE OF 1949 AMENDMENT

Section 10 of act Aug. 2, 1949, provided that: "This Act [adding section 19-404a, amending this section, and repealing sections 19-404 and 19-405] shall take effect on July 1, 1949."

TRANSFER OF OFFICE

Section 1 of act Aug. 2, 1949, provided in part:

"That the office of the probation officer of the United States District Court for the District of Columbia, the office of the Register of Wills for the District of Columbia, and the Commission on Mental Health, are hereby transferred from the government of the District of Columbia to the Administrative Office of the United States Courts for budgetary and administrative purposes, and the provisions of chapter 41 of title 28, United States Code, shall apply to such offices."

CROSS REFERENCE

Jurisdiction, practice, and procedure in probate court, see §§ 11-501 to 11-520.

§ 19-402. Bond.

The register of wills shall, before he acts as such, give a bond to the United States, with two or more sureties, to be approved of by the chief judge of the United States District Court for the District of Columbia in the sum of five thousand dollars, faithfully to discharge the duties of his office and seasonably to record the decrees and orders of the judge of the District Court holding the special term for probate court business for the District, and all wills proved before him or the court, and all other matters directed to be recorded in the court or in the office of the register, which bond shall be entered in full upon the minutes of the court, and the original filed with the records thereof. (R.S., D.C., § 930; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", "chief judge" for "chief justice" and "judge" for "justice."

§ 19-403. Powers.

The said register of wills may receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final passage or rejection of same by the court, may take probate of claims against the estates of deceased persons that are proper to be brought before him, and pass any claims not exceeding three hundred dollars; may take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval by the court. It shall be his duty to make full and fair entries of the proceedings of said court, and also to make a fair record in a strong bound book or books of all wills proved before him or said court, and of all other matters by law directed to be recorded in said court, and to lodge every original paper filed with him in such place of safety as the court may appoint. He shall make out and issue every summons, process, and order of the court, and in every respect act under its control and direction in reference to matters coming within the jurisdiction of said court. He shall be, and hereby is, authorized to appoint five deputies, who may do and perform any and all the acts necessary in the administration of his office and the certification of the records of said court which he himself is authorized to do; also to appoint and fix the number and the compensation of the employees of said probate court and office of register of wills: *Provided*, That the employees of said office shall not be in excess of the number actually necessary for the proper conduct of the office of said register of wills. (Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 121; June 30, 1902, 32 Stat. 525, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265; Apr. 24, 1926, 44 Stat. 322, ch. 176; Aug. 7, 1946, 60 Stat. 889, ch. 792.)

CODIFICATION

Provisions which required the expenses of the office of the register of wills to be paid from the revenues of the office were omitted in view of act Apr. 24, 1926, which provided that appropriations for the operation and maintenance of the office of the register shall be included in the annual estimates of appropriation for the government of the District of Columbia.

Provisions which fixed the annual compensation of the register of wills at \$4,000 were omitted in view of act Mar. 4, 1923, which fixed the compensation of officers and employees of the United States government and the government of the District of Columbia.

AMENDMENTS

1946—Act Aug. 7, 1946, increased the number of authorized deputies from two to five.

1902—Act June 30, 1902, raised from one to two the number of deputies permitted to be appointed, and added the concluding proviso.

CROSS REFERENCES

Attorney for service of process upon nonresident fiduciaries, see § 20-118.

Docket for claims against estates, see § 18-513.

Duty to prepare papers for appointment of guardian to enable indigent boys to enlist in the Navy, see § 21-105.

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

Notice to absent executor of probate of will, see § 20-306.

§ 19-404. Repealed. Aug. 2, 1949, 63 Stat. 492, ch. 383, § 9.

Section, act Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1, required fees and emoluments of the register of wills to be deposited weekly with the collector of taxes, and is now covered by section 19-404a.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1949, see note under section 19-401.

§ 19-404a. Payment of fees, costs and other moneys.

The register of wills of the District of Columbia shall pay into the treasury all fees, costs, and other moneys collected by him (except uncollected fees not required by Act of Congress to be prepaid), and shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him. (Aug. 2, 1949, 63 Stat. 491, ch. 383, § 5.)

EFFECTIVE DATE

Section effective July 1, 1949, see note under section 19-401.

§ 19-405. Repealed. Aug. 2, 1949, 63 Stat. 492, ch. 383, § 9.

Section, act Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2, required the annual estimates of appropriations for the government of the District of Columbia to include estimates of appropriations for the operation and maintenance of the office of register of wills.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1949, see note under section 19-401.

§ 19-406. Required to post table of fees.

The register is required to make fair tables of his fees, and to post the same in some conspicuous place in his office, for the inspection of all persons who may have business therein. (R. S., D. C., § 933.)

CROSS REFERENCE

Fees, see § 11-1501 et seq.

§ 19-407. Penalty for failure to post table of fees.

The register shall forfeit for each day such tables shall be missing through his neglect the sum of ten dollars, to be recovered as other debts of the same amount are recoverable, one-half to the District, and one-half to the informer. (R. S., D. C., § 934.)

§ 19-408. Penalty for charging greater fees.

If the register or any person for him, shall take greater fees than provided for in section 11-1503 of this Code, such officer shall forfeit and pay the party injured fifty dollars, to be recovered as debts of the same amount are recoverable. (R. S., D. C., § 935.)

§ 19-409. To act as clerk of probate court.

The register of wills of the District of Columbia shall be, and hereby is, authorized, empowered, and directed to act as clerk of the said probate term, to keep and certify its records and generally, with respect to said term, to exercise all the powers and perform all the duties which might otherwise be properly exercised or performed by the clerk of the United States District Court for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 120; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 19-410. Not to practice law.

No person, being register of wills shall plead as an attorney at law in any court in the District of Columbia, for any person or persons, on any pretence whatsoever; and no register of wills as aforesaid shall exact, extort, demand, take, accept, or receive, from any person whatsoever, any fee or fees, gratuity, gift, or reward, for giving his advice in any matter or thing that will be transacted in the courts of the District of Columbia, under the penalty of \$80, current money for every such offense. (Md. Act 1781, ch. 16; Md. Act 1786, ch. 10; Apr. 2, 1792, 1 Stat. 248, ch. 16, § 9.)

§ 19-411. Penalty for charging for advice.

The register of wills shall not demand, take, or receive, from any person whatever any fee, gratuity, gift or reward, for giving his advice in any matter or thing relative to his office, under the penalty of \$133.33, for every offense. (Md. Act, 1779, ch. 25, § 7; Md. Act, 1781, ch. 16; Apr. 2, 1792, 1 Stat. 248, ch. 16, § 9.)

TITLE 20.—ADMINISTRATORS, EXECUTORS, AND COLLECTORS

Chap.	Sec.
1. General Provisions.....	20-101
2. Administrators.....	20-201
3. Executors.....	20-301
4. Collectors.....	20-401
5. Suits.....	20-501
6. Accounts.....	20-601
7. Estates of Absentees and Absconders.....	20-701

NOTES TO DECISIONS

- Compensation although disqualified 1
- Construction 2
- Derivation of probate system 3
- Discretion of court 4
- Disqualification or removal 5
- Fraud in securing appointment 6

1. Compensation although disqualified

Where petitioners failed to bring the disqualification of the administrator to the attention of the probate court until administration was almost completed, such administrator will be allowed reasonable commissions and compensation to date of appointment and qualification of his successor, including expenses and reasonable attorney's fees, and costs of the proceeding will be taxed against petitioners. *In re Allen's Estate* (1940, 30 F. supp. 243).

2. Construction

This section prohibiting granting of letters testamentary or of administration to person convicted of infamous crime is not discretionary, and if such disqualification is discovered after letters have been issued appointment should be revoked. *Dial v. Johnson* (1958, 259 F. 2d 189, 104 U.S. App. D.C. 32).

3. Derivation of probate system

The District of Columbia probate system is largely derived from Maryland, and, ordinarily, courts of the District follow Maryland decisions. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

4. Discretion of court

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

5. Disqualification or removal

In proceeding on petition for removal of administrator on ground that he had been convicted of an infamous crime, order refusing removal must be vacated and set aside in order that there could be an express judicial finding made as to whether administrator had been convicted as alleged, and order entered for his removal if finding was against him on that issue. *Dial v. Johnson* (1958, 259 F. 2d 189, 104 U.S. App. D.C. 32).

An order removing a disqualified administrator is a final appealable order. *Perry v. Wilson* (1931, 48 F. 2d 1021, 60 App. D.C. 109).

Petitioners whose knowledge of the disqualification of administrator existed at the time of his appointment are reprimanded by the court for failure to disclose it at that time. *In re Allen's Estate* (1940, 30 F. Supp. 243).

Conviction of conspiracy to violate the National Prohibition Act is sufficient to disqualify and cause removal of an administrator. *Id.*

6. Fraud in securing appointment

If trial court found that administrator had perpetrated fraud in securing appointment, trial court should exercise its discretion to determine whether fraud was a sound reason for it to depart from statutory scheme in designating administrator. *Dial v. Johnson* (1958, 259 F. 2d 189, 104 U.S. App. D.C. 32).

§ 20-102. Persons between 18 and 21 years of age.

In case letters testamentary or of administration shall be granted to any person above eighteen but

Chapter 1.—GENERAL PROVISIONS

Sec.	
20-101.	Competency—Determination by probate court.
20-102.	Persons between 18 and 21 years of age.
20-103.	Administrator with the will annexed—Preference.
20-104.	Application for letters—Contents—Bond—Sale of real estate.
20-105.	Letters de bonis non—Form—Duties.
20-106.	Will proved after letters granted—Letters revoked—Administrator's liability—Pending actions—Accounting—Prior distribution—Will declared invalid after distribution—Liability.
20-107.	Removal of co-executor, co-administrator, or co-collector for negligence or misconduct—Complaint—Recovery of loss or damage.
20-108.	Additional bond—Failure to provide—Revocation—Delivery of assets.
20-109.	Counter security—Application of surety—Delivery of property—Inventory—Duties and liability of surety.
20-110.	Accounting by representative of deceased executor or administrator.
20-111.	Enforcement of order against representative of deceased executor or administrator.
20-112.	Liability of executor or administrator of a deceased executor or administrator for conversion of property of estates.
20-113.	Executor de son tort.
20-114.	Executor de son tort—Liability for waste.
20-115.	Investment of funds.
20-116.	Continuing decedent's business—Verified petition — Affidavits — Contents — Accounting — Debts of business as expenses of estate.
20-117.	Executor's or administrator's bond—Recording—Copies—Ex rel. actions upon—Actions by subsequent administrator—Actions by creditors.
20-118.	Fiduciary residing outside District of Columbia—Power of attorney to register of wills—Failure to give power.
20-119.	Resignation—Petition—Accounting—Liability.

§ 20-101. Competency—Determination by probate court.

No letters testamentary or of administration shall be granted to a person convicted of an infamous offense, or to an idiot or lunatic, or person non compos mentis, or one under eighteen years of age, or to an alien; and all questions as to the disqualification on any of said grounds of any person claiming to be entitled to letters testamentary or of administration shall be determined by the probate court, after such notice to the said persons as the court may direct. (Mar. 3, 1901, 31 Stat. 1232, ch. 854, § 261.)

CROSS REFERENCE

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

under twenty-one years of age, the bond executed by him for the faithful performance of his duties shall be as binding as if he were of full age. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 294.)

§ 20-103. Administrator with the will annexed—Preference.

In case any will admitted to probate shall not appoint an executor, or the executor therein appointed shall have died or renounced the executorship, or shall be incompetent to serve, administration shall be granted with the will annexed to the person who would have been entitled to administration in case of the intestacy of the deceased testator: *Provided, however,* That if there be a residuary legatee named in such will, he shall be preferred to all, except a widow. And the condition of the bond of the administrator so appointed and the oath to be taken by him and his duties and liabilities shall be the same if he had been appointed executor in the will and had received letters testamentary. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 298.)

§ 20-104. Application for letters—Contents—Bond—Sale of real estate.

Whenever any person shall apply to the probate court for letters testamentary or of administration, he shall set forth, under oath, as fully as possible, all the personal and real estate left by the decedent and the amount of his debts as far as can be ascertained; and the penalty of the bond required of him, except in the cases provided for in sections 20-203, 20-302, 20-303, shall be sufficient to secure the proper application of all the personal estate of the testator or intestate; and when it shall become necessary to sell the real estate of the decedent, in part or in whole, the executor or administrator shall give such additional bond, with approved security, as shall be directed by the court, to secure the proper application of the proceeds arising from such sale or sales. And whenever an executor is empowered by the will to make sale of the real estate of the testator, for any purpose, he shall account for said proceeds in said court. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 295.)

§ 20-105. Letters de bonis non—Form—Duties.

If an executor or administrator shall die before the administration of the estate is completed, letters of administration de bonis non or de bonis non cum testamento annexo, as the case may require, shall be granted, in the discretion of the court, giving preference, however, to the person who would be entitled in the order given in sections 20-201 to 20-219, if he shall actually apply for the same; and the form of the letters shall be the same as in the case of an original administration, except that it shall be confined to the property of the deceased not already administered, and the authority shall be to administer all property herein described as assets and not distributed and delivered or retained by the executor or former administrators, under the court's direction. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 299.)

NOTES TO DECISIONS

Appointment of brother or mother 1
Discretion of court 2

1. Appointment of brother or mother

Where decedent's father was also his administrator, the appointment, at father's death, of brother as administra-

tor, to exclusion of divorced mother, was proper. *Haviland v. Harriss* (1931, 50 F. 2d 1069, 60 App. D.C. 255).

2. Discretion of court

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

§ 20-106. Will proved after letters granted—Letters revoked—Administrator's liability—Pending actions—Accounting—Prior distribution—Will declared invalid after distribution—Liability.

If administration be granted, and a will disposing of the estate of the deceased shall afterwards be proved according to law, and letters testamentary shall have issued thereon, the same shall be considered a revocation of the letters of administration. But the administrator shall not be held to answer for any acts done by him according to law, in good faith, and in ignorance of such will and before any actual or implied revocation of his letters; and the executor obtaining letters shall be authorized to prosecute any actions at law or in equity commenced by the administrator and obtain judgment in his own name, and likewise to defend any suit commenced against the administrator; and said executor shall have the benefit of all judgments obtained by the administrator and be bound by all judgments obtained against him to the extent of assets received by said executor, unless such judgments were obtained by fraud. And it shall be the duty of said administrator to account for and deliver to the executor without delay all goods, chattels, and personal estate and proceeds of any realty sold in his possession, belonging to the deceased, in default of which his bond may be put in suit by the executor or administrator cum testamento annexo.

And if distribution of the estate, or any part thereof, shall have been lawfully made by the administrator, the distributee or distributees, and their personal representatives, and not the administrator so distributing the estate, shall be answerable for the property so distributed, or its value, to the person or persons thereto entitled.

And if any will be hereafter adjudged invalid in any action begun after distribution of the estate, or any part thereof, lawfully made by the executor or executrix, in good faith and without knowledge on his or her part of the invalidity of such will, and without notice that such action was intended, the distributee or distributees of the property, and their personal representatives, and not such executor or executrix, shall be answerable for the property, or its value, to the person or persons thereto entitled. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 290; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, changed the first part of the second sentence of the first paragraph before the semicolon which formerly read: "But all acts done by the administrator according to law, before any actual or implied revocation of his letters, shall be valid and effectual," and added the last two paragraphs of the section.

CROSS REFERENCE

Revocation of letters and accounting, see § 11-515.

NOTES TO DECISIONS

Defenses to compulsory accounting 1

Duty of executor 2

Effect of letters of administration 3

1. Defenses to compulsory accounting

That time within which a caveat to will could be filed by heirs not found within jurisdiction but given notice of application for probate of will by publication had not yet expired was not a sufficient defense to residuary legatee's action against executor to compel an accounting and distribution of residuary estate. *Cashell v. Eslin* (1944, 55 F. Supp. 747).

2. Duty of executor

After probate of a will and until its revocation, executor is required to act in accordance with terms of will, and, in absence of wrongdoing on his part, is fully protected in so doing. *Cashell v. Eslin* (1944, 55 F. Supp. 747).

3. Effect of letters of administration

Letters of administration granted on a petition setting out the existence of a will and averring that no proceedings had been taken for its probate and seeking no adjudication as to the will, and the order being silent on that point, is not an adjudication that decedent died intestate. *Morris v. Foster* (1922, 278 F. 321, 51 App. D.C. 238, certiorari denied 42 S. Ct. 586, 259 U.S. 582, 66 L. Ed. 1074).

A subsequent probate of the will and granting of letters testamentary revoke the letters of administration. *Id.*

§ 20-107. Removal of co-executor, co-administrator, or co-collector for negligence or misconduct—Complaint—Recovery of loss or damage.

If any joint executor, administrator, or collector shall apprehend that he is likely to suffer by the negligence or misconduct in the administration or the improper use or misapplication of the assets of the estate by any co-executor, co-administrator, or co-collector, he may make complaint to said court; and if said complaint shall be adjudged well founded, the court shall have authority, in its discretion, to revoke the powers and authority of the executor, administrator, or collector so complained of and to compel the delivery and surrender to the remaining executor, administrator, or collector of the assets and all books, papers, and evidences of debt of the estate that may be in the possession or control of the person so dismissed from the administration; and the remaining executors, administrators, or collectors shall be entitled to recover, in an action on the case, for any loss or damage they may suffer through the executor, administrator, or collector whose powers shall have been revoked as aforesaid. (Mar. 3, 1901, 31 Stat. 1210, ch. 854, § 125.)

NOTE TO DECISION

Grounds for removal 1

Jurisdiction 2

1. Grounds for removal

This section providing that if any joint executor, administrator, or collector shall apprehend that he is likely to suffer by negligence or misconduct in administration or improper use or misapplication of assets of estate by any coexecutor, coadministrator, or cocollector, he may make complaint to court, and if complaint shall be adjudged "well founded," court shall have authority, in its discretion, to revoke powers and authority of executor, administrator, or collector, does not necessarily require that complaint be adjudged "well founded" in sense that there be a final determination on merits of question of ownership of controverted property, before removal can be had. *Goldsborough v. Marshall* (1957, 243 F. 2d 240, 100 U.S. App. D.C. 134).

Where husband of deceased wife and a daughter of deceased wife by former marriage were appointed as co-administrators of estate of deceased wife, and controversy arose as to whether certain realty standing in name of deceased wife and sum of money deposited in husband's name were in fact property of husband, and daughter filed a motion under this section as administrator for removal of husband as coadministrator, husband's removal was authorized by this section, on ground that daughter's complaint was "well founded." *Id.*

2. Jurisdiction

Where husband of deceased wife and one of deceased wife's daughters were appointed as coadministrators of estate of wife, and daughter filed motion for removal of husband as coadministrator, because of controversy as to whether realty standing in deceased wife's name and sum of money deposited in husband's name were in fact property of husband, and federal District Court entered first order removing husband and appointing a neutral party as administrator, and husband then appealed from first order, District Court had jurisdiction to enter second order appointing another neutral party as administrator, when first neutral party declined appointment. *Goldsborough v. Marshall* (1957, 243 F. 2d 240, 100 U.S. App. D.C. 134).

§ 20-108. Additional bond—Failure to provide—Revocation—Delivery of assets.

Whenever the probate court shall be satisfied that the bond already given by an executor or administrator is insufficient, the said executor or administrator may be required to file an additional bond, and on his failure to do so his letters may be revoked. And upon the revocation of letters testamentary or of administration under this provision, the executor or administrator whose letters are so revoked shall forthwith deliver to any substituted executor or administrator all the assets of his testator or intestate in his possession or under his control. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 296.)

CROSS REFERENCE

Bonds required of trust companies, see §§ 26-333, 26-334.

NOTE TO DECISION

1. Petition for additional bond

Court has power, upon petition of attorney who has contract with executrix for payment of a fee, but no lien on proceeds of judgment, alleging insolvency of executrix and her intention to remove the fund from the jurisdiction on its receipt, to require the executrix to give additional bond, or revoke her letters and thus prevent collection of judgment by her. *Parish v. McGowan* (39 App. D.C. 184, reversed on other grounds 35 S. Ct. 543, 237 U.S. 285, 59 L. Ed. 955). See, also, *Cropper v. McLane* (6 App. D.C. 119, dismissed 16 S. Ct. 1200, 163 U.S. 682, 41 L. Ed. 316).

§ 20-109. Counter security—Application of surety—Delivery of property—Inventory—Duties and liability of surety.

If any surety of an executor or administrator shall apprehend himself to be in danger of suffering from the suretyship, he may apply to the probate court, and the said court may call upon the party to give counter security, to be approved by the court; and if the party so called on shall not, within a fixed reasonable time, give counter security, the court may order the property remaining in the hands of such executor or administrator to be delivered up to such surety, and the court may enforce the delivery by proper process; and an inventory of the property delivered to such surety shall be returned without delay, and the property contained in such inventory

shall be by the said surety sold, distributed, and delivered up, as the case may require, under the immediate order of the court, as if such surety were executor or administrator; but inasmuch as it would be inconvenient to creditors and others interested in the estate, if there should be a double administration, the executor or administrator shall go on to discharge his trust, unless the court revoke his letters for some just cause, as hereinbefore directed, and he shall be answerable for the property in the same manner as if it were not on his default as aforesaid delivered to the surety; and he shall be entitled to sue the said surety and recover damages in case he shall suffer from the misconduct of such surety, in diminishing any part of the property, without obtaining an allowance for the same from the court; and the said surety shall bring into court, to be deposited with the register of wills, the money arising from the sale of any property as aforesaid, to be applied according to the meaning of this code. (Mar. 3, 1901, 31 Stat. 1211, ch. 854, § 128.)

CROSS REFERENCE

Bonds required of trust companies, see §§ 26-333, 26-334.

NOTE TO DECISION

1. "Property" defined

Term "property" as herein used includes the proceeds of the sale of property. *In re McKnight's Estate* (1 App. D. C. 28).

§ 20-110. Accounting by representative of deceased executor or administrator.

On the application of an administrator de bonis non the court may order the executor or the administrator of a deceased executor or administrator to deliver over to him all the personal property that was in the hands of the said deceased executor or administrator, as such, and also all the money, bonds, notes, accounts, and evidences of debt which the said deceased executor or administrator may have taken, received, and had at the time of his death, including the proceeds of sale of either personal or real estate made by said deceased executor or administrator, which shall be deemed unadministered assets. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 301.)

CROSS REFERENCE

Accounting for deceased executor or administrator, see, also, §§ 20-607, 20-608.

§ 20-111. Enforcement of order against representative of deceased executor or administrator.

On the failure of said executor or administrator to comply with said order by a day named, the court may enforce its order by attachment against such executor or administrator, and may direct the bond of the deceased executor or administrator, or that of the executor or administrator so failing, or both, to be put in suit for the use of the administrator de bonis non. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 302.)

§ 20-112. Liability of executor or administrator of a deceased executor or administrator for conversion of property of estates.

All and every the executor and executors, administrator or administrators of an executor or administrator of right, who shall waste or convert to his own use, goods, chattels, or estate of his testator or

intestate, shall from henceforth be liable and chargeable in the same manner as his or their testator or intestate should or might have been. (4 and 5 Wm. and Mary, ch. 24, § 12, 1692; Alex. Br. Stat., p. 585; Comp. Stat. D. C., p. 41, § 180.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

§ 20-113. Executor de son tort.

Every person and persons that shall obtain, receive, and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud, or without valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts (except it be in or towards satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the intestate at the time of his decease) shall be charged and chargeable as executor of his own wrong; and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless to and for himself allowance of all just, due and principal debts upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought to have and pay by law. (43 Eliz. ch. 8, § 2, 1601; Kilty's Rep., p. 236; Alex. Br. Stat., p. 427; Comp. Stat. D. C., p. 41, § 178.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

§ 20-114. Executor de son tort—Liability for waste.

All and every the executors and administrators of any person or persons, who as executor or executors in his or their own wrong, or administrators, shall waste or convert any goods, chattels, estate or assets of any person deceased to their own use, shall be liable and chargeable in the same manner as their testator or intestate would have been if they had been living. (30 Car. 2, ch. 7, § 2, 1677; Kilty's Rep., p. 176; Alex. Br. Stat., p. 567; Comp. Stat. D. C., p. 41, § 179.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

§ 20-115. Investment of funds.

Whenever, under the provisions of a will, it shall be necessary for an executor or an administrator cum testamento annexo to retain in his hands the personal estate or any part thereof after all just claims are discharged, as where money or some other thing is directed to be paid at a distant period or upon a contingency, the probate court shall have the power, on the application of such executor or administrator or of a party interested, to decree or give directions in relation thereto; and it shall be the duty of said executor or administrator to apply to the said probate court, and the said court shall have full power to decree or direct what part of the personal estate

shall be retained or appropriated for the purpose and in what manner it shall be disposed of, and the legacy or benefit intended by the will shall be secured to the person to be entitled at a future period or contingency, and how the necessary part of the personal estate to be appropriated for the purpose shall be prevented from lying dead or being unproductive, and how it shall be applied, agreeably to the intent of the will or the construction of law, in case the contingency shall not take place. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 369.)

CROSS REFERENCE

Investment of funds, see, also, § 11-513.

NOTES TO DECISIONS

Duties of executor 1
Status of executor 2

1. Duties of executor

Under a bequest of the income of a fund to a life tenant, with remainder over, it is the duty of the executor to invest the fund, pay the income to the person entitled for life, and preserve the principal for the remainderman. *Payne v. Robinson* (26 App. D.C. 283, 6 Ann. Cas. 784).

2. Status of executor

"The executor does not cease to be executor because the period of administration, so called, may be passed. He is still executor as long as he has anything under the will to execute." *Marfield v. McCurdy* (25 App. D. C. 342).

"The principal difference between an executor during the period of administration and an executor after the lapse of the period of administration is that the former is responsible to the probate court for the faithful execution of his trust, the latter to a court of equity." *Id.*

§ 20-116. Continuing decedent's business—Verified petition—Affidavits—Contents—Accounting—Debts of business as expenses of estate.

The probate court may, in its discretion, authorize any fiduciary accountable to it to continue any business of the decedent for a period of twelve months after decedent's death: *Provided*, That, upon good cause shown, the probate court may, in its discretion, extend the said period. No order shall be entered so authorizing a fiduciary until he shall have filed a petition under oath, supported by the affidavits of two reputable persons familiar with the decedent's business, setting forth the appraised value of the business, whether the decedent conducted it at a profit or loss and the approximate amount thereof, and the estimated amount of the expenses per month necessary to be incurred in order to continue the business. Any fiduciary who is given such authorization shall file monthly statements showing all receipts and disbursements, debts contracted and obligations incurred, and the profit or loss; and the court, in its discretion, may order the discontinuance of the business at any time.

Debts contracted and obligations incurred by the fiduciary in so continuing the business of the decedent shall be deemed to be an expense of administration of the estate. (Mar. 3, 1901, ch. 854, § 123a, as added Apr. 19, 1920, 41 Stat. 556, ch. 153, and amended June 18, 1953, 67 Stat. 66, ch. 131, § 1.)

AMENDMENTS

1953—Act June 18, 1953, empowered the probate court upon good cause shown, to extend the period to continue a business.

NOTES TO DECISIONS

Computation of commissions 1
Continuing business 2

1. Computation of commissions

No case is made for payment to executor in operating decedent's business over and above the amount already permitted by the Code. *Stoner v. Doherty* (1950, 182 F. 2d 673, 86 U.S. App. D.C. 368).

2. Continuing business

Executor is not required to continue the business of a decedent although he followed the appropriate practice in obtaining the approval of the court to do so. *Stoner v. Doherty* (1950, 182 F. 2d 673, 86 U.S. App. D.C. 368).

§ 20-117. Executor's or administrator's bond—Recording—Copies—Ex rel. actions upon—Actions by subsequent administrator—Actions by creditors.

Every bond executed by an executor or administrator shall be recorded in the office of the register of wills; and any person conceiving himself to be interested in the administration of the estate shall be entitled to have or demand a copy of such bond, under the hand and seal of the register of wills, on which an action may be maintained, in the name of the United States, for the use of the party interested, and judgment may be recovered in such action for the damage actually sustained. And an administrator appointed in the place of an executor or administrator who has resigned, been removed, or whose letters have been revoked, may in like manner maintain an action against the executor or former administrator and his sureties, on his administration bond, for all loss and damage to the estate resulting from this breach of duty. No creditor shall be entitled to maintain an action on a testamentary or administration bond for any claim against a testator or intestate until, when practicable, an action has been commenced against the executor or administrator of the deceased and a summons issued therein has been returned "Not to be found," or a writ of fieri facias or of attachment, issued on a judgment against such executor or administrator, has been returned "nulla bona," or until such apparent insolvency of the executor or administrator or insufficiency of his effects as in the judgment of the court before which such action may be tried shall show the said creditor to be without remedy except by such action on the executor's or administrator's bond. (Mar. 3, 1901, 31 Stat. 1236, ch. 854, § 297; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted the words "when practicable" after the word "until."

NOTES TO DECISIONS

Actions within section 1
Construction by Maryland Court 2
Effect of judgment 3
Execution and return 4
Special undertaking 5

1. Actions within section

This section was inapplicable to action against an executrix, on a special bond, to recover value of a note executed by testator. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D. C. 376).

This section governs actions on general bonds and the normal "administration of estates" which involves the collection, management, and distribution of estate, including legal proceedings necessary to satisfy claims of creditors, next to kin, legatees, or whatever other parties may have any claim to property of a deceased person. *Id.*

2. Construction by Maryland court

A decision of the Maryland Court of Appeals interpreting Maryland statute from which a section of District of Columbia Code was derived was not controlling because rendered after law was adopted by the District, but was

persuasive of proper interpretation of the District statute. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

3. Effect of judgment

Whether a judgment or decree against an administrator is conclusive evidence of the debt in an action against the surety on his bond, although the preponderance of authority seems to affirm that it is, see *Bonding Co. v. United States ex rel. Paynter* (23 App. D.C. 535).

4. Execution and return

"The requirement of execution and return was satisfied, notwithstanding the return was made the next day after issue, by order of the plaintiff's attorney." *Bonding Co. v. United States ex rel. Paynter* (23 App. D. C. 535).

5. Special undertaking

That executor with consent of residuary legatee gave a special undertaking instead of a general bond did not affect executor's obligation to account to residuary legatee and make distribution of such legatee's share of residuary estate within a reasonable time after such residue could be determined. *Cashell v. Eslin* (1944, 55 F. Supp. 747).

The giving of a special undertaking by executor creates a personal obligation to creditors and legatees not present where a general bond is given. *Cashell v. Eslin* (1944, 55 F. Supp. 747).

§ 20-118. Fiduciary residing outside District of Columbia—Power of attorney to register of wills—Failure to give power.

In the case of the grant of either original or ancillary letters testamentary, or of administration, or of collection, or of guardianship, the person designated shall, if a nonresident of the District of Columbia, file in the office of the register of wills, before the issuance of such letters, an irrevocable power of attorney designating the register of wills and his successors in office as the person upon whom all notices and process issued by any competent court in the District of Columbia may be served, with like effect as personal service, in relation to any suit, matter, cause, or thing affecting or pertaining to the estate in which the letters are issued. It shall be the duty of said register of wills to forthwith forward by registered mail to the address of such fiduciary, which shall be stated in said power of attorney, any notice or process served upon said register as aforesaid.

In the event that any fiduciary shall fail to file such power of attorney within ten days after the passing of the order of appointment, such order shall thereupon stand revoked, and he shall forfeit all rights to the office. (Mar. 3, 1901, ch. 854, § 308a, as added Apr. 19, 1920, 41 Stat. 562, ch. 153.)

§ 20-119. Resignation—Petition—Accounting — Liability.

If any person, after having accepted the office of executor or administrator, shall desire to retire from and resign the same, he may file his petition to that effect, accompanied by a full and particular account, under oath, of his receipts and disbursements, if any, and the court shall thereupon direct such notice as it may think proper to be given of said application, and, if no cause be shown to the contrary, may release and discharge him from his office and pass such order as to costs and commissions and impose such terms in other respects as the nature of the case may require: *Provided*, That such executor or administrator shall not, by said discharge, be released from any liability for past acts, defaults, or omissions of duty. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 292.)

Chapter 2.—ADMINISTRATORS

Sec.

- 20-201. Granting of letters of administration.
- 20-202. Bond by administrator.
- 20-203. Special bond.
- 20-204. Persons entitled to administer—Surviving spouse or children.
- 20-205. Persons entitled to administer—Grandchild.
- 20-206. Persons entitled to administer—Father—Mother.
- 20-207. Persons entitled to administer—Brothers and sisters.
- 20-208. Persons entitled to administer—Next of kin.
- 20-209. Persons entitled to administer—Males to be preferred.
- 20-210. Persons entitled to administer—Relations of whole-blood to be preferred.
- 20-211. Persons entitled to administer—Descending relations preferred to collaterals.
- 20-212. Persons entitled to administer—Limit of preference in lineal relatives.
- 20-213. Persons entitled to administer—Feme sole preferred.
- 20-214. Persons entitled to administer—Relations on part of father.
- 20-215. Persons entitled to administer—Persons incompetent to serve to be excluded.
- 20-216. Persons entitled to administer—Creditors.
- 20-217. Notice of application.
- 20-218. Declining administration.
- 20-219. Letters of administration—Form.

§ 20-201. Granting of letters of administration.

On the death of any person leaving real or personal estate in the District, letters of administration on his estate may be granted, on the application of any person interested, on proof satisfactory to the probate court, that the decedent died intestate. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 273.)

CROSS REFERENCES

Appointment and tenure of executors and administrators, see § 20-101 et seq.

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

Trust companies authorized to act, see §§ 26-309, 26-312, 26-316, 26-333, 26-334.

NOTES TO DECISIONS

- Contents of petition 1
- Discretion of court 2
- Eligibility 3
- Property 4
- Removal of administrator 5

1. Contents of petition

Where petition of sister of deceased in the United States District Court for the District of Columbia properly asked for letters of administration and necessarily claimed that deceased died intestate because his holographic will was unwitnessed, the petition did not make two claims and had only one purpose, namely, the securing of administration, though it prayed that the holographic will be denied probate and record, and therefore appeal of sister from order denying motion for rehearing would not be dismissed, on ground that it offended Federal Rule of Civil Procedure, Rule 54(b), U.S. Code, title 28, Appendix, providing that when more than one claim for relief is presented, court may direct entry of final judgment on one or more but less than all of the claims only on expressed determination that there is no just reason for delay and on express direction for entry of judgment. *Shafer v. Children's Hospital Society of Los Angeles, Calif.* (1959, 285 F. 2d 107, 105 U.S. App. D.C. 123).

2. Discretion of court

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by a specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor

or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

3. Eligibility

Consul of Greece in the city of Washington entitled to sole administration of estate of deceased national. (See notes to § 20-107.) *Diamantopoulos v. Glekas* (1926, 11 F. 2d 200, 56 App. D.C. 151).

Appointment of administrator in Virginia does not imply a finding of domicile in Virginia. *In re Grinnage's Estate* (1939, 101 F. 2d 695, 69 App. D.C. 370).

Appointment of administrator in Virginia does not prevent granting of letters of administration of personality in the District by the District Court of the United States for the District of Columbia. *Id.*

4. Property

A claim against the United States does not furnish the foundation for a local administration when the decedent was domiciled in another jurisdiction at the time of his death. *In re Coit's Estate* (3 App. D. C. 246).

A government check in the possession of the treasurer of the United States, payable to a particular person, is for jurisdictional purposes personal property in the District of Columbia. *In re Grinnage's Estate* (1939, 101 F. 2d 695, 69 App. D.C. 370).

5. Removal of administrator

Unless power of probate court to remove an administrator for a particular cause can be found in this chapter or by necessary inference therefrom, it does not exist. *Perkins v. Berger* (1945, 145 F. 2d 856, 79 U.S. App. D.C. 286).

The fact that administratrix asserted a stale claim against deceased's estate did not authorize removal of administratrix. *Id.*

§ 20-202. Bond by administrator.

Every administrator, except corporations authorized to act as administrators, shall, before entering on his duties, file in the probate court his bond to the United States, with security approved by the court, in such penalty as the court shall direct, with condition to administer according to law all the money, goods, chattels, rights, and credits of the deceased; and when the court shall have ordered the sale of the decedent's real estate, he shall give a like bond conditioned to administer the proceeds of the real estate that may be sold for the payment of the decedent's debts which shall come into his possession, or to the possession of any other person for him, and in all other respects perform the trust reposed in him, and shall also take and subscribe an oath similar to that prescribed for executors. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 274.)

CROSS REFERENCE

Bonds required of trust companies, see §§ 26-333, 26-334.

NOTE TO DECISION

1. Consular officer

A bond is required where Greek consul is appointed administrator of estate of deceased national. *Diamantopoulos v. Glekas* (1926, 11 F. 2d 200, 56 App. D.C. 151).

§ 20-203. Special bond.

If the person appointed as administrator shall be entitled to the residue of the estate after the payment of the debts, he may, instead of the bond herein provided for, execute a bond, with security approved by the court, in such penalty as the court may consider sufficient, conditioned for the payment of all the debts and claims against the deceased, and all damages which shall be recovered against him as administrator; and where the administrator shall file the consent in writing of those entitled to the residue and they shall all be of full age, the court

may, if it sees fit, direct that only such special bond be given, and in such cases the administrator shall not be required to return any inventory or account, but shall be personally answerable for all debts, claims, and damages that may be recovered against him, in like manner as the executor who gives a similar bond: *Provided*, That the surety or sureties in said bond shall not be liable for a greater amount than the penalty thereof. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 275; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added the clause beginning with the words "and where" and ending with the words "be given."

CROSS REFERENCE

Bonds required of trust companies, see §§ 26-333, 26-334.

NOTE TO DECISION

1. In general

Where ordinarily dispute involved in action by widow against administrator to recover her distributive share of estate would be within jurisdiction of federal District Court for the District of Columbia sitting as a Court of Probate, but action was brought in Municipal Court of the District of Columbia because administrator had given a special bond, which relieved him from accounting and made personally answerable for debts and claims against estate, and it was determined that widow was entitled to prevail, administrator was not entitled to allowance of attorneys' fees. *Ashton v. Ashton* (D.C. Mun. App. 1955, 117 A. 2d 459).

§ 20-204. Persons entitled to administer—Surviving spouse or children.

If the intestate leave a widow or surviving husband and a child or children, administration, subject to the discretion of the court, shall be granted either to the widow or surviving husband or to the child, or one or more of the children qualified to act as administrator, and further subject to the discretion of the court as follows: (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 276; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

NOTES TO DECISIONS

Appointment of outsider 1
Caveat 2
Right to appointment 3
Widow's preference 4

1. Appointment of outsider

Under this section providing that, if intestate leaves widow or child, administration shall be granted either to widow or child, appointment of complete outsider as administrator was not justified, even though widow had failed in earlier proceeding to establish documents proffered by her as decedent's will and was seeking to charge estate with expenses of that proceeding and relations between widow and decedent's child were strained. *Brooks v. De Lacy etc.* (1958, 257 F. 2d 227, 103 U.S. App. D.C. 223).

2. Caveat

Where testatrix by purported will left her entire estate to her son, and estate included no realty in District of Columbia, and son offered will for probate in District of Columbia, husband of testatrix lacked necessary interest in estate to file a caveat, even though husband might be appointed administrator if will should be set aside, since husband would take same share of estate whether will was or was not sustained. *Kimberland v. Kimberland* (1953, 204 F. 2d 38, 92 U.S. App. D.C. 145).

3. Right to appointment

These statutory regulations imply a right to appointment upon the part of the described parties, in the

absence of disqualification, and consequently after they are once regularly appointed and qualified they can not be removed without notice and a trial. *Brosnan v. Brosnan* (1923, 289 F. 547, 53 App. D.C. 149).

In the absence of competent relatives or creditors administration shall be granted at the discretion of the court. *Diamantopoulos v. Glekas* (1926, 11 F. 2d 200, 56 App. D.C. 151).

4. Widow's preference

Under District of Columbia law, a widow has a statutory preference to letters of administration, but this preference is subject to court's discretion. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

Where District Court revoked letters of administration granted to decedent's sister, and it appeared that decedent's widow had a claim against major portion of estate, had been long separated from decedent and had delayed a year after death before seeking to be appointed administratrix, district court should have considered an alternative to appointment of widow as administratrix. *Id.*

§ 20-205. Persons entitled to administer—Grandchild.

If there be a widow or surviving husband and no child, the widow or surviving husband shall be preferred, and next to the widow or surviving husband or children a grandchild shall be preferred. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 277; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

NOTES TO DECISIONS

1. Widow's preference

Under District of Columbia law, a widow has a statutory preference to letters of administration, but this preference is subject to court's discretion. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

Where District Court revoked letters of administration granted to decedent's sister, and it appeared that decedent's widow had a claim against major portion of estate, had been long separated from decedent and had delayed a year after death before seeking to be appointed administratrix, district court should have considered an alternative to appointment of widow as administratrix. *Id.*

§ 20-206. Persons entitled to administer—Father—Mother.

If there be neither widow or surviving husband, nor child, nor grandchild to act, the father shall be preferred; and if there be no father, the mother shall be preferred. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 278; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

NOTE TO DECISION

1. Brother or mother

Appointment of decedent's brother as administrator de bonis non upon death of decedent's father and administrator, held properly within discretion of court on motion of divorced mother for removal. *Haviland v. Harriss* (1931, 50 F. 2d 1069, 60 App. D.C. 255).

§ 20-207. Persons entitled to administer—Brothers and sisters.

If there be neither widow or surviving husband, nor child, nor grandchild, nor father, nor mother to act, brothers and sisters shall be preferred. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 279; Apr. 19, 1920, 41 Stat. 561, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

NOTES TO DECISIONS

Discretion of court 1 Nonresident alien 2

1. Discretion of court

Under District of Columbia statutes relating to appointment of administrator of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

2. Nonresident alien

Brother of deceased alien who was naturalized preferred to widow and parents who are nonresident aliens. *Lely v. Kalinoglu* (1935, 76 F. 2d 983, 64 App. D.C. 213, 100 A.L.R. 1523, certiorari denied 55 S. Ct. 925, 295 U.S. 765, 79 L. Ed. 1707).

§ 20-208. Persons entitled to administer—Next of kin.

If there be neither widow or surviving husband, nor child, nor grandchild, nor father, nor mother, nor brother, nor sister, the next of kin shall be preferred. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 280; Apr. 19, 1920, 41 Stat. 562, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the words "or surviving husband."

§ 20-209. Persons entitled to administer—Males to be preferred.

Males shall be preferred to females in equal degree. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 281.)

§ 20-210. Persons entitled to administer—Relations of whole-blood to be preferred.

Relations of the whole-blood shall be preferred to those of the half-blood in equal degree, and relations of the half-blood shall be preferred to relations of the whole-blood in a remoter degree. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 282.)

§ 20-211. Persons entitled to administer—Descending relations preferred to collaterals.

Relations descending shall be preferred to relations ascending, in the collateral line; that is to say, for example, a nephew shall be preferred to an uncle. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 283.)

§ 20-212. Persons entitled to administer—Limit of preference in lineal relatives.

None shall be preferred in the ascending line beyond a father or mother, or in the descending line below a grandchild. (Mar. 3, 1901, 31 Stat. 1234, ch. 854, § 284.)

§ 20-213. Persons entitled to administer—Feme sole preferred.

A feme sole shall be preferred to a married woman in equal degree. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 285.)

§ 20-214. Persons entitled to administer—Relations on part of father.

Relations on the part of the father shall be preferred to those on the part of the mother, in equal degree. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 286.)

§ 20-215. Persons entitled to administer—Persons incompetent to serve to be excluded.

If any person described in sections 20-204 to 20-216 should be incompetent to serve, then administration shall be granted as if such person were not living. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 287.)

§ 20-216. Persons entitled to administer—Creditors.

If there be no relations, or those entitled decline or refuse to appear and apply for administration, on proper summons or notice, administration may be granted to the largest creditor applying for the same; and if creditors neglect to apply, it may be granted at the discretion of the court. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 288.)

NOTES TO DECISIONS

Appointment by other court 1
Date of appointment 2
Discretion of court 3
Remand for further proof 4
Statutory scheme 5
Validation of acts 6

1. Appointment by other court

The validity of appellee's appointment as administratrix by the New Jersey court is not an essential condition to her appointment as administratrix ad litem. *Welch v. Welch* (1927, 19 F. 2d 686, 57 App. D.C. 212).

2. Date of appointment

Where one has so conducted himself by management of a business and sale of assets belonging to a decedent that he becomes an executor de son tort, his subsequent appointment as administrator reflects back to the death of the decedent. *Penn v. Whidden* (D. C. Mun. App. 1945, 42 A. 2d 136).

3. Discretion of court

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. *Randall v. Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

4. Remand for further proof

Where creditor filed petition for administration of deceased's estate stating that after diligent search, creditor was satisfied that deceased died intestate and without surviving relation, and District of Columbia relied upon allegations of creditor's petition, pleadings and evidence were insufficient to authorize probate court to determine whether the District was entitled to distribution under escheat statute, § 18-717, and case was remanded for determination of question whether intestate died without heirs. *Frazier v. Kutz*, (1944, 139 F. 2d 380, 78 U.S. App. D. C. 241).

5. Statutory scheme

This section setting forth scheme as to who shall be appointed administrator, court may in its discretion depart from the statutory scheme where there is a sound reason to do so. *Dial v. Johnson* (1958, 259 F. 2d 189, 104 U.S. App. D.C. 32).

6. Validation of acts

Where one has so conducted himself by management of business and sale of assets belonging to a decedent that he becomes an executor de son tort, his subsequent appointment as administrator validates any previous acts which would have been valid if done after his appointment and his acts as executor de son tort, though void, are thereby made valid. *Penn v. Whidden* (D. C. Mun. App. 1945, 42 A. 2d 136).

§ 20-217. Notice of application.

Upon any application for letters of administration, such notice thereof shall be given, by publication or

otherwise, as the rules of the court may require. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 289; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted the words "but it shall not be necessary to notify any collateral relatives more remote than brothers and sisters of the intestate" following "may require."

§ 20-218. Declining administration.

If any person entitled to administration shall, in writing, decline the same, the court shall proceed as if such person were not entitled. (Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 291.)

§ 20-219. Letters of administration—Form.

The form of letters of administration shall be as follows:

District of Columbia, to wit:

The United States of America.

To all persons to whom these presents shall come, greeting:

Know ye that administration of the goods, chattels, and credits of ———, late of ———, deceased, is hereby granted and committed unto ———, of ———.

Witness (A B) the Chief Judge of the United States District Court for the District of Columbia.

Test:

C D, Register of Wills.

(Mar. 3, 1901, 31 Stat. 1235, ch. 854, § 293; June 30, 1902, 32 Stat. 529, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1902—Act June 30, 1902, changed the word "present" to "presents."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice."

Chapter 3.—EXECUTORS

Sec.

20-301. Letters testamentary—Bond—Oath—Corporations.

20-302. Bonds for debts only—Removal of executor for waste.

20-303. Special bond.

20-304. Joint executor—Joint or separate bond.

20-305. Letters of administration cum testamento annexo.

20-306. Absent executor—Summons—Notice.

20-307. Summons to each of several executors.

20-308. Renunciation.

20-309. Executor disqualified.

20-310. No power to act without letters.

20-311. Form of letters testamentary.

20-312. Executor of executor.

§ 20-301. Letters testamentary—Bond—Oath—Corporations.

When any will or codicil respecting either real or personal property shall have been authenticated and admitted to probate, letters testamentary thereon shall be issued to the executor named therein, if he

is legally competent and will accept the trust: *Provided*, That he shall first execute a bond to the United States, with security to be approved by the court, in such penalty as the court may require, with a condition that he will administer according to law and to the will of the testator all his goods, chattels, rights, and credits, and the proceeds of all his real estate that may be sold for the payment of his debts or legacies which shall at any time come to the possession of the executor or to the possession of any other person for him, and in all other respects faithfully perform the trusts reposed in him: *And provided further*, That said executor shall take and subscribe and file an oath that he will well and truly administer the estate of the deceased according to law and will give a just account of his administration when thereto lawfully called: *Provided*, That the above conditions as to bond and oath shall not apply to corporations authorized to act as executors. (Mar. 3, 1901, 31 Stat. 1232, ch. 854, § 262.)

CROSS REFERENCES

Appointment and tenure of administrators and executors, see § 20-101 et seq.

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

Naming debtor as executor does not discharge debt, see § 18-303.

Trust companies authorized to act, see §§ 26-309 to 26-312, 26-316, 26-333, 26-334.

NOTES TO DECISIONS

Ancillary letters 1
Liability of executor 2

1. Ancillary letters

Where testatrix, who was domiciled in Michigan and whose estate and beneficiaries were largely in Michigan but who had intangible property in District of Columbia, named resident of District of Columbia, as sole executor, but Michigan court appointed Michigan resident as administrator with will annexed, because Michigan law forbids appointment of a nonresident executor, it was within discretion of District of Columbia court to appoint the Michigan executor as ancillary administrator. *Purcell v. Cramton* (1944, 143 F. 2d 22, 79 U.S. App. D.C. 99).

The requirement of this section that when any will shall have been authenticated and admitted to probate letters testamentary thereon shall be issued to the executor named therein, if he is legally competent and will accept the trust, does not apply to ancillary letters. *Id.*

2. Liability of executor

An executor executing a general bond is responsible for payment of debts and claims to extent of assets collected only, and cannot be sued on general bond until determination is made of the extent to which creditors can be paid from assets. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D. C. 376).

§ 20-302. Bonds for debts only—Removal of executor for waste.

Whenever a testator shall, by last will and testament, request that his executor be not required to give bond for the performance of his duty, in such case the bond required of the executor shall be in such penalty as the court may consider sufficient to secure the payment of the debts due by the testator: *Provided, however*, That the penalty of such bond shall not exceed double the value of the personal estate; and when less than this sum it may be increased, or an additional bond may be required, whenever it shall be made to appear to the court that the bond as given is insufficient to secure the payment of the debts of the testator: *And provided further*, That whenever any party interested shall make

it appear to the court that any executor who has given such bond only as is herein provided for is wasting the assets of the estate, or that the assets are in danger of being lost, wasted, or misappropriated, then the said executor may be removed or required to give additional bond with security in a penalty sufficient to secure the interests of all the creditors, distributees, and legatees entitled to take said estate, and on his failure to give bond as required his letters may be revoked; and upon such revocation the same results shall ensue as provided in section 20-108. (Mar. 3, 1901, 31 Stat. 1232, ch. 854, § 263; June 30, 1902, 32 Stat. 528, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out the words "creditor, distributee, or legatee entitled to take under the will," and inserted in lieu thereof the words "party interested."

CROSS REFERENCES

Bonds required of trust companies, see §§ 26-333, 26-334.

Liability of sureties for debt due from executor to estate, see § 18-303.

NOTE TO DECISION

1. Avoidance of deed

If deed was procured by undue influence and deceased grantor left a valid will, her executor had right to avoid the deed. *Kashouty v. Deep* (1942, 126 F. 2d 233, 75 U.S. App. D. C. 259).

§ 20-303. Special bond.

If the executor is the residuary legatee of the personal estate of the testator, or provided the residuary legatee of full age shall notify his consent to the court, he may, instead of the bond prescribed as aforesaid, give bond with security approved by the court, and in a penalty prescribed by the court, conditioned to pay all the debts and just claims against the testator, and all damages which shall be recovered against him as executor, and all legacies bequeathed by the will, in which case he shall not be required to file any inventory or render any account. And if such bond be given by the executor, he shall be answerable for the full amount of all debts, claims, and damages that may be recovered against him as executor as if he were sued in his own right, and any legatee may recover the full amount of his legacy in a suit on the executor's bond or in equity, and the giving of the bond shall be considered an assent to the legacy: *Provided*, That the surety or sureties in said bond shall not be liable for a greater amount than the penalty thereof. (Mar. 3, 1901, 31 Stat. 1232, ch. 854, § 264.)

NOTES TO DECISIONS

Actions on bonds 1
Executor's special undertaking 2
Liability of executor 3

1. Actions on bonds

This section does not prevent recovery on special bond until debt or claim sued upon has been recovered in a separate action brought against executor. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D.C. 376).

2. Executor's special undertaking

Although executrix in giving a special undertaking rendered herself personally liable for all debts and just claims against testator, special bond given by executrix did not guarantee claimant's right to recover on claim rejected by executrix and claimants were required to sue within statutory period. *McNeill and Fuller v. Selby* (D.C. Mun. App. 1955, 116 A. 2d 160).

3. Liability of executor

A special bond given by an executor who is also residuary legatee operates as an admission that there are sufficient assets in the estate to pay all debts and forecloses that question, and executor assumes thereby responsibility of payment of debts to the full extent of his personal estate. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D. C. 376).

§ 20-304. Joint executor—Joint or separate bond.

When two or more persons are appointed executors, the court may take a separate bond with security from each of them or a joint bond with security from all of them together. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 265.)

§ 20-305. Letters of administration cum testamento annexo.

If there be only one executor named in the will, and he shall have been present at the probate of the will, and shall not within twenty days thereafter file a bond and qualify as executor by taking the oath aforesaid, letters of administration with the will annexed may be granted as if no executor had been named. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 266.)

§ 20-306. Absent executor—Summons—Notice.

If said executor shall not have been present at the probate of the will, but shall be within the District, a summons may be issued to him, either at the instance of any person interested or ex officio by the register of wills, requiring him to appear and file his bond as required by law within twenty days after service of said summons; and if he be not found in said District, notice shall be given to him by publication to appear within thirty days after the first publication of said notice, and on his failure to appear and give his bond and qualify by taking the prescribed oath, as aforesaid, administration may be granted as if no executor had been named in the will. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 267; June 24, 1949, 63 Stat. 268, ch. 242, § 2.)

AMENDMENTS

1949—Act June 24, 1949, struck out the words "twenty" and "within thirty days after the first publication", and inserted in lieu thereof, respectively, the words "five" and "within ten days after publication".

§ 20-307. Summons to each of several executors.

If there be more than one executor named in a will, there may be the same proceeding with respect to each of them as if he were the sole executor, and any circumstances under which letters of administration may be granted on failure of a sole-named executor shall authorize the granting of letters testamentary to one or more of the executors on failure of one or more of the others; and any circumstances under which letters of administration may be granted on failure of a sole-named executor shall authorize the granting of such letters of administration on failure of all the executors named to appear and qualify as aforesaid. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 268.)

§ 20-308. Renunciation.

If any executor named in a will shall file or transmit to the probate court an attested renunciation of his executorship, there shall be the same proceeding

with respect to granting letters testamentary or of administration as if the party so renouncing had not been named in the will. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 269.)

§ 20-309. Executor disqualified.

If any person named as executor be disqualified from serving, letters testamentary or of administration may be granted as if he had not been named as executor. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 270.)

§ 20-310. No power to act without letters.

In case letters testamentary shall be granted to one or more of the executors named in a will on failure of the rest, no executor not named in said letters shall in any manner interfere with the administration; and if letters of administration with the will annexed shall be granted, no executor named in the will shall in any manner interfere with the administration; and no executor named in a will shall, before letters testamentary are granted to him, have any power to dispose of any part of the estate of the deceased or to interfere therewith, further than is necessary to collect and preserve the same. (Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 271.)

§ 20-311. Form of letters testamentary.

The following shall be the form of letters testamentary to be issued under the seal of the probate term of the United States District Court for the District of Columbia:

District of Columbia, to wit:

The United States of America.

To all persons to whom these presents shall come, greeting:

Know ye that the last will and testament of ———, of ———, deceased, hath, in due form of law, been exhibited, proved, and recorded in the office of the register of wills of the District of Columbia, a copy of which is to these presents annexed, and administration of all the goods, chattels, and credits of the deceased is hereby granted and committed unto ———, the executor by said will appointed.

Witness (A B) the Chief Judge of the United States District Court for the District of Columbia, this ——— day of———.

Test: C D, Register of Wills.

(Mar. 3, 1901, 31 Stat. 1233, ch. 854, § 272; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice."

§ 20-312. Executor of executor.

In no case shall the executor of an executor, as such, be entitled to administration de bonis non on the estate of the first deceased. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 300.)

Chapter 4.—COLLECTORS

Sec.

20-401. Letters ad colligendum.

20-402. Bond of collector—Oath—Form.

20-403. Duties of collector—Liability—Commission.

20-404. When powers to cease.

20-405. Liability of collector for refusing to deliver estate.

§ 20-401. Letters ad colligendum.

Letters ad colligendum may be granted to one or more persons in case of a contest in relation to a will, or the absence of the executor from the District, or his delay in qualifying, or for other sufficient cause, and the form of such letters shall be as follows:

To all persons to whom these presents shall come, greeting:

Know ye that, whereas —, of —, deceased, had, as is said, at his decease, personal property within the District of Columbia, administration whereof can not immediately be granted, but which, if speedy care be not taken, may be lost, destroyed, or diminished, to the end that the same may be preserved for those who may appear to have a legal right or interest therein, we do hereby request and authorize —, of —, to secure and collect said property, wheresoever the same may be, in said District, whether the same be goods, chattels, debts, or credits, and to make a true inventory thereof and exhibit the same with all convenient speed, with an account of his collections, into the office of the register of wills.

Witness (A B) the Chief Judge of the United States District Court for the District of Columbia.

Test: C D, Register of Wills.
(Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 304; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice."

CROSS REFERENCES

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

Trust companies authorized to act, see §§ 26-309 to 26-312, 26-316, 26-334.

NOTE TO DECISION

1. Appointment

Where judgment creditor, who had become resident and domiciliary of Virginia, died in Virginia while appeal from such judgment was pending, and person named as executor in judgment creditor's purported will had filed such will with clerk of court in Virginia but had not taken further proceedings thereunder, the district court should have appointed a collector of assets of estate of judgment creditor. *Belt v. Lynn* (1954, 211 F. 2d 431, 94 U.S. App. D.C. 1).

§ 20-402. Bond of collector—Oath—Form.

Every collector, except corporations authorized to act as such, before letters shall be issued to him, shall execute a bond to the United States, in a penalty and with security to be approved by said court, with the following condition:

"The condition of the above obligation is such that if the above bounden — shall well and honestly discharge the office of collector of the goods, chattels, and personal estate of —, deceased, in the District of Columbia, and shall make or cause to be made a true and perfect inventory or inventories of such of said goods, chattels, personal estate, and debts as shall come to his possession or knowledge and make return of the same to the probate court of the District, and shall also deliver to the person or persons who shall be authorized by the court to receive them such of said goods, chattels, personal estate, and debts as shall come to his possession, except such as shall be allowed for by said court, then the said obligation shall be void; it shall otherwise be in full force and virtue at law."

And he shall also take and subscribe the following oath:

"I, —, do swear that I will well and truly discharge the office of collector of the goods, chattels, and personal estate of —, deceased, according to the tenor of the letters granted me by the probate court of the District of Columbia and the directions of law, to the best of my knowledge, so help me God." (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 305.)

CROSS REFERENCE

Bonds required of trust companies, see §§ 26-333, 26-334.

§ 20-403. Duties of collector—Liability—Commission.

The collector shall collect the goods, chattels, and personal estate of the deceased, including the debts due him, and cause the same to be appraised and return an inventory thereof, as an administrator is required to do, and may, under the authority of the court, sell perishable articles and bring suits for debts or other property, as an administrator may do, and shall account for the money recovered. The said collector may, if authorized by the court, take possession of, hold, manage, conserve, and control all real estate affected by the will or wills in dispute, and said collector shall discharge, pendente lite, all the duties of an administrator, including the payment of debts, and shall be liable to an action by any creditor of the deceased and shall be entitled to the protection of any provision of law expressly relating to executors and administrators.

Said collector may be allowed a commission not exceeding 10 per centum on the personal property, debts due the estate, and rentals from real estate actually collected by him.

In the event that such collector is authorized by the court to take possession of the real estate affected by such will or wills as hereinbefore set forth, the letters of collection shall so expressly specify, and his bond as such collector, in addition to the several matters set forth in section 20-402, shall specifically include the faithful performance of his duties with respect to such real estate. (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 306; Apr. 19, 1920, 41 Stat. 562, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, deleted the words "said collector may be authorized and directed by the court to discharge, pendente lite, all or any of the duties of an administrator, including the payment of debts" and inserted the second sentence of the first paragraph; raised the maximum from 3 to 10 per centum; and, added the last paragraph.

CROSS REFERENCE

Inventory after appointment of executor or administrator, see § 18-407.

NOTES TO DECISIONS

Attorney's fees 1
Commission 2
Decisions under prior law 3
Powers of collector 4

1. Attorney's fees

An attorney whose services are rendered to an estate at request of collector of estate may look to the estate for his compensation and measure of allowance to the attorney is such as court may consider proper in light of applicable facts. *Buck v. Putnam* (1945, 146 F. 2d 662, 79 U.S. App. D. C. 295).

Where account of collector of estate showed collection of assets to amount of approximately \$580,000, allowance of fee of \$6,000 to collector's attorney for services rendered by him to collector in administration of estate was not an abuse of discretion. *Id.*

2. Commission

Where account of collector of an estate showed collection of assets to amount of approximately \$580,000, allowance of a commission of 1½ percent of fund handled by collector during the 10-month period which he served was not an abuse of discretion. *Buck v. Putnam* (1945, 146 F. 2d 662, 79 U.S. App. D.C. 295).

3. Decisions under prior law

Probate court has authority, in case of the contest of a will, to appoint a collector of the personal estate, under sec. 304 of the 1901 Code (31 Stat. 1237, ch. 854 (§ 20-401)), and his powers, when so appointed, are those in general of a temporary administrator. *Hutchins v. Dante* (40 App. D. C. 262).

Duty of executors and trustees in respect to the payment of income is merely ministerial, and the collector, acting as administrator, may, under the court's direction, temporarily perform that duty. *Hutchins v. Hutchins* (41 App. D. C. 122).

Under secs. 306-308 of the 1901 Code (31 Stat. 1238, ch. 854 (§§ 20-403 to 20-405)), collectors may bring suits, but there is no expression permitting suits to be brought against them. *Berry & Whitmore Co. v. Dante* (43 App. D. C. 110).

Attorneys rendering services to the estate may recover fees from collector when such services were requested by collector in his representative capacity. *Brandenburg v. Dante* (1920, 261 F. 1021, 49 App. D.C. 141).

4. Powers of collector

Collector has no power under this section (as amended) to prosecute appeal from order disbaring his decedent from practice of law. *Metzger v. O'Donoghue* (1923, 288 F. 461, 53 App. D.C. 107).

A collector of an estate for time being performs all duties and exercises all powers of an administrator. *Buck v. Putnam* (1945, 146 F. 2d 662, 79 U.S. App. D.C. 295).

§ 20-404. When powers to cease.

On the granting of letters testamentary or of administration the power of any such collector shall cease, and it shall be his duty to deliver, on demand, all the property and money of the decedent in his hands, except as before excepted, to the person obtaining such letters, and the executor or administrator may be permitted to prosecute any suit commenced by said collector as if the same had been begun by said executor or administrator, and may also defend any suit brought against said collector by any creditor of the deceased. (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 307; Apr. 19, 1920, 41 Stat. 562, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, added the last phrase.

NOTES TO DECISIONS

Action commenced by collector 1
Services of attorney 2
Variance between decree and order 3

1. Action commenced by collector

Upon granting of letters testamentary or of administration, power of collector of assets of estate of judgment creditor would cease, and executor or administrator could be permitted to prosecute any action commenced by collector. *Belt v. Lynn* (1954, 211 F. 2d 431, 94 U.S. App. D.C. 1).

2. Services of attorney

This section contemplates that the collector may bind the estate for the services of counsel. *Brandenburg v. Dante* (1920, 261 F. 1021, 49 App. D.C. 141).

3. Variance between decree and order

Where petitioner, seeking writ of habeas corpus, had been ordered to turn over concealed assets to collector of deceased's estate, whereas petitioner was held in contempt on petition of executor of estate for failing to deliver assets to the executor who had been appointed subsequent to the entry of the turn-over order, alleged variance between contempt decree and the turn-over order was not "fatal," since, upon the grant of letters to the executor, he was entitled to prosecute any suit commenced by the collector as if the suit had been begun by the executor. *Watkins v. Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

§ 20-405. Liability of collector for refusing to deliver estate.

If the said collector shall neglect or refuse to deliver over the property and estate to the executor or administrator, the court may, by citation and attachment, compel him to do so, and the executor or administrator may also proceed, by civil action, to recover the value of the assets from him and his sureties by action on his bond. (Mar. 3, 1901, 31 Stat. 1238, ch. 854, § 308; Apr. 19, 1920, 41 Stat. 562, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, deleted the following: "Such collector shall not be liable to an action by any creditor of the deceased."

NOTE TO DECISION

1. Right to sue

Congress was careful to use words that in no way abridged the right to pursue such a remedy of one in whose favor the remedy was inferentially recognized in the preceding sections. *Brandenburg v. Dante* (1920, 261 F. 1021, 49 App. D.C. 141).

Chapter 5.—SUITS

Sec.

- 20-501. Suits by and against executors or administrators.
- 20-502. Judgments against executor or administrator—Amount of damages—When assessed.
- 20-503. Concealment of assets by strangers.
- 20-504. Concealment by executor or administrator.
- 20-505. Foreign executors and administrators—Suits by.
- 20-506. Suits on bonds against heirs.

§ 20-501. Suits by and against executors or administrators.

Executors and administrators shall have full power and authority to commence and prosecute any personal action at law or in equity which the testator or intestate might have commenced and prosecuted: *Provided, however,* That in tort actions, the said right of action shall be limited to damages for personal injury except for pain and suffering resulting therefrom; and they shall also be liable to be sued in the United States District Court for the District of Columbia in any action at law or in equity, except as aforesaid, which might have been maintained against the deceased; and they shall be

entitled to or answerable for costs in the same manner as the deceased would have been, and shall be allowed for the same in their accounts, unless it shall appear that there were not probable grounds for instituting or defending the suits in which judgments or decrees shall have been given against them. (Mar. 3, 1901, 31 Stat. 1241, ch. 854, § 327; June 30, 1902, 32 Stat. 529, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 19, 1948, 62 Stat. 488, ch. 598, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1948—Act June 19, 1948, deleted the words "except actions for injuries to the person or to the reputation" and substituted the words: "Provided, however, In tort actions, the said right of action shall be limited to damages for personal injury except for pain and suffering resulting therefrom."

1902—Act June 30, 1902, deleted the words "slander and for" and inserted the words "or to the reputation" after "injuries to the person."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCES

Action for wrongful death, see § 16-1201 et seq.
Jurisdiction, pleading, and practice in probate court, see §§ 11-501 to 11-520.
Prosecution of suits begun by collectors, see § 20-404.
Set-off, see § 16-1908.

NOTES TO DECISIONS

Attachment or garnishment 1
Compromise 2
Construction 3
Jurisdiction 4
Parties 5
Reliance on statute 6
Res judicata 7
Sale by executor 8

1. Attachment or garnishment

The District Court for District of Columbia has exclusive jurisdiction of suits against an executor on claims against the estate, but an attachment or garnishment directed to an executor, in connection with an action against a third party who claims an interest in the estate, is not a "suit against executor" within jurisdiction of district court. *Frank v. Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

2. Compromise

Where executor reasonably believed that estate was entitled to claim Government bonds notwithstanding their registration in names of decedent or another person, and reasonably claimed an interest in savings account deposits which were made entirely from decedent's money, and when question of ownership of bonds and deposits was first raised, such other person might have made claim of complete ownership of both, the situation furnished the basis for a valid compromise and settlement of the respective claims. *Magruder v. National Metropolitan Bank of Wash.* (D. C. Mun. App. 1945, 40 A. 2d 828).

3. Construction

While perhaps proviso excepting damages for pain and suffering is somewhat inartistically drawn, nevertheless it is not ambiguous and the legislative history supports this conclusion. *Phillips v. Lust* (1949, 82 F. Supp. 63).

4. Jurisdiction

"An executor or administrator cannot be sued in another jurisdiction than that which the administration of the estate is depending, for an accounting, or for acts involving the administration of the estate, or the assets

thereof in his hands as such executor or administrator." *Johns v. Herbert* (2 App. D. C. 485).

If, however, he becomes a trustee of the property, after the estate should be closed, "he is amenable to suit in the courts of any jurisdiction within which he may be found." *Id.*

"An administrator or executor cannot sue or be sued in his representative capacity in any other jurisdiction than the one of his appointment, except where it is permitted by the laws of the jurisdiction in which the suit is sought to be maintained." *Bryan v. Curtis* (30 App. D.C. 234).

The right conferred by section 329 of the 1901 code (§ 20-505) does not imply "that suit can be maintained in the courts of the District against such administrator or executor." *Id.*

Section 1 of the Municipal Court Act (41 Stat. 1310), this section, and section 328 of the 1901 code (§ 20-502) are in pari materia, and must be construed together. The municipal court has no jurisdiction over suits against executors or administrators. *Sanford v. Sanford* (1923, 286 F. 777, 52 App. D.C. 315).

5. Parties

Where mortgagor executed mortgage covering Pennsylvania realty and died resident of Pennsylvania, mortgagor's administrator was a "necessary party" to suit for an accounting against mortgagees by executrix of estate of mortgagor's mother who was the mortgagor's sole heir. *Cain v. Hutson* (1942, 127 F. 2d 19, 75 U.S. App. D.C. 335, certiorari denied 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

6. Reliance on statute

In a prior case, § 20-501 of Code was construed as not only permitting but requiring the presence of an executor as a plaintiff in action of this nature, and as such case has not been changed or overruled, etc., executors were warranted in relying upon the Code provision, so construed, as direct statutory authority to institute action to avoid a deed. *Ransey v. Curtis* (1950, 182 F. 2d 687, 86 U.S. App. D.C. 386).

7. Res judicata

Where success of executrix in suit to set aside testator's sale of realty would inure solely to individual benefit of executrix as sole beneficiary under will, ordinary distinction between her representative and her individual capacity was not material for purposes of application of doctrine of res judicata by virtue of prior ejectment suit against executrix individually. *Jamison v. Garrett* (1953, 92 U.S. App. D.C. 232, 205 F. 2d 15).

Where former ejectment action brought by grantee of realty against possessor who claimed an equitable title under grantor's oral agreement to devise was settled by stipulation which provided that possessor should receive payment for all rights and should deliver to grantee a quitclaim deed, judgment therein, which incorporated stipulation, was res judicata of subsequent suit by possessor, as executrix of grantor's will of which she was sole beneficiary, to set aside sale of realty to grantee, but in which she failed to assert any ground which was unknown to her at time of ejectment action. *Id.*

8. Sale by executor

When will directs the executor to sell the real estate of testator, the legal title vests in him and he has the power to convey, and also authority to enforce specific performance of contract for the sale. *Griffith v. Stewart* (31 App. D.C. 29, affirmed 30 S. Ct. 528, 217 U.S. 323, 54 L. Ed. 782, 19 Ann. Cas. 639).

§ 20-502. Judgments against executor or administrator—Amount of damages—When assessed.

If the verdict of the jury in any suit against an executor or administrator be against such executor or administrator, or if he shall be willing to confess judgment, and the debt or damages which the deceased (if he or she were alive) ought to pay be ascertained by verdict, or confession, or otherwise, the court shall thereupon assess the sum which the executor or administrator ought to pay, regard being had to the amount of assets in his hands and the

debts due to other persons; and if it shall appear to the court that there are assets to discharge all just claims against the deceased, the judgment shall be for the whole debt or damages found by the jury, or confessed, or otherwise ascertained, and costs; and if it shall appear to the court that there are not assets to discharge all such just claims, the judgment shall be for such sum only as bears a just proportion to the amount of the debt or damages and costs, regard being had to the amount of all the just claims and of the assets—that is to say, as the amount of all the said claims shall be to the assets, so shall the amount of the said debt or damages and costs be to the sum required, for which judgment is to be given.

And in no case shall the court proceed to assess as aforesaid and to pass such judgment against an executor or administrator until the time limited by law or by the court for the executor or administrator to pass his account shall have expired: *Provided*, That the said executor or administrator shall make oath (or affirmation, as the case may require) that he hath not assets to discharge all such just claims; and the account settled by the probate court, in which the debt or damages sued for ought to be stated, shall be evidence to show the amount of assets and claims; and the court shall have power, when the real debt or damages are ascertained, to refer the matter to an auditor to ascertain the sum for which judgment shall be given; and in case the judgment shall be for a sum inferior to the real debt or damage and costs, it shall go on and say "that the plaintiff be entitled to such further sum as the court shall hereafter assess on discovery of further assets in the hands of the defendant"; and the court, at any time afterwards, when applied to by the plaintiff, on three days' notice to the defendant or his attorney, may assess and give judgment for such further proportionable sum as the plaintiff shall appear entitled to, regard being had as aforesaid to the amount of the debt and other claims; and on any judgment passed as aforesaid a fieri facias may issue against the defendant, and either his own goods or the goods of the deceased may be thereupon taken and sold, and it shall be the duty of the executor or administrator to discharge said judgment or put it on a footing with other just claims, and on failure his administration bond may be put in suit by the plaintiff. (Mar. 3, 1901, 31 Stat. 1242, ch. 854, § 328.)

NOTES TO DECISIONS

Assets 1
 Defenses 2
 Judgment 3
 Jurisdiction 4
 Procedure in collection of claims 5

1. Assets

"Assets" for purpose of determining sufficiency of "assets" to discharge just claims of estate means property, real or personal, tangible or intangible, legal or equitable, which can be made available for, or can be appropriated to, the payment of debts. *Stoner v. National Metropolitan Bank of Washington* (1948, 77 F. Supp. 699).

2. Defenses

Executors sued for debt or damages and making oath under this section as to insufficiency of assets cannot successfully raise such defense by merely raising doubt as to sufficiency of assets or leaving matter vague, but must establish precisely the condition of estate so that court may not know exactly what part of claim should be allowed, and hence oath that "executors cannot determine

that they will have sufficient assets to pay all claims" was insufficient. *Stoner v. National Metropolitan Bank of Washington* (1948, 77 F. Supp. 699).

3. Judgment

In action against an executor on a demand, unless defense of insufficiency of assets is interposed, judgment may be entered for the full amount of demand sued on. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D. C. 376).

In action against an executor on a demand, a fieri facias may issue against the executor, and either his own goods or goods of deceased may be taken and sold. *Id.*

Final judgment would not be entered against administratrix of one liable for accounting until plaintiff had complied with this section governing judgments against executor or administrator, and court would retain jurisdiction for purpose of enabling plaintiff to comply and of entering final judgment. *Cafritz v. Corporation Audit Co.* (1945, 60 F. Supp. 627).

4. Jurisdiction

Section 1 of the Municipal Court Act (§ 11-703) and sections 327 and 328 of the 1901 Code (§§ 20-501, 20-502) are in pari materia, and must be construed together. Cases covered by said sections 327 and 328 are to be treated as exceptions to those coming within the purview of section 1. *Sanford v. Sanford* (1923, 286 F. 777, 52 App. D. C. 315).

5. Procedure in collection of claims

Proceeding for collection of claims against estate is against executor in his official capacity to determine amount of demand sued on, the value of assets in hands of executor, and proration of the two. *Hawley v. Hawley* (1940, 114 F. 2d 745, 72 App. D. C. 376).

§ 20-503. Concealment of assets by strangers.

If an executor, administrator, or collector shall believe that any person conceals any part of his decedent's estate, he may file a petition in said court alleging such concealment, and the court may compel an answer thereto on oath; and if satisfied, upon an examination of the whole case, that the party charged has concealed any part of the estate of the deceased, the court may order the delivery thereof to the executor, administrator, or collector, and may enforce obedience to such order in the same manner in which orders of said court may be enforced. (Mar. 3, 1901, 31 Stat. 1209, ch. 854, § 122.)

CROSS REFERENCE

Criminal penalty for concealing or converting assets of estate, see § 22-1404.

NOTES TO DECISIONS

Determination of ownership 1
 Jurisdiction 2

1. Determination of ownership

On petition of creditor, court is without jurisdiction to order fund in possession of third person (who claims an interest therein) paid into the registry of the court. *Cook v. Speare* (13 App. D.C. 446).

Purpose of section is to furnish prompt remedy for discovery of assets and their reduction to possession when discovered. "But we are unable to find a further intention to confer upon the probate court jurisdiction to determine the question of the actual ownership of such property" as between executor and rival claimant. *Richardson v. Daggett* (24 App. D. C. 440).

2. Jurisdiction

The probate court of the District of Columbia does not have jurisdiction to decide disputes concerning title or possession of property, as between representatives of an estate and strangers who claim adversely to the estate. *Watkins v. Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

Where petitioner had offered for probate a will in which he was named executor and he acted upon his testamentary authority and did not question jurisdiction of probate court of District of Columbia over him until after an earlier will had been admitted to probate, and rule

had been sought by new executor to require the petitioner to show cause why he should not be adjudged in contempt for failure to comply with a turn-over order, the petitioner's conduct constituted a "waiver" of objection that he became a stranger to the estate from the moment that the will which he had offered for probate was declared invalid, and that therefore probate court was without jurisdiction to adjudge him in contempt. *Id.*

§ 20-504. Concealment by executor or administrator.

If any person interested in any decedent's estate shall by petition allege that the executor, administrator, or collector has concealed or has in his hands and has omitted to return in the inventory or list of debts any part of his decedent's assets, and the court shall finally adjudge and decree in favor of the allegations of the petition, in whole or in part, it shall order an additional inventory or list of debts, as the case may be, to be returned by the executor, administrator, or collector, and appraisalment to be made accordingly, to comprehend the assets omitted, and the court may compel obedience to said order, and, if the same is not complied with, revoke the letters testamentary or of administration or of collection and order the bond of the executor, administrator, or collector to be put in suit. (Mar. 3, 1901, 31 Stat. 1210, ch. 854, § 124.)

CROSS REFERENCE

Criminal penalty for concealing or converting assets of estate, see § 22-1404.

NOTES TO DECISIONS

Jurisdiction 1 Right to hearing 2

1. Jurisdiction

Where an executor asserts title to assets adversely to the decedent's estate, the probate court of the District of Columbia has jurisdiction under statute to try the question of title thereby presented. *Watkins v. Rives* (1942, 125 F. 2d 33, 75 U. S. App. D. C. 109).

2. Right to hearing

Petition charging executor with concealing assets is a pleading only and not evidence; and executor is entitled to his day in court—in other words, to a trial upon the evidence. *Brosnan v. Brosnan* (1923, 289 F. 547, 53 App. D. C. 149).

§ 20-505. Foreign executors and administrators—Suits by.

It shall be lawful for any person or persons to whom letters testamentary or of administration have been granted by the proper authority in any of the United States or the territories thereof to maintain any suit or action and to prosecute and recover any claim in the District in the same manner as if the letters testamentary or of administration had been granted to such person or persons by the proper authority in the said District; and the letters testamentary or of administration, or a copy thereof certified under the seal of the authority granting the same, shall be sufficient evidence to prove the granting thereof, and that the person or persons, as the case may be, hath or have administration: *Provided*, nevertheless, That the probate court of the District shall have the power, upon the petition of anyone interested, to require from such person or persons the security required by law in like cases from a resident administrator or executor, or the said court may grant auxiliary or ancillary letters, as the case may require, to the same or other persons. (Mar. 3, 1901, 31 Stat. 1242, ch. 854, § 329.)

NOTES TO DECISIONS

Ancillary letters 1 Law governing 3 Parties in specific performance 2

1. Ancillary letters

Where testatrix, who was domiciled in Michigan and whose estate and beneficiaries were largely in Michigan but who had intangible property in District of Columbia, named resident of District of Columbia as sole executor, but Michigan court appointed Michigan resident as administrator with will annexed, because Michigan law forbids appointment of a nonresident executor, it was within discretion of District of Columbia court to appoint the Michigan executor as ancillary administrator. *Purcell v. Cramton* (1944, 143 F. 2d 22, 79 U. S. App. D. C. 99).

The requirement of § 20-301, that when any will shall have been authenticated and admitted to probate letters testamentary thereon shall be issued to the executor named therein, if he is legally competent and will accept the trust, does not apply to ancillary letters. *Id.*

Ordinarily ancillary letters are granted to the domiciliary executor or administrator. *Id.*

2. Parties in specific performance

Such an executor may maintain specific performance without joining heirs. *Griffith v. Stewart* (31 App. D. C. 29, affirmed 30 S. Ct. 528, 217 U. S. 323, 54 L. Ed. 782, 19 Ann. Cas. 639).

3. Law governing

"Letters of administration obtained in the jurisdiction of the domicil of the decedent prevail over letters of administration de bonis non granted in this District, and the statute confers upon such foreign administrator the right 'to recover from any individual within the District of Columbia effects or money belonging to the testator or intestate, and that letters testamentary or of administration obtained in either of the States or Territories of this Union give a right to the person having them to receive or give discharges for assets, without suit, which may be in the hands of any person in the District of Columbia.' *Kane v. Paul* (14 Pet. (39 U. S.) 33, 10 L. Ed. 341)." *Southern R. Co. v. Hawkins* (35 App. D. C. 313, 21 Ann. Cas. 926).

A suit filed by a Maryland executor for specific performance of a contract to buy realty located in Maryland must be governed by the law of that state. *Griffith v. Stewart* (31 App. D. C. 29, affirmed 30 S. Ct. 528, 217 U. S. 323, 54 L. Ed. 782, 19 Ann. Cas. 639).

Local administrator, however, may maintain action for death by wrongful act over the objection of the defendant where "the foreign executor did not attempt to bring this suit, and is not here complaining because it was brought by appellee. In such a situation, we think, he may be presumed to have waived any right conferred upon him by the local statute, and that such waiver may be taken advantage of by the real party in interest." *Southern R. Co. v. Hawkins* (35 App. D. C. 313, 21 Ann. Cas. 926). See, also, *Western Union Tel. Co. v. Lipscomb* (22 App. D. C. 104).

Under this section, the domiciliary administrator of a Michigan decedent's estate might have the estate in the District of Columbia administered by the probate court, or might apply for the appointment of an ancillary administrator. *Wiggins v. Mayer* (1928, 22 F. 2d 869, 57 App. D. C. 293).

While authorizing a domiciliary administratrix to sue in the courts of the District of Columbia, this section limits the purposes of such suits and, by implication, limits exercise of the power to situations in which no ancillary administration has been granted in the District. *Duehay v. Acacia Mut. Life Ins. Co.* (1939, 105 F. 2d 768, 70 App. D. C. 245, 124 A.L.R. 1268).

Nothing contained in this section reveals an intention on the part of Congress to abandon the well-established principle of law which governs ancillary administrations. *Id.*

§ 20-506. Suits on bonds against heirs.

No creditor by a bond which purports to bind the heirs of the obligor shall be entitled to sue the heirs at common law in respect of assets descended to them, but debts by specialty and by simple contract, with-

out distinction, shall be payable primarily out of the personal estate, and, if that be insufficient, shall be payable equally and without preference out of the proceeds of the real estate. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 360.)

NOTE TO DECISION

1. Real estate mortgages

Debts by specialty and by simple contract, shall be payable primarily out of the personal estate. Mortgage on devised real estate must be paid out of the personal property. *Tracy v. Atwell* (1929, 32 F. 2d 392, 58 App. D. C. 397).

Chapter 6.—ACCOUNTS

Sec.

- 20-601. First account within twelve months.
- 20-602. Subsequent accounts.
- 20-603. Failure to account.
- 20-604. Assets to be charged.
- 20-605. Disbursements and allowances.
- 20-606. Bequests to executors.
- 20-607. Executor of deceased executor or administrator to render account.
- 20-608. Accounts of deceased executrix or administrator.
- 20-609. Lost property.
- 20-610. Executor or administrator of deceased executor or administrator entitled to commission—To render accounts.

§ 20-601. First account within twelve months.

Every executor and administrator shall render to the probate court within the period of twelve months from the date of his letters the first account of his administration: *Provided*, That said account may be rendered six months from the date of his letters. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 361; June 24, 1949, 63 Stat. 361, ch. 242, § 7.)

AMENDMENT

1949—Act June 24, 1949, added the proviso.

CROSS REFERENCE

Jurisdiction, pleading and practice in probate court, see §§ 11-501 to 11-520.

§ 20-602. Subsequent accounts.

If the first account shall not show the estate which was on hand to be fully administered, other accounts shall be rendered from time to time until the estate is fully administered under such rules as the United States District Court for the District of Columbia may establish. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 362; June 30, 1902, 32 Stat. 529, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1902—Act June 30, 1902, substituted provisions requiring subsequent accounts from time to time for provisions which required an accounting every six months until the estate was fully administered.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 20-603. Failure to account.

If an executor or administrator shall fail to return an account within the time limited by law or fixed

by the rules of court, or within such further time as the probate court shall allow, his letters, on application of any person interested, may be revoked and administration granted at the discretion of the court. (Mar. 3, 1901, 31 Stat. 1247, ch. 854, § 363; June 30, 1902, 32 Stat. 529, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted provisions which provided that the administrator to whom letters may be granted shall be entitled to put the delinquent's bond in suit and which provided for the recovery of damages.

§ 20-604. Assets to be charged.

In such account shall be stated, on one side, the assets which have come to his hands, according to the inventory or inventories returned to the court or received and appraised as herein directed, after the inventory or inventories returned, and the sales made under the court's direction—that is to say, the inventory or inventories are to show the articles of the estate, and the sales, the amount of their value, where they have been sold, and for articles so sold he shall be charged the price according to the return; and if any articles have been sold for credit and not yet paid for they shall be accounted for in a subsequent account, and all moneys received for debts due the decedent shall be included in said account. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 364.)

NOTES TO DECISIONS

- Counsel fees 1
- Effect of settlement 2
- Income from specific bequests 3
- Interest on assets 4

1. Counsel fees

Counsel fees for defending will be charged against the estate. *McIntire v. McIntire* (1904, 24 S. Ct. 196, 192 U. S. 116, 48 L. Ed. 369).

2. Effect of settlement

Settlement of administrator's first and final accounts held not to be given the effect of an adjudication of distributee's rights. *Claudy v. Duvall* (1925, 5 F. 2d 381, 55 App. D. C. 319).

3. Income from specific bequests

Dividends accruing after death of testatrix upon shares of stock specifically bequeathed are not subject to administrative costs until residuary bequests are exhausted. *Nash v. Ober* (2 App. D. C. 304).

4. Interest on assets

If executor mingles money belonging to estate with his own or is negligent in not paying it over or investing it to render it productive, he is chargeable with interest. *Mades v. Miller* (2 App. D. C. 455).

§ 20-605. Disbursements and allowances.

On the other side shall be stated the disbursements by him made, namely: First. Funeral expenses, to be allowed at the discretion of the court, according to the condition and circumstances of the deceased, not exceeding six hundred dollars: *Provided*, That for special cause shown the court may make such additional allowance not exceeding four hundred dollars as such special circumstances may warrant. Second. The debts of the deceased proved or passed as herein directed, and paid or retained. Third. The allowance for things lost, or which have perished without the party's fault, which allowance shall be according to the appraisement. Fourth. His commissions, which shall be at the discretion of the court, not under one per centum nor exceeding ten

per centum on the amount of the inventory or inventories, excluding what is lost or perished. Fifth. His allowance for costs, attorneys' fees, and extraordinary expenses which the court may think proper to allow. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 365; June 30, 1902, 32 Stat. 529, ch. 1329; Aug. 1, 1953, 67 Stat. 358, ch. 308, § 1.)

AMENDMENTS

1953—Act Aug. 1, 1953, provided for a maximum priority allowance of \$600 for funeral expenses, and increased the maximum statutory allowance to \$1000.

1902—Act June 30, 1902, changed the allowance from \$600 to \$300 and added the proviso in the first sentence.

CROSS REFERENCES

Allowance of attorneys' fees, see notes to § 11-504.
Priority of payment, see § 18-520.

NOTES TO DECISIONS

- Ancillary commissions 1
- Authority for payments 2
- Compensation of executor or administrator 3
- Computation of commissions 4
- Discretion of court 5
- Effect of settlement of final accounts 6
- Funeral expenses 7
- Inventory items 8
- No allowance prior to final settlement 9

1. Ancillary commissions

Where commissions to ancillary executors of approximately 2.5 percent of the amount of the ancillary estate and the attorney's fees in approximately the same amount were allowed and there was nothing in the record to indicate that a caveat was pending or immediately contemplated at the domicile of the testatrix, District Court did not abuse its discretion in allowing the fees and commission. *Powell v. Ogden & Sellers, Ancillary etc.* (1960, 278 F. 2d 451, 108 U.S. App. D.C. 6).

Where commissions of approximately 2.5 percent of the amount of the ancillary estate and attorney's fees in approximately the same amount were allowed, the Court of Appeals would assume that the domiciliary court, in fixing commissions, would take into account the payments made to the same persons in their capacity as ancillary executors, notwithstanding that the 10 percent limitation in the District statute could not apply outside the jurisdiction and hence could not place a limit on the commissions allowable to the domiciliary executors. *Id.*

2. Authority for payments

An executor should not make payments to himself on account of commissions until he has been authorized by court to do so. *Doherty v. Stoner* (1948, 169 F. 2d 965, 83 U. S. App. D. C. 365).

Where it was certain, because of size of inventory and provision of will fixing his compensation at 10% thereof, that executor would ultimately be entitled to commissions largely in excess of advances on commissions which he prematurely paid to himself, and that executor had substantially completed his work, unauthorized withdrawals by executor resulted in no harm to estate, and executor would not be charged with interest on commissions which he withdrew prematurely. *Id.*

3. Compensation of executor or administrator

This section "Places a limitation beyond which the court may not go in allowing compensation for the services of an executor or administrator, or executors or administrators, in administering an entire estate." *Brosnan v. Fox* (1923, 284 F. 923, 52 App. D. C. 143).

"In the case of succession the court must make only such allowances * * * to the succeeding executors or administrators within the limitation fixed by the statute." *Id.*

The court has power to compensate an executor for defending the validity of a contested will, which is finally adjudicated void. *Id.*

4. Computation of commissions

Where executor sold testatrix' realty, executor was entitled to have his commission based on gross sale price rather than net sum received, notwithstanding that debts and charges were taken out of sale price by title insurance

company which handled the settlement after sale and that only the net sum was turned over to executor. *Doherty v. Stoner* (1948, 169 F. 2d 965, 83 U. S. App. D. C. 365).

Where testatrix on date of her death had on deposit in local bank the sum of \$44,219.73, and bank held her note for \$25,000, and on due date, which was before executor qualified, bank charged testatrix' account with principal of note and accrued interest, so that executor succeeded to a credit of only \$19,053.06, entire deposit of \$44,219.73 was properly a part of inventory upon which executor's commissions were to be calculated. *Id.*

No case is made for payment to executor in operating decedent's business over and above the amount already permitted by the Code. *Stoner v. Doherty* (1950, 182 F. 2d 673, 86 U.S. App. D.C. 368).

5. Discretion of court

Provision in will directing that executor be allowed maximum compensation permitted by law nullified court's discretion under this section as to amount of executor's commissions. *Doherty v. Stoner* (1948, 169 F. 2d 965, 83 U. S. App. D. C. 365).

6. Effect of settlement of final accounts

Settlement of administrator's first and final accounts held not to be given the effect of an adjudication of distributee's rights. *Claudy v. Duvall* (1925, 5 F. 2d 381, 55 App. D. C. 319).

7. Funeral expenses

A child's guardian would be granted permission to pay funeral expenses of child's mother in a reasonable amount out of estate received by child and where such allowances out of a decedent's estate were limited by this section to a maximum of \$600, payment would be authorized in that amount instead of the sum of \$821 prayed for. *In re Fitzwater's Guardianship* (1947, 69 F. Supp. 866).

This section placing a limit of \$600 on disbursements by executor or administrator for funeral expenses means \$600 for a funeral within the District of Columbia, so that where a body has been transported from the District of Columbia for burial elsewhere executor or administrator may disburse not more than \$600 for expenses in the District of Columbia and not more than \$600 for expenses outside of the District of Columbia. *In re Tunison's Estate* (1948, 75 F. Supp. 573).

8. Inventory items

Disbursements for payroll, operating and miscellaneous expenses incurred in continuing a business until its sale are not inventory items within the meaning of the section authorizing commissions. *Stoner v. Doherty* (1950, 182 F. 2d 673, 86 U. S. App. D. C. 368).

9. No allowance prior to final settlements

"An executor, prior to final settlement of the estate, or the termination of his services in connection with the estate, is not entitled to an allowance of commissions." *Brosnan v. Fox* (1923, 284 F. 923, 52 App. D. C. 143).

An executor is not entitled to commission prior to final settlement of estate or termination of his services, but such rule should not be applied in such a way as to create unnecessary hardship. *Doherty v. Stoner* (1948, 169 F. 2d 965, 83 U.S. App. D.C. 365).

§ 20-606. Bequests to executors.

If anything be bequeathed to an executor by way of compensation, no allowance of commission shall be made unless the said compensation shall appear to the court to be insufficient; and if so, it shall be reckoned in the commission to be allowed by the court. (Mar. 3, 1901, 31 Stat. 1248, ch. 854, § 366.)

§ 20-607. Executor of deceased executor or administrator to render account.

The executor or administrator of a deceased executor or administrator who shall die before an account of his administration hath been rendered shall render an account showing the amount of the assets received and the payments made by his decedent, and the account shall, if found by the court to be correct,

be admitted to record as other administration accounts. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 370.)

CROSS REFERENCE

Accounting for deceased executor or administrator, see § 20-110.

§ 20-608. Accounts of deceased executrix or administratrix.

The husband of an executrix or administratrix who shall die before a final account of her administration shall have been settled shall render such account, if required by the court, showing thereby the amount of money and property received and of payments and disbursements made by such executrix or administratrix, or that may have been received or paid by him, and not before accounted for with the court; and the account so rendered shall, if found by the court to be correct, be admitted to record as other administration accounts in cases where the executrix or administratrix rendered them in person; and in case of refusal of the husband to render such account, the court may proceed against him by attachment, and may commit him until he shall render such account. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 371.)

§ 20-609. Lost property.

The probate court shall have power to make allowance to any executor, administrator, or collector for property of the decedent which hath perished or been lost without the fault of the party; and no profit shall be made and no loss sustained by an executor or administrator in the increase or decrease of the estate under his management; but he shall return an inventory and account for such increase, and may be allowed for such decrease on the settlement of the final or other account. (Mar. 3, 1901, 31 Stat. 1249, ch. 854, § 372.)

§ 20-610. Executor or administrator of deceased executor or administrator entitled to commission—To render accounts.

The executor or administrator of the deceased executor or administrator shall return, on oath, to the court, on or before the day named as provided in section 20-111, a list of the bonds, notes, accounts, and money provided in section 20-110, and shall be entitled to retain out of the money such commission as the court shall allow, not exceeding ten per centum on the principal inventory, and the personal estate and money turned over by him shall be assets in the hands of the administrator de bonis non, to be accounted for by him as such. (Mar. 3, 1901, 31 Stat. 1237, ch. 854, § 303.)

NOTES TO DECISIONS

Agreements as to compensation 1
Compensation fixed by will 2
Time for payment 3

1. Agreements as to compensation

"An executor or administrator may agree to serve for less than the compensation fixed in the statute, and if he does so the agreement will be enforced." *Washington Loan & Trust Co. v. Convention of Protestant Episcopal Church of Diocese of Washington* (1924, 293 F. 833, 54 App. D. C. 14, 34 A. L. R. 913).

2. Compensation fixed by will

Executor qualifying under will fixing commission at 3 per cent. can not subsequently claim a larger sum, although it acted on advice of counsel that the limitation was void and stated in its petition that it based its appli-

cation on that advice. *Washington Loan & Trust Co. v. Convention of Protestant Episcopal Church of Diocese of Washington* (1924, 293 F. 833, 54 App. D. C. 14, 34 A. L. R. 913).

Allowance of commission. *Sinnott v. Kenaday* (14 App. D. C. 1, followed in 14 App. D. C. 484, reversed on other grounds 21 S. Ct. 233, 179 U. S. 606, 45 L. Ed. 339). See, also, *Marfield v. McCurdy* (25 App. D. C. 342); *Howard v. Howard* (38 App. D. C. 575); *Brosnan v. Fox* (1923, 284 F. 923, 52 App. D. C. 143).

3. Time for payment

Generally, an executor's commissions should be withheld until final settlement of the estate or termination of his services, but this rule is one of caution and should not be applied so as to create unnecessary hardship. *Maloney v. Foundry M. E. Church* (1944, 139 F. 2d 388, 78 U. S. App. D. C. 263).

Where the bulk of an estate had been collected and the balance appeared to be dependent on the results of long litigation, the executor, claiming a commission of 5 per cent of the principal assets converted to cash, should be given an opportunity to show that postponement of payment would be an unreasonable hardship not necessary to protect the estate against his resignation or disqualification. *Id.*

In its discretion, after hearing evidence, the court may allow advance payment of an executor's commissions if it finds that otherwise unavoidable delay in final settlement will cause an unreasonable hardship and there is no reasonable probability that the remaining amount will be insufficient to satisfy claims of a possible successor. *Id.*

Chapter 7.—ESTATES OF ABSENTEES AND ABSCONDERS

Sec.

- 20-701. Petition for appointment of receiver, where absentees interested in property—United States Attorney necessary party.
- 20-702. Warrant to United States marshal—Fees of marshal.
- 20-703. Notice of hearing to absentee and interested parties.
- 20-704. Time of hearing—Publication and posting of notice.
- 20-705. Appointment of receiver—Bond—Finding of date of disappearance.
- 20-706. Transfer of property to receiver—Schedule of property.
- 20-707. Receiver may take possession of additional property of and debts due absentee—Appointment of receiver.
- 20-708. Procedure where absentee left only debts due him—Appointment of receiver.
- 20-709. Care, custody, sale of property.
- 20-710. Support of absentee's wife and minor children.
- 20-711. Receiver may adjust claims of or against estate.
- 20-712. Compensation of receiver—Interest of absentee in property to cease after fourteen years.
- 20-713. Distribution after fourteen years as if absentee had died intestate.
- 20-714. Time for distribution and accounting when receiver not appointed within thirteen years.
- 20-715. Sections 14-501, 14-502 not affected.

§ 20-701. Petition for appointment of receiver, where absentees interested in property—United States Attorney necessary party.

If a person entitled to or having an interest in property in the District of Columbia has disappeared or absconded from the District of Columbia, and it is not known where he is, or if such person, having a wife or minor child, dependent to any extent upon him for support, has disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or if his whereabouts is known and he has been without the District of Columbia continuously for two years or longer, anyone who would under the law of the District of Columbia be entitled to administer upon the estate of such

absentee if he were deceased, or if no one is known to be so entitled, any suitable person, or such wife, or someone in her or such minor's behalf, may file a petition under oath in the United States District Court for the District of Columbia, sitting in equity, stating the name, age, occupation, and last known residence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residence of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, and containing a schedule of his property, real and personal, so far as known, within the District of Columbia, and praying that such property may be taken possession of and a receiver thereof appointed under the provisions of this chapter. The United States attorney in and for the District of Columbia shall be made a party to every such petition and shall be given due notice of all subsequent proceedings under said sections. (Apr. 8, 1935, 49 Stat. 111, ch. 46, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCES

Jurisdiction, pleading, and practice in probate court, see §§ 11-501 to 11-520.

Presumption of death after seven years, see § 14-501.

NOTE TO DECISION

1. "Without the District" defined

To be "without the District of Columbia continuously for two years or longer" must be held to mean to be uninterruptedly and physically beyond the confines of the District, and not merely to establish residence outside of the District. *De Ruiz v. De Ruiz* (1937, 88 F. 2d 752, 66 App. D. C. 370).

§ 20-702. Warrant to United States marshal—Fees of marshal.

The court may thereupon issue a warrant directed to the United States marshal in and for the District of Columbia, commanding him to take possession of the property named in said schedule and hold it subject to the order of the court and make return of said warrant as soon as may be, with a statement of his actions thereon and a schedule of the property so taken. The marshal shall post a copy of the warrant upon each parcel of land named in the schedule and cause so much of the warrant as relates to land to be recorded with the recorder of deeds of the District of Columbia. He shall receive such fees for serving the warrant as the court allows, but not more than those established by law for similar service upon a writ of attachment. If the petition is dismissed, said fees and the cost of publishing and serving the notice hereinafter provided shall be paid by the petitioner; but if a receiver is appointed, they shall be paid by the receiver and allowed in his account. (Apr. 8, 1935, 49 Stat. 111, ch. 46, § 2.)

§ 20-703. Notice of hearing to absentee and interested parties.

Upon the return of such warrant, the court may issue a notice reciting the substance of the petition, the warrant, and the marshal's return, which shall be addressed to such absentee and to all persons who claim of record an interest in said property, or who are known to petitioner to claim an interest in said property, and to all whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the marshal's schedule should not be appointed and said property held and disposed of under the provisions of this chapter. (Apr. 8, 1935, 49 Stat. 111, ch. 46, § 3.)

§ 20-704. Time of hearing—Publication and posting of notice.

The return day of said notice shall be not less than thirty nor more than sixty days after its date unless otherwise ordered by the court. The court shall order said notice to be published not less than once in each of three successive weeks in one or more newspapers within the District of Columbia, and a copy to be posted in a conspicuous place and upon each parcel of land named in the marshal's schedule, and a copy to be mailed to the last known address of such absentee. The court may order other and further notice to be given within or without the District of Columbia. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 4.)

§ 20-705. Appointment of receiver—Bond—Finding of date of disappearance.

The absentee or any person who claims an interest in any of the property may appear and show cause why the prayer of the petition should not be granted. The court may, after hearing, dismiss the petition and order the property in possession of the marshal to be returned to the person entitled thereto, or it may appoint a receiver of the property which is in the possession of the marshal and named in his schedule. If a receiver is appointed, the court shall find and record the date of the disappearance or absconding of the absentee; and such receiver shall give bond to said court in such sum and with such condition as the court orders, with a corporate surety thereon approved by the court. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 5.)

§ 20-706. Transfer of property to receiver—Schedule of property.

After the approval of such bond the court may order the marshal to transfer and deliver to such receiver the possession of the property under the aforesaid warrant, and the receiver shall file in said court a schedule of the property received by him. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 6.)

§ 20-707. Receiver may take possession of additional property of and debts due absentee—Appointment of receiver.

Such receiver upon petition filed by him may be authorized and directed by the court to take possession of any additional property within the District of Columbia which belongs to such absentee and to demand and collect all debts due such absentee from any person within the District of Columbia, and hold

the same as if it had been transferred and delivered to him by the marshal. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 7.)

§ 20-708. Procedure where absentee left only debts due him—Appointment of receiver.

If such absentee has left no corporeal property within the District of Columbia, but there are debts and obligations due or owing to him from persons within the District of Columbia, a petition may be filed as provided in section 20-701, stating the nature and amount of such debts and obligations, so far as known, and praying that a receiver thereof may be appointed. The court may thereupon issue a notice as above provided, without issuing a warrant, and may, upon the return of said notice and after a summary hearing, dismiss the petition or appoint a receiver and authorize and direct him to demand and collect the debts and obligations specified in said petition. The receiver shall give bond as provided in section 20-705, and shall hold the proceeds of such debts and obligations and all property received by him, and distribute the same as hereinafter provided. The court may confer upon the receiver such further authority as may be conferred under section 20-707. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 8.)

§ 20-709. Care, custody, sale of property.

The court may make orders for the care, custody, leasing, and investing of all property and its proceeds in the possession of the receiver. After the appointment of a receiver, upon his petition and after notice, the court may order all or part of said property, including the rights of the absentee in land, to be mortgaged, or sold at public or private sale, to supply money for payments authorized by this chapter or for reinvestment approved by the court. (Apr. 8, 1935, 49 Stat. 112, ch. 46, § 9.)

§ 20-710. Support of absentee's wife and minor children.

The court may order said property or its proceeds acquired by mortgage, lease, or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's wife and minor children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 10.)

§ 20-711. Receiver may adjust claims of or against estate.

The court may authorize the receiver to adjust by arbitration or compromise any demand in favor of or against the estate of such absentee. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 11.)

§ 20-712. Compensation of receiver—Interest of absentee in property to cease after fourteen years.

The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of said property or proceeds. If within fourteen years after the date of the disappearance and absconding as found and recorded by the court, such absentee appears, or an administrator, executor, assignee in insolvency, or trustee in bankruptcy of such absentee is appointed, such receiver shall account for, deliver, and pay over to him the remainder of said property. If such absentee does not appear and claim said property within such fourteen years, all his right, title, and interest in said property, real or personal, or the proceeds thereof shall cease, and no action shall be brought by him on account thereof. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 12.)

§ 20-713. Distribution after fourteen years as if absentee had died intestate.

If at the expiration of such fourteen years said property has not been accounted for, delivered, or paid over under the provisions of section 20-712, the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if such absentee had died intestate within the District of Columbia on the day fourteen years after the date of the disappearance or absconding as found and recorded by the court. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 13.)

§ 20-714. Time for distribution and accounting when receiver not appointed within thirteen years.

If such receiver is not appointed within thirteen years after the date found by the court under section 20-705, the time limited for accounting for, or fixed for distributing, said property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the fourteen years provided in sections 20-712 and 20-713; except that the time limited for accounting for, or fixed for distributing, any additional property or its proceeds within the District of Columbia coming into the possession of such receiver during such one year period, or for barring actions relative thereto, shall be one year after the date possession is taken by such receiver. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 14.)

§ 20-715. Sections 14-501, 14-502 not affected.

Nothing contained in this chapter shall be construed as repealing or modifying sections 14-501 or 14-502. (Apr. 8, 1935, 49 Stat. 113, ch. 46, § 15.)



21

22

TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS

Chap.		Sec.
1.	Infants and Other Incompetents.....	21-101
2.	Property of Infants and Persons Non Compos Mentis.....	21-201
3.	Insane Persons, Inquests.....	21-301
4.	Drunkards and Drug Addicts.....	21-401
5.	Conservators.....	21-501

Chapter 1.—INFANTS AND OTHER INCOMPETENTS

Sec.	
21-101.	Natural guardians.
21-102.	Testamentary guardians.
21-103.	Appointment by court—Limitation of number of wards.
21-104.	Enlistment of indigent boys—Appointment of guardians.
21-105.	Enlistment of indigent boys—Preparation of guardianship papers.
21-106.	Bond required from parents of child entitled to property.
21-107.	Husband, parent, or testamentary guardian may be enjoined from interfering with minor's estate.
21-108.	Appointment by deed or will for child inheriting property from parent.
21-109.	Appointment by court of guardian for infant entitled to property.
21-110.	When guardian of estate is appointed by court.
21-111.	Selection of guardian by infant.
21-112.	Preferences in appointment of guardian.
21-113.	Election of guardian by ward.
21-114.	Husband as guardian.
21-115.	Ancillary guardian of nonresident infant or lunatic—Petition.
21-116.	Suits by ancillary guardian.
21-117.	Suits by next friend.
21-118.	Bond.
21-119.	Bond of guardians.
21-120.	One bond for several wards.
21-121.	Additional bond.
21-121a.	Settlement of actions involving minor children, subject to court approval—Appointment of guardian necessary where proceeds of settlement exceeds \$3,000.
21-122.	Counter security—Petition by surety.
21-123.	Surety.
21-124.	Guardian to have possession of property.
21-125.	Inventory.
21-126.	Accounts—Maintenance and education—Sales—Compensation.
21-127.	Allowances made before bond was given.
21-128.	Sale of realty.
21-129.	When guardianship ceases.
21-130.	Final account.

§ 21-101. Natural guardians.

The father and mother shall be the natural guardians of the person of their minor children. If either dies or is incapable of acting, the natural guardianship of the person shall devolve upon the other. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1123.)

CODIFICATION

Section is based on the opening provisions of section 1123 of act Mar. 3, 1901. Remainder of section is classified to section 21-108.

CROSS REFERENCES

Adoption, see § 16-201 et seq.
 Ancillary guardian for nonresident infants and persons non compos mentis, §§ 21-115, 21-116.
 Application of chapter to drunkards and drug addicts, see § 21-401.
 Application of chapter to persons non compos mentis, see § 21-303.
 Appointment of guardian for infant owners of buildings sought to be condemned by Board for Condemnation of Insanitary Buildings, see § 5-624.
 General provisions concerning feeble-minded persons, including inquests, commitments and discharges, see §§ 32-603 to 32-629.
 General provisions concerning management and control of infant and estate, see § 21-126.
 Guardian ad litem for persons under disabilities in condemnation proceedings to obtain land for streets, see § 7-204.
 Guardian ad litem in condemnation proceedings, see § 16-604.
 Guardian ad litem in proceedings to condemn land for United States, see § 16-627.
 Guardian ad litem in proceedings to probate will, see § 19-303.
 Guardian ad litem in proceedings to sell infant's real estate, see § 21-205.
 Guardian ad litem in proceedings to sell real estate held by tenant for life with a contingent limitation, see § 45-1102.
 Trust companies authorized to act, see §§ 26-309 to 26-312, 26-316, 26-333, 26-334.

NOTES TO DECISIONS

1. Custody of child

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *Bell and Bell v. Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D. C. 179).

Custody of child awarded to mother notwithstanding that after divorce she committed adultery with the man she subsequently married, the father of child having died and left the child in the possession of grandfather. *Sardo v. Villapiano* (1936, 81 F. 2d 255, 65 App. D.C. 121).

It is established both by statute and common law that as between the grandfather and the mother the child should be entrusted to the mother, unless such a course is inconsistent with the child's welfare. *Id.*

A child of parties to divorce proceeding is a "ward of court" and the court has power to change the custody of the child, to enforce parental obligations to provide for maintenance, and if necessary to remove the child from the custody of both parents. *Emrich v. McNeil* (1942, 126 F. 2d 841, 75 U. S. App. D. C. 307, 146 A. L. R. 1146).

A reservation in original divorce decree is not necessary for the exercise of court's continuing jurisdiction concerning custody and maintenance of minor child. *Id.*

Where husband established a separate domicile in the District of Columbia, the wife remaining in North Carolina with the minor children by agreement, in granting husband a divorce the District of Columbia court was without jurisdiction to make an award of custody of children, since their domicile remained in North Carolina. *Oxley v. Oxley* (1947, 159 F. 2d 10, 81 U.S. App. D.C. 346).

§ 21-102. Testamentary guardians.

Every father or mother, whether of full age or not, when the other parent does not survive, may, by last will and testament, appoint a guardian of the person to have the care, custody, and tuition of his or her infant child, not being a married female; and if the person so appointed shall refuse the trust, the probate court may appoint another person in his place. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1124.)

§ 21-103. Appointment by court—Limitation of number of wards.

If any infant shall have neither natural nor testamentary guardian, a guardian of the person may be appointed by the probate court in its own discretion or on the application of any next friend of such infant: *Provided, however,* That no person, except trust companies, shall act as guardian of the person for more than five infants at one and the same time, unless said infants be members of one family. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1125; Mar. 3, 1927, 44 Stat. 1383, ch. 350.)

AMENDMENT

1927—Act Mar. 3, 1927, added the proviso.

CROSS REFERENCES

Appointment by juvenile court, see § 11-917.
Jurisdiction, pleading, and practice in probate court, see §§ 11-501 to 11-520.

NOTES TO DECISIONS

Continuance of jurisdiction 1
Enforcement of decrees 2
Jurisdiction 3

1. Continuance of jurisdiction

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. *Johnson v. Austin, Guardian, etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction of the United States District Court holding Probate Court did not stop short of enforcing its own decrees in proceedings to remove guardian of child and appoint another guardian. *Id.*

2. Enforcement of decrees

Although recourse to District Court may be necessary to effectuate decrees of District Court holding Probate Court, Probate Court is but an arm of District Court and the full judicial machinery of the District Court is available to enforce lawful decrees of its component parts. *Johnson v. Austin, Guardian, etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Even if the United States District Court holding Probate Court were powerless to enforce a custody decree, other avenues are open in the District Court to give litigants relief through enforcement of such a decree. *Id.*

3. Jurisdiction

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson v. Austin, Guardian, etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations Jurisdiction is vested in Domestic Relations Branch of the Municipal Court. *Id.*

§ 21-104. Enlistment of indigent boys—Appointment of guardians.

The probate court shall have power to appoint guardians to indigent boys for the purpose of securing their enlistment in the naval or marine service

of the United States, as provided by law, free of all costs on account of such proceeding. (Mar. 3, 1901, 31 Stat. 1217, ch. 854, § 166.)

§ 21-105. Enlistment of indigent boys—Preparation of guardianship papers.

The register of wills shall prepare papers in connection with appointment of guardians to enable indigent boys to enlist in the United States Navy as provided by law, without making any charge therefor. (July 14, 1892, 27 Stat. 154, ch. 171.)

§ 21-106. Bond required from parents of child entitled to property.

When any infant whose father or mother may be living shall, by gift, or otherwise, be entitled to any property, the probate court may require the father or mother, as guardian, to give bond and security to account for the property, and on his or her failure or refusal so to do may appoint another person guardian, who shall give bond as in other cases. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 152.)

§ 21-107. Husband, parent, or testamentary guardian may be enjoined from interfering with minor's estate.

On application of any friend of an infant entitled to real or personal estate, or in the exercise of its own discretion, the court may enjoin any parent or husband or testamentary guardian of such infant from interfering with said infant's estate without being appointed and giving bond as guardian of such estate. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1129.)

NOTE TO DECISION

1. Felonies

Under this section prescribing fine not exceeding \$1,000 or imprisonment for not more than five years, or both, as punishment for any offense not specifically covered by sections of this code, all common-law misdemeanors, not embodied in any act of Congress, became felonies in District of Columbia, since any offense potentially punishable by imprisonment for more than one year is a "felony." *U.S. v. Davis* (1947, 71 F. Supp. 749, 83 U.S. App. D.C. 99, 167 F. 2d 228, certiorari denied 68 S. Ct. 1501, 334 U.S. 849, 92 L. Ed. 1772).

§ 21-108. Appointment by deed or will for child inheriting property from parent.

In case of the death of either parent from whom his or her minor children shall inherit or take by devise or bequest, such parent may by deed or last will and testament appoint a guardian of the property of the children, subject to the approval of the proper court of the District of Columbia: *And provided further,* That nothing herein contained shall be held to limit or affect the power of a court of equity to appoint some other person guardian of such children when it shall be made to appear to said court that the welfare of said children requires it. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1123.)

CODIFICATION

Section is based on the proviso clauses of section 1123 of act Mar. 3, 1901. Remainder of section is classified to section 21-101.

NOTE TO DECISION

1. In general

By this provision the power of equity to guard the welfare of the child is preserved. *Church v. Church* (1921, 270 F. 359, 50 App. D.C. 237).

§ 21-109. Appointment by court of guardian for infant entitled to property.

The probate court shall have power to appoint a guardian or guardians to any infant orphan entitled to any property, real, personal, or mixed, within the District, or whose person and residence may be within the District, except where such orphan may have a testamentary guardian. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 150.)

NOTES TO DECISIONS

Law governing 1 Nonresident infants 2

1. Law governing

A guardian of the estate should be appointed "in accordance with the laws of the place in which the property is found." *Lehmer v. Hardy* (1924, 294 F. 407, 54 App. D.C. 51).

2. Nonresident infants

"The courts of the District of Columbia have no authority to appoint guardians of the persons of infants who do not reside and are not domiciled within their territorial jurisdiction." *Lehmer v. Hardy* (1924, 294 F. 407, 54 App. D.C. 51).

§ 21-110. When guardian of estate is appointed by court.

Subject to the provisions of sections 21-101 to 21-103, 21-108, and 21-129, whenever land shall descend or be devised to any infant under twenty-one years of age, or such infant shall be entitled to a distributive share of the personal estate of an intestate, or to a legacy or bequest under a last will, or shall acquire any real or personal property by gift or purchase, the probate court may appoint a guardian of said infant's estate; and if there shall be a guardian of the person of such infant the guardian of the estate so appointed may be the same or a different person: *Provided, however*, That no person, except trust companies, shall act as guardian of the estate of more than five infants at one and the same time unless the infants are entitled to shares of the same estate. The said appointment may be made at any time after the probate of the will or the grant of administration where the infant is entitled as a devisee, legatee, or next of kin. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1127; Mar. 3, 1927, 44 Stat. 1383, ch. 350.)

AMENDMENT

1927—Act Mar. 3, 1927, changed "the said court" to "the probate court" and added the proviso to the first sentence.

CROSS REFERENCES

Guardians generally, see notes to § 21-101.

Majority of female who is beneficiary under a will, see § 18-722.

§ 21-111. Selection of guardian by infant.

When it shall be necessary to appoint a guardian, either of the person or the estate, of an infant, the infant shall, if practicable, be brought before the court, and, if over the age of fourteen years, shall be entitled to select and nominate his or her guardian; and if a guardian shall have been appointed before the infant has attained the age of fourteen years, the said infant, upon arriving at said age, may select a new guardian, notwithstanding the appointment before made: *Provided, however*, That the court shall, in all cases, approve the character and competency of the guardian selected by the infant, and such guardian shall be under the same obligations and discharge the same duties as if se-

lected by the court; and whenever, after a guardian of the estate has been previously appointed, the infant shall select a new guardian upon arriving at the age of fourteen years, and said new selection is approved by the court, and the person so selected is duly appointed and qualified, the guardian previously appointed shall settle his final account and turn over his ward's estate to the newly appointed guardian. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1130.)

§ 21-112. Preferences in appointment of guardian.

Whenever it shall be necessary for the court to appoint a guardian of the infant's estate, as aforesaid, the father, if living, or, if he be dead, then the mother, if living, or, if the infant be a married female her husband, shall have the preference over other persons, unless the infant be over fourteen years of age, as hereinafter directed: *Provided*, That in the judgment of the court the parent or husband so entitled shall be a suitable person to have the management of the infant's estate. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1128.)

CODIFICATION

The word "hereinafter" refers to the remainder of the sections of chapter 31 of act Mar. 3, 1901, they being §§ 1129—1142. These sections are classified to §§ 21-107, 21-111, 21-114 to 21-116, 21-119, 21-120, 21-123 to 21-128, and 21-130.

§ 21-113. Election of guardian by ward.

Every orphan or other infant to whom the probate court is authorized to appoint a guardian shall be entitled, on arriving at the age of fourteen years, notwithstanding any appointment of guardian before made by the court, to elect a guardian for himself; but such guardian must be approved by the court and shall be required to give bond as in other cases, and be subject to the control of the court as other guardians are. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 155.)

§ 21-114. Husband as guardian.

Whenever any female infant, to whom a guardian of her estate has been appointed, shall marry she may select her husband as the guardian of her said estate, with the approval of the court, and after he is duly appointed and qualified by giving bond, as is required in other cases, the powers of the guardian previously appointed shall cease, and he shall settle his final account and turn over his ward's estate to her husband, agreeably to the order and directions of the court. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1140.)

§ 21-115. Ancillary guardian of nonresident infant or lunatic—Petition.

Whenever an infant or lunatic residing without the District is entitled to a property in the District or to maintain any action therein, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the state or territory where said infant or lunatic resides, or any person at the request of said guardian or committee, may apply to the court by petition for ancillary letters as such guardian or committee. Said petition must be under oath and be accompanied with duly certified copies of so much of the record and proceedings as shows the appointment of such guardian or

committee and that he has given a sufficient bond to account for all property and money that may come into his hands by virtue of the authority hereby conferred. The court may thereupon issue to such guardian or committee ancillary letters as such guardian or committee, without citation, or may cite such persons as it may think proper to show cause why the said application should be refused; and the said court shall require from such person or persons the security required by law in like cases from a resident guardian or committee. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1141; June 30, 1902, 32 Stat. 542, ch. 1329; Mar. 3, 1905, 33 Stat. 1006, ch. 1441.)

AMENDMENTS

1905—Act Mar. 3, 1905, added the provisions relating to committees, and that part of the last sentence following the semicolon.

1902—Act June 30, 1902, inserted after the word "copies" in the second sentence the words "of so much".

NOTES TO DECISIONS

1. Veterans' legislation

Sections 44 and 45, D. C. 1929 (this section and § 21-116), are of local application and must give way to laws of Congress relating to veterans' affairs. *First Nat. Bank v. United States* (1940, 30 F. Supp. 730).

Colorado bank may sue in the courts of the District of Columbia, as conservator, for the recovery of monthly payments of a veteran's government insurance, and is not required to have an ancillary guardian appointed. *Id.*

§ 21-116. Suits by ancillary guardian.

Upon the granting of said ancillary letters the said guardian shall be entitled to institute and prosecute to judgment any action in the courts of the District, to take possession of all property of his said ward, and collect and receive all moneys belonging and due to him therein, to give full receipt and acquittances for debts and to release all claims, liens, and mortgages to him belonging, on property in said District, in the same manner as if his authority had been originally conferred by the United States District Court for the District of Columbia: *Provided*, That said guardian shall be required to give security for the costs which may accrue in any action brought by him, in the same manner as other nonresidents bringing suit in the courts of said District. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1142; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Ancillary proceedings 1
Suit under original appointment 2

1. Ancillary proceedings

Word "ancillary" as used differentiates between original jurisdiction and proceedings which are subordinate and auxiliary thereto. *First Nat. Bank v. United States* (1940, 30 F. Supp. 730).

2. Suit under original appointment

One who had been appointed guardian of her two minor children by courts of Virginia, and who also had

been appointed ancillary guardian by the United States District Court for District of Columbia, could bring suit in Municipal Court under her original appointment and was not required to sue as ancillary guardian. *De Bobula v. Coppedge* (D. C. Mun. App. 1944, 40 A. 2d 255).

§ 21-117. Suits by next friend.

In every case whereas such as be within age may sue if such within age be eloined, so that they can not sue personally, their next friends shall be admitted to sue for them. (13 Edw. 1, ch. 15, § 1, 1285; Kilty's Rept., p. 212; Alex. Brit. Stat., p. 121; Comp. Stat. D. C., p. 446, § 31.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

§ 21-118. Bond.

The court shall require of guardians so appointed (as provided in section 21-109), and of testamentary guardians, unless it be otherwise directed by the will appointing them, bond, with sufficient security, conditioned for the due discharge of their duties. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 151.)

CROSS REFERENCE

Bonds required of trust companies, see §§ 26-333, 26-334.

§ 21-119. Bond of guardians.

Every guardian appointed by the court, except corporations authorized to act as guardians, before entering upon or taking possession of or interfering with the estate of the infant, shall execute a bond to the United States in such penalty and with such surety or sureties as the court shall approve, to be recorded and to be liable to be put in suit for the use of any person interested, with the following condition:

The condition of the above obligation is such that if the above bounden ———, as guardian to ———, shall faithfully account to the court, as required by law, for the management of the property and estate of the infant under his care, and shall also deliver up said property agreeably to the order of the court or the directions of law, and shall in all respects perform the duty of guardian to the said ——— according to law, then the above obligation shall cease; it shall otherwise remain in full force and virtue. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1131.)

§ 21-120. One bond for several wards.

Where the same person is guardian to any number of persons entitled to shares of the same estate the court may accept one bond instead of separate bonds for each ward, and said bond shall be liable to be put in suit for the use of all or either of the wards as fully as separate bonds might be. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1132.)

§ 21-121. Additional bond.

The court may at any time require any guardian to give bond or additional bond, when the interests of the infant require it, and on his failure or refusal so to do may revoke his appointment and appoint another guardian in his place, and require the estate of the infant to be forthwith delivered to the newly appointed guardian, and may direct him to bring suit

upon the bond of his predecessor. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 153.)

§ 21-121a. Settlement of actions involving minor children, subject to court approval—Appointment of Guardian necessary where proceeds of settlement exceeds \$3,000.

(1) Any person entitled to maintain or defend an action in behalf of a minor child, including actions relating to real estate, shall be competent to settle or compromise any action so brought and, upon settlement or compromise thereof or upon satisfaction of any judgment obtained therein, shall be competent to give a full acquittance and release of all liability in connection with such action, but no such settlement or compromise shall be valid unless the same shall be approved by a judge of the court in which such action is pending.

(2) Before any person shall receive any money or other property on behalf of a minor in settlement or compromise of any action brought on behalf of or against such minor or in satisfaction of any judgment in any such action, where (after deduction of fees, costs and all other expenses incident to the matter) the net value of said money and property due the minor exceeds \$3,000, such person shall be duly appointed by a court of competent jurisdiction as guardian of the estate of such minor to receive such money or property, and shall have qualified as such. (Mar. 3, 1901, ch. 854, § 153A, as added Sept. 14, 1959, 73 Stat. 553, Pub. L. 86-268.)

§ 21-122. Counter security—Petition by surety.

If any surety of a guardian shall by petition set forth that he apprehends himself to be in danger of loss in consequence of his suretyship, and shall pray the court that he may be relieved, the court, after summoning the guardian to answer said petition, may require him to give counter security to indemnify his original surety or to deliver his ward's estate into the hands of the surety or of some other person; in either of which cases the court shall require sufficient security to be given by the person into whose hands said estate shall be delivered, and make such other order as may seem just. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 154.)

§ 21-123. Surety.

If any surety of a guardian, setting forth by petition that he apprehends himself to be in danger of suffering by said suretyship, shall pray to be relieved, the court, after service of a summons on the guardian to answer the petition, may order him to give counter security for the indemnity of the original surety, or to deliver the ward's estate into the hands of the surety or of some other person; in either of which cases the person into whose hands the ward's estate shall be delivered shall be required to give sufficient security for the proper management and application of the same, and such further order may be passed for the relief of the petitioner as may seem just. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1138.)

§ 21-124. Guardian to have possession of property.

On the execution of his bond, as required as aforesaid, the guardian shall be entitled to an order of the court directing the real and personal estate of the ward to be delivered into his possession, and all

legacies and distributive shares to which the ward may be entitled to be paid or delivered to him whenever they shall be properly payable or distributable according to law. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1133.)

§ 21-125. Inventory.

Every guardian, within three months after the execution and approval of his bond, shall return to the court, under oath, an inventory of the real and personal estate of his ward and of the probable annual income thereof, and the court may direct the said estate to be appraised and the annual income thereof to be ascertained by two competent persons, to be appointed by the court, who shall report their appraisal and finding under oath. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1134.)

CROSS REFERENCES

Other provisions concerning property of infants, see § 21-201 et seq.

Separate estate of infant married women, see § 30-201 et seq.

§ 21-126. Accounts—Maintenance and education—Sales—Compensation.

It shall be the duty of the guardian to manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions, and shall not be answerable for any loss or decrease sustained without his fault; and the court shall determine the amounts to be annually expended in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and the court, if it shall deem it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell the same or part thereof, under its order, as provided in sections 21-201 to 21-213; but no guardian shall sell any property of his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services rendered by the guardian not exceeding a commission of five per centum of the amounts collected if and when disbursed. (Mar. 3, 1901, 31 Stat. 1370, ch. 854, § 1135; Feb. 10, 1927, 44 Stat. 1067, ch. 101.)

CODIFICATION

The provision for exceeding the income of the estate and making use of the principal under certain circumstances is set out in §§ 21-201 to 21-213. The original wording of this section in act Mar. 3, 1901, was "as provided in subchapter three of chapter one." This subchapter contained §§ 60 to 220 which are classified as follows: §§ 11-301, 11-307, 11-308, 11-311 to 11-322, 11-324 to 11-330, 11-401, 11-402, 11-501 to 11-505, 11-507, 11-509 to 11-520, 11-1001, 11-1002, 11-1101 to 11-1103, 11-1201 to 11-1208, 11-1301 to 11-1304, 11-1401 to 11-1420, 11-1505 to 11-1507, 11-1515, 13-104 to 13-113, 15-110, 16-1301 to 16-1305, 16-1501, 18-607 to 18-612, 19-301 to 19-313, 20-107, 20-109, 20-116, 20-504, 21-103 to 21-105, 21-109, 21-113, 21-118, 21-121, 21-122, 21-201 to 21-213, 21-301 to 21-305, 22-1414, 32-101 to 32-104, 36-103, and 45-616.

AMENDMENT

1927—Act Feb. 10, 1927, deleted the words "not exceeding ten per centum of the principal of the personal estate and on the annual income of the estate" which followed

the word "commissions" in the second sentence, and added the last sentence.

CROSS REFERENCES

- Capacity to contract for life insurance, see § 35-430.
- Child labor and work permits, see § 36-201 et seq.
- Criminal liability for failure to provide and care for minor children, see § 22-901 et seq.
- Duty to file income tax returns, see § 47-1515.
- Duty to file schedule of personal property for taxation, distraint of property for nonpayment, see §§ 47-1203, 47-1301.
- Guardians generally, see notes to § 21-101.
- Indorsement of negotiable instrument passes title, see § 28-123.
- Liability as stockholder of business corporation, see § 29-220.
- Liability for income taxes, see § 47-1524.
- Liability for necessities, see § 28-1102.
- Marriage, consent of parents or guardian, see § 30-111.
- May redeem from tax sales within one year after majority, see § 47-1003.
- Minimum wages for minors, see § 36-401 et seq.
- Rights under real estate leases, see §§ 45-927 to 45-930.
- Suits to annul marriage, see § 30-104.

NOTES TO DECISIONS

- Compensation of Conservator 1
- Temporary conservator 2
- Limitation of compensation 3

1. Compensation of conservator

In view of facts that duties of conservator and guardian are basically the same, and that District of Columbia Code providing for appointment of conservators is silent as to compensation of conservators and merely provides that conservators shall have same rights and powers as guardians and that court shall have the same powers with respect to property of any person for whom conservator has been appointed as it has with respect to property of infants under guardianships, compensation of conservator should be fixed under this section limiting compensation of guardians to fixed percentage of amounts actually collected if and when disbursed. *In re Searle* (1953, 118 F. Supp. 273).

2. Compensation of temporary conservator

Compensation of temporary conservator would not be determined under this section fixing compensation of guardian but would be determined by considering the character of services rendered, the size of the estate, and the compensation awarded guardian ad litem and attorney for the guardian. *In re Searle* (1953, 118 F. Supp. 273).

3. Limitation of compensation

Limitation of compensation of committee of insane person to five per cent. of amount received and disbursed precludes allowance of additional fees. *Hines v. Paregol* (1935, 77 F. 2d 953, 64 App. D.C. 306).

Committee who has wisely and judiciously preserved the estate of a lunatic should not be denied reasonable compensation merely because he had preserved the estate instead of expending it. *In re Gallen* (1937, 18 F. Supp. 683).

§ 21-127. Allowances made before bond was given.

Any allowance which may be made to a guardian for the clothing, support, maintenance, education, or other expenses incurred for the ward or his estate, before said guardian shall have given bond or been appointed, shall have the same effect and operation in law as if the same had been made subsequently to the appointment of said guardian and his giving bond. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1137.)

§ 21-128. Sale of realty.

Whenever any guardian shall think that the interests of his ward will be promoted by a sale of his real estate for the purpose of reinvesting the proceeds in

other property or securities, he may make application therefor to the probate court, and such proceedings shall be had thereupon as directed in sections 21-201 to 21-213. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1136.)

CODIFICATION

See codification note under § 21-126.

§ 21-129. When guardianship ceases.

The natural guardianship or the appointive guardianship of the person aforesaid shall cease, in the case of a male infant when he is twenty-one years of age, and in the case of a female infant when she is eighteen years of age or marries. (Mar. 3, 1901, 31 Stat. 1369, ch. 854, § 1126.)

NOTES TO DECISIONS

- Majority of female infants 1
- Marriage of infant 2

1. Majority of female infants

There is no statute in force in the District of Columbia which clearly provides that female infants shall as a general rule attain their majority at the age of 18 years; exceptions to the common-law rule have been provided by statute, but these recognize the continued existence of the general rule of the common law. *Jones v. Jones* (1934, 72 F. 2d 829, 63 App. D.C. 373, 95 A.L.R. 352).

2. Marriage of infant

Where a 13-year-old girl, legally married, was committed to the Board of Children's Guardians two years later as destitute and homeless, and later committed to the Reform School as incorrigible, she was not entitled to release on habeas corpus, on the ground of her marriage. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

§ 21-130. Final account.

On the arrival of any ward at the age of twenty-one years the guardian shall exhibit a final account of his trust to the court, and shall deliver up, agreeably to the court's order, to the ward all the property of said ward in his hands, including bonds and other securities, and on his failure so to do his bond may be put in suit in the name of the United States for the use of the party interested, and he may be attached, as herein elsewhere provided. (Mar. 3, 1901, 31 Stat. 1371, ch. 854, § 1139.)

CODIFICATION

The words "as herein elsewhere provided" refer to chapter 31 of act Mar. 3, 1901, from which this section is derived. This chapter is classified to §§ 21-101 to 21-103, 21-107, 21-108, 21-110 to 21-112, 21-114 to 21-116, 21-119, 21-120, 21-123 to 21-130.

Chapter 2.—PROPERTY OF INFANTS AND PERSONS NON COMPOS MENTIS

Sec.

- 21-201. Sale of infant's principal for maintenance or education.
- 21-202. Property of infants and persons non compos mentis subject to liens.
- 21-203. Property of infants and persons non compos mentis subject to executory contract.
- 21-204. Sale or exchange of infant's real estate.
- 21-205. Sale or exchange of infant's real estate—Parties.
- 21-206. Sale or exchange of infant's real estate—Proof.
- 21-207. Sale or exchange of infant's real estate—Decree of sale—Costs.
- 21-208. Sale or exchange of infant's real estate—Terms of sale—Disposition of proceeds.
- 21-209. Exchanges—Equality—Appointment of trustee.
- 21-210. Sale of particular estate or remainder—Death while infant—Conversion of proceeds.
- 21-211. Lease of infant's estate—Where consent necessary.
- 21-212. Mortgage of infant's estate.

Sec.

- 21-213. Contract for sale by adult in behalf of himself and infant or person non compos mentis.
- 21-214. Gifts of securities to minors in District—Registration—Delivery—Deed of gift.
- 21-215. Gift irrevocable—Rights and duties of guardian.
- 21-216. Management of gift property by custodian—Rights, powers and duties of custodian.
- 21-217. Custodian not to receive compensation for services—Reimbursement for expenses.
- 21-218. Bond—Liability of custodian.
- 21-219. Resignation—Steps required to complete resignation.
- 21-220. Death or incapacity of custodian—Appointment of successor.
- 21-221. Rights, powers and duties of successor custodian.
- 21-222. Action against custodian for accounting.
- 21-223. Definitions.
- 21-224. Method for making gifts of securities not exclusive.

§ 21-201. Sale of infant's principal for maintenance or education.

Wherever it shall appear, upon the petition of the infant by next friend or of the guardian of an infant, and the appearance and answer of such infant by guardian to be appointed by the court, and proof by depositions of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of some part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the probate court may decree such sale on such terms as to it may seem proper. (Mar. 3, 1901, 31 Stat. 1217, ch. 854, § 165.)

CROSS REFERENCES

Ancillary guardian for nonresident infants and persons non compos mentis, see §§ 21-115, 21-116.

Application of chapter to drunkards and drug addicts, see § 21-401.

Application of chapter to persons non compos mentis, see § 21-303.

Contesting will after majority, see § 19-309.

General provisions concerning rights, liabilities, and property of infants, see § 21-126.

Guardians generally, see notes to § 21-101.

Jurisdiction pleading and practice in probate court, see §§ 11-501 to 11-520.

New promise after majority, see § 12-306.

Provisions concerning property of persons non compos mentis, see §§ 21-202, 21-203, 21-213, 21-301 et seq.

§ 21-202. Property of infants and persons non compos mentis subject to liens.

If any infant or person non compos mentis be entitled to any real or personal estate in the District which shall be liable to any mortgage, trust, or lien, or in any way charged with the payment of money, the court shall have the same power to decree in such case as if the infant were of full age or such person non compos mentis were of sound mind. (Mar. 3, 1901, 31 Stat. 1203, ch. 854, § 91.)

CROSS REFERENCES

Rights and duties of persons non compos mentis under real estate mortgage, see § 45-620.

Rights of infants under mortgages, see §§ 45-608, 45-609.

§ 21-203. Property of infants and persons non compos mentis subject to executory contract.

Where an infant or person non compos mentis is entitled to any real or personal estate in the District bound by any executory contract entered into by the person or persons from whom said infant or person non compos mentis has derived title, or where

an infant or person non compos mentis claims any right or interest in such property under and in virtue of any such contract, the court in either case shall have the same power to decree the execution of such contract or to pass any just and proper decree that the court would have if the parties were of full age and sound mind. (Mar. 3, 1901, 31 Stat. 1203, ch. 854, § 92.)

§ 21-204. Sale or exchange of infant's real estate.

Whenever the guardian or, in case of his refusal to act, a next friend of any infant shall deem that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property, or by an exchange of his said property for other property, he may file a bill in said court, verified by his oath, setting forth all the estate of said infant, real and personal, and all the facts which, in his opinion, tend to show whether the infant's interest will be promoted by said sale or exchange or not. (Mar. 3, 1901, 31 Stat. 1215, ch. 854, § 156.)

NOTES TO DECISIONS

Historical 1

Sale for reinvestment 2

1. Historical

Prior to enactment of the Code, orphan's court of the District had jurisdiction to decree sale of infant's real estate for his support or education. *Thaw v. Ritchie* (1890, 10 S. Ct. 1037, 136 U.S. 519, 34 L. Ed. 531).

2. Sale for reinvestment

Decree of District Court of the United States for the District of Columbia for sale of infant's property for purpose of reinvestment is not subject to collateral attack. *United States ex rel. Hine v. Morse* (1911, 31 S. Ct. 37, 218 U.S. 493, 54 L. Ed. 1123).

§ 21-205. Sale or exchange of infant's real estate—Parties.

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant; and it shall be the duty of the court to appoint some fit and disinterested person to be guardian ad litem for the infant, who shall answer the bill under oath. The infant also, if above the age of fourteen, shall answer the bill in proper person, under oath. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 157.)

§ 21-206. Sale or exchange of infant's real estate—Proof.

Every fact material to determine the propriety of such sale or exchange shall be clearly proved by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 158.)

§ 21-207. Sale or exchange of infant's real estate—Decree of sale—Costs.

If the court shall be satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, such sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 159.)

**§ 21-208. Sale or exchange of infant's real estate—
Terms of sale—Disposition of proceeds.**

Any such sale may be made upon such terms as to cash and credit as the court may direct, and a lien shall be retained on the property sold for the purchase money; and the proceeds of such sale shall be invested for the infant's benefit in other real estate or in such other manner as the court may direct; and if the infant, after any such sale, shall die intestate or under twenty-one years of age, the proceeds of such sale, or so much thereof as may remain at his death, if not reinvested in other real estate, shall be considered as real estate, and shall pass accordingly to such persons as would have been entitled to the estate if it had not been sold. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 160.)

§ 21-209. Exchanges—Equality—Appointment of trustee.

In decreeing an exchange of the infant's estate for other property the court shall not be bound to require equality or sameness in the quantity or character of the estate or interest, and the court may appoint trustees to execute the deeds necessary to carry such exchange into effect. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 161.)

**§ 21-210. Sale of particular estate or remainder—
Death while infant—Conversion of proceeds.**

Where an infant is entitled to a particular estate, as for life or years, and another person is entitled to an estate in remainder or reversion or executory devise in the same property, or such other person is entitled to the particular estate and the infant is entitled in remainder or reversion or by way of executory devise, the court shall have the same power to decree a sale or exchange as aforesaid, having reference solely to the interests of the infant: *Provided*, The other person so interested will consent to such sale or exchange and execute the conveyances necessary to carry the same into effect. And the court shall direct the annual income from the fund or property acquired by such sale or exchange to be applied according to the interests of the respective parties. And in case of the death of said infant under twenty-one years of age the proceeds of any such sale not invested in real estate shall be deemed real estate and pass to those who would be entitled if the property had not been sold. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 162; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted after the word "reversion" in the first sentence the words "or executory devise."

§ 21-211. Lease of infant's estate—Where consent necessary.

In cases where it shall appear to the court that it will be to the advantage of the infant that his real estate shall be demised, the said court shall have the power to decree that the same be so demised for a term of years not to exceed the minority of the infant, yielding such rents and on such terms and conditions as the court may direct: *Provided*, That where the infant is entitled to only a part of the estate as tenant in common, joint tenant, tenant of

the particular estate, or remainderman, or otherwise, all the owners of the other interests assent to the passing of such decree. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 163; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted after the word "court" in the first sentence the words "by proof taken in a similar proceeding to that provided for in the foregoing sections," and inserted in the proviso the words "tenant in common, joint tenant."

NOTES TO DECISIONS

**Assignment of contract 1
Mortgage of minor's realty 2**

1. Assignment of contract

Assignment of an existing lease is not a "demise" within this section providing for court approval of any demise of an infant's real estate. *Sweeney v. Jacobsen* (1952, 103 F. Supp. 393, 92 U.S. App. D.C. 93, affirmed 202 F.2d 461).

2. Mortgage of minor's realty.

Orphans court had power to authorize sale of minor's realty for his support, and hence power to authorize a mortgage. *Middleton v. Parke* (3 App. D. C. 149).

§ 21-212. Mortgage of infant's estate.

In cases where it shall appear to the court by proof that it would be for the benefit and advantage of the infant to raise money by mortgage for his maintenance or to improve his real property or to pay off charges, liens, or incumbrances thereon, the court may, on the application of the guardian or of the infant by next friend, decree a conveyance of said property, by mortgage or deed of trust, to be executed by the guardian, on such terms as may seem to the court expedient; and this section shall apply to cases where the infant holds jointly or in common with other persons of full age or holds a portion of the estate, as a particular estate, for life or years or in remainder or reversion: *Provided*, That the other owners interested, all being of full age, will consent to such decree and unite in said mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1216, ch. 854, § 164; June 30, 1902, 32 Stat. 527, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted the words "as provided in the foregoing section" and inserted after the word "mortgage," the words "for his maintenance or."

§ 21-213. Contract for sale by adult in behalf of himself and infant or person non compos mentis.

If any contract has been made for the sale of the lands, tenements, or hereditaments by any person or persons interested therein jointly or in common with any infant, idiot, or person non compos mentis, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of all the circumstances, shall consider to be for the interest and advantage both of such infant, idiot, or person non compos mentis and of the other person or persons interested therein to be confirmed, the court may confirm such contract and order a deed to be executed according to the same; and all sales and deeds made in pursuance of such order shall be sufficient in law to transfer the estate and interest of such infant, idiot, or person non compos mentis in such lands, tenements, or hereditaments. (Mar. 3, 1901, 31 Stat. 1203, ch. 854, § 93.)

§ 21-214. Gifts of securities to minors in District—Registration—Delivery—Deed of gift.

(a) With respect to the District of Columbia, any adult person may make a gift of securities to a person who has not attained the age of 21 years on the date of the gift (hereinafter referred to as the "minor") in the following manner:

(1) Securities, if in registered form, shall be registered by the donor in his own name or in the name of any adult member of the minor's family or in the name of any guardian of the minor, followed by the words "as custodian, for

-----,
(Name of minor)

a minor, under the laws of the District of Columbia", and the securities shall be delivered to the person in whose name they are thus registered as custodian. If the securities are thus registered in the name of the donor as custodian such registration shall of itself constitute the delivery required by this section.

(2) Securities, if in bearer form, shall be delivered by the donor to any adult member of the minor's family, other than the donor, or to any guardian of the minor, accompanied by a deed of gift duly acknowledged in substantially the following form, signed by the donor and the person designated therein as custodian:

DEED OF GIFT UNDER THE LAWS OF THE DISTRICT OF COLUMBIA

I, ----- do hereby deliver to
(Name of donor)

-----, as custodian for
(Name of custodian)

-----, a minor, under the
(Name of minor)

laws of the District of Columbia, the following security(ies): Principal amount \$-----,
of the-----

(Description of security)

Serial number of security-----
or

Certificate No. -----, representing

----- shares of the -----
(Class or type of stock)

stock of -----
(Name of company)

(Signature of donor)

I, -----, do hereby
(Name of custodian)

acknowledge receipt of the above described security(ies).

(Signature of custodian)

Dated: -----

(b) The person designated as a custodian under this section is hereinafter called "the custodian". (Aug. 3, 1956, 70 Stat. 1028, ch. 947, § 1.)

§ 21-215. Gift irrevocable—Rights and duties of guardian.

A gift made in the manner prescribed in section 21-214 shall be irrevocable and shall convey to the minor indefeasibly vested legal title to the securities thus delivered, but no guardian of the person or property of the minor shall have any rights,

duties or authority with respect to any property held at any time by the custodian under the authority of sections 21-214 to 21-224 unless said guardian shall himself be or become custodian in accordance herewith. (Aug. 3, 1956, 70 Stat. 1028, ch. 947, § 2.)

§ 21-216. Management of gift property by custodian—Rights, powers and duties of custodian.

(a) The custodian shall hold, manage, invest and reinvest the property held by him as custodian, including any unexpended income therefrom, as hereinafter provided. He shall collect the income therefrom and apply so much or the whole thereof and so much or the whole of the other property held by him as custodian as he may deem advisable for the support, maintenance, education and general use and benefit of the minor, in such manner, at such time or times, and to such extent as the custodian in his absolute discretion may deem suitable and proper, without court order, without regard to the duty of any person to support the minor and without regard to any other funds which may be applicable or available for the purpose. To the extent that property held by the custodian and the income thereof is not so expended, it shall be delivered or paid over to the minor upon the minor's attaining the age of twenty-one years, and in the event that the minor dies before attaining the age of twenty-one years it shall thereupon be delivered or paid over to the estate of the minor.

(b) The custodian may sell, exchange, convert, or otherwise dispose of any and all of the securities or other property held by him in such manner and at such time or times, for such prices and upon such terms as he may deem advisable; he shall have the power in his sole and absolute discretion to retain any and all securities delivered to him within the meaning and under the authority of sections 21-214 to 21-224 without reference to the statutes relating to permissible investments by fiduciaries; he shall invest the minor's property in such securities as would be acquired by prudent men of discretion and intelligence who are seeking a reasonable income and the preservation of their capital without reference to the statutes relating to permissible investments by fiduciaries or hold part or all of the same in one or more bank accounts in his name as such custodian; he may vote in person or by general or limited proxy with respect to any securities held by him; he may consent directly or through a committee or other agent to the reorganization, consolidation, dissolution or liquidation of any corporations, the securities of which may be held by him, or to the sale, lease, pledge or mortgage of any property by or to any such corporation.

(c) In addition to the foregoing rights, powers, and duties with respect to any securities or other property held by the custodian, the custodian, in his name as such custodian, shall have all the powers of management which a guardian of the property of the minor would have.

(d) The custodian may execute and deliver any and all instruments in writing which he may deem advisable to carry out any of the foregoing powers. No issuer of securities, transfer agent, registrar, or bank, or other person acting on the instructions of

any person purporting to be a custodian or donor, shall be responsible for determining whether any person has been duly designated as a custodian under sections 21-214 to 21-224, or whether any purchase, sale, or transfer to or by any person as custodian is in accordance with or authorized by sections 21-214 to 21-224, or shall be obliged to inquire into the validity under sections 21-214 to 21-224 of any instrument or instructions executed or given by a person purporting to act as custodian or donor, or be bound to see to the application by any person purporting to act as custodian of any money or other property paid or delivered to him. All registered securities held by the custodian from time to time shall be registered in his name followed by the words "as custodian for

(Name of minor)

a minor under the laws of the District of Columbia". All other property held by the custodian for the minor under the authority of sections 21-214 to 21-224 shall be kept separate and distinct from the custodian's own personal funds and property and shall be maintained at all times in such a manner as to identify it clearly as the minor's property held by the custodian under the authority of sections 21-214 to 21-224. (Aug. 3, 1956, 70 Stat. 1029, ch. 947, § 3.)

§ 21-217. Custodian not to receive compensation for services—Reimbursement for expenses.

A person acting as custodian, other than a guardian of the property of the minor, shall receive no compensation for his services but shall be entitled to reimbursement from the property held by him as custodian for the reasonable expenses incurred in the performance of his duties hereunder. A guardian of the property of the minor, when acting as custodian under the authority of sections 21-214 to 21-224, may receive such additional compensation for his services as guardian as he would be entitled to receive if the property held by him as custodian hereunder were held by him in his capacity as guardian, in addition to the other property of the minor held by him in that capacity. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 4.)

§ 21-218. Bond—Liability of custodian.

A custodian who is not compensated for acting as such shall be under no obligation to give bond for the faithful performance of his duties and shall not be liable for any losses to the property held by him except such as are the result of his bad faith or intentional wrongdoing or result from his investing the minor's property in a manner other than as prescribed in section 21-216 (b). (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 5.)

§ 21-219. Resignation—Steps required to complete resignation.

A custodian may resign by (1) executing and duly acknowledging an instrument of resignation designating a successor custodian who is an adult member of the minor's family or a guardian of the minor, (2) delivering such instrument to the successor custodian, (3) causing securities, if in registered form, to be registered in the name of the successor

custodian as such, and (4) delivering to the successor custodian such securities so registered together with all other property held by him as custodian. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 6.)

§ 21-220. Death or incapacity of custodian—Appointment of successor.

In the event of the death or incapacity of the custodian before the minor attains the age of twenty-one years, if there is a duly appointed and acting general guardian of the property of the minor at the time of such death or incapacity of the custodian, he shall become the successor custodian, but if there is no duly appointed and acting general guardian of the property of the minor at said time, the successor custodian shall be the adult member of the minor's family or a guardian of the minor, designated by will or duly acknowledged instrument of appointment executed by the last acting custodian. If no such designation is made by the last acting custodian, his legal representative may designate in writing an adult member of the minor's family or a guardian of the minor a successor custodian. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 7.)

§ 21-221. Rights, powers and duties of successor custodian.

Any successor custodian shall have all the rights, powers and duties of a custodian under the authority of sections 21-214 to 21-224. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 8.)

§ 21-222. Action against custodian for accounting.

The next friend or legal representative of a minor, in whose behalf securities are held by a custodian under sections 21-214 to 21-224, or the minor in his own right, no later than one year after reaching twenty-one years of age, shall be entitled to maintain an action in the United States District Court for the District of Columbia against such custodian, or his estate for an accounting and delivery of the securities and unexpended income, in the event of the death, inability, or neglect to act of such custodian. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 9.)

§ 21-223. Definitions.

(a) The term "security" as used in sections 21-214 to 21-224 means any note, stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, certificate of deposit for a security or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing.

(b) A security is in "registered form" when its terms specify a person entitled to the security or to the rights it evidences and specify that its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer.

(c) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any endorsement.

(d) The term "member of the minor's family" as used in sections 21-214 to 21-224 means the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(e) The term "legal representative" as used in sections 21-214 to 21-224 means, as may be appropriate in the circumstances, the executor, administrator, general guardian, or committee (conservator) of the property of the person to whose legal representative reference is made.

(f) A gift made under authority of sections 21-214 to 21-224 to a guardian of the minor as custodian shall be deemed to have satisfied the requirements of said sections if the person to whom delivery has been made is either guardian of the person or guardian of the property of the minor, duly appointed in the District of Columbia or in the State, Territory or country where the minor was domiciled at the time of the delivery of the gift. (Aug. 3, 1956, 70 Stat. 1030, ch. 947, § 10.)

§ 21-224. Method for making gifts of securities not exclusive.

Sections 21-214 to 21-224 shall not be construed as providing an exclusive method for making gifts of securities to minors. (Aug. 3, 1956, 70 Stat. 1031, ch. 947, § 11.)

Chapter 3.—INSANE PERSONS. INQUESTS

Sec.

- 21-301. Estates of lunatics—Accounting—Compensation—Dower.
- 21-302. No committee to be appointed for more than five wards.
- 21-303. Power of court over lunatics' estates—Conversion of proceeds of sale.
- 21-304. Sale of estate for maintenance or to pay judgment—Mortgage.
- 21-305. Sales to be ratified by court.
- 21-306. Proceedings by Commissioners to determine mental condition.
- 21-307. Jury in lunacy proceedings instituted by Commissioners—Appointment of committee or trustee—Costs and expense of maintenance—Payment.
- 21-308. Commission on Mental Health.
- 21-309. Salaries of executive secretary and physician-members of Commission.
- 21-310. Insanity proceedings—Application for writ de lunatico inquirendo, and for observation.
- 21-311. Issuance of attachment—Examination.
- 21-312. Report to be served—Demand for jury trial—Trial.
- 21-313. Jury.
- 21-314. Procedure if no jury trial demanded.
- 21-315. Commitment after trial.
- 21-316. Recommendations of Commission.
- 21-317. Transfer of nonresident insane—Confinement of residents—Custody of harmless insane.
- 21-318. Liability of relatives for costs of maintenance and treatment.
- 21-319. Insane persons having property—Inquiry by board—Charge for care.
- 21-320. Hearing to restore status of paroled person—Petition—Trial—Decision.
- 21-321. Witness fees.
- 21-322. Undertaking.
- 21-323. Applications and certificates for commitment and confinement.
- 21-324. Penalty for false petition or affidavit.
- 21-325. Existing remedies preserved.
- 21-326. Apprehension and detention by police, without warrant, of insane persons found in public places.
- 21-327. Arrest at other than public places.
- 21-328, 21-329. Omitted.
- 21-330. Certificate by physician as to sanity or insanity—Qualifications of physician.
- 21-331. Making false affidavit or certificate—Penalty.
- 21-332. Discharge of patients on bond.
- 21-333. Insane persons not to be confined in jail.

§ 21-301. Estates of lunatics—Accounting—Compensation—Dower.

The equity court shall have full power and authority to superintend and direct the affairs of persons non compos mentis, and to appoint a committee or trustees for such persons after hearing the nearest relatives of such person, or some of them if residing within the jurisdiction of the court, and to make such orders and decrees for the care of their persons and the management and preservation of their estates, including the collection, sale, exchange, and reinvestment of their personal estate, as to the court may seem proper. In the event that the person has no known relative residing within the jurisdiction of the court, then the court shall appoint some disinterested person to act as guardian ad litem for such person in the proceedings for the appointment of a committee or trustee. The committee or trustee shall account for all profit and increase of the estate of such person and the annual value thereof and shall be credited for taxes, repairs, improvements, expenses. The court shall allow a reasonable compensation for services rendered by the committee not exceeding a commission of 5 per centum of the amounts collected if and when disbursed. The court may, upon such terms as under the circumstances of the case it may deem proper, decree the conveyance and release of any right of dower of a person non compos mentis, whether the same be inchoate or otherwise. (Mar. 3, 1901, ch. 854, § 115b, as added June 30, 1902, 32 Stat. 524, ch. 1329, and amended Feb. 10, 1927, 44 Stat. 1067, ch. 100.)

AMENDMENT

1927—Act Feb. 10, 1927, changed "the said court" in the first line of this section to "the equity court," and inserted the second, third, and fourth sentences.

RIGHT OF DOWER

Abolition of right of dower, and its incidents, see § 18-201a.

CROSS REFERENCES

- Ancillary guardian for nonresident infants and persons non compos mentis, see §§ 21-115, 21-116.
- Drunkards and drug addicts, see § 21-401.
- Duty to file income tax returns, see § 47-1515.
- Duty to file schedule of personal property for taxation, distraint of property for nonpayment, see §§ 47-1203, 47-1301.
- Exemption from military service, see § 39-101.
- Guardian ad litem for persons under disabilities in condemnation proceedings to obtain land for streets, see § 7-204.
- Guardian ad litem in condemnation proceedings, see § 16-604.
- Guardian ad litem in proceedings before commission on mental health, see § 21-308.
- Guardian ad litem in proceedings to condemn land for United States, see § 16-627.
- Guardian ad litem in proceedings to probate will, see § 19-303.
- Liability for income taxes, see § 47-1524.
- May redeem from tax sales within one year after removal of disability, see § 47-1003.
- Other provisions concerning property and estates of persons non compos mentis, see §§ 21-202, 21-203, 21-213.
- Release of dower generally, see § 30-216.
- Rights under real estate leases, see §§ 45-924 to 45-930.
- Suits to annul marriage, see § 30-104.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see Rule 2, United States Code, Title 28, Appendix.

NOTES TO DECISIONS

Adjudication as necessary 1
 Allegations of petition 2
 Costs and maintenance of ward committed to Government Hospital 3
 Functions of committee 4
 Hearing to be allowed relatives 5
 Lunatic's suit for annulment of marriage 6
 Procedural requirements 7
 Procedure for commitment 8
 Property, jurisdiction over 9
 Property rights of surviving co-owner 10
 Reimbursement 11
 Residence 12
 Selection of committee 13

1. Adjudication as necessary

This section is not operative until a person has been adjudged non compos mentis except in case of application for an ancillary committee. *Cooper v. Burton* (1942, 127 F. 2d 741, 75 U.S. App. D.C. 298).

A general or domiciliary committee for an allegedly insane person in New Jersey could not be appointed by District of Columbia courts without an adjudication of insanity, and there could not be an adjudication of insanity in absence of personal jurisdiction over the person. *Id.*

This section relates solely to appointment of committees or trustees for persons who have been adjudged non compos mentis, and it could not be relied on in support of a petition to obtain an adjudication to that effect. *Id.*

2. Allegations of petition

Under no statute is court authorized to commit any person for mental examination on petition which fails to state facts upon which an allegation of present insanity is based. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

3. Costs and maintenance of ward committed to Government Hospital

District of Columbia has an action against the committee of an insane person with homicidal tendencies, who has been committed to Government Hospital for the Insane, to recover from his estate for costs and maintenance. *DePue v. District of Columbia* (45 App. D.C. 54, Ann. Cas. 1917E, 414).

4. Functions of committee

Under law of District of Columbia, committee of an incompetent is the mere conservator of the ward's estate and his authority is mainly ministerial or administrative. *In re Estate of Church* (1956, 141 F. Supp. 703).

Under law of District of Columbia, committee of an incompetent cannot, without authority of the court which appointed him, exercise a right which is personal to the incompetent or perform an act which is contrary to the incompetent's intentions expressed before his disability. *Id.*

This section conferring on equity court full power and authority to superintend and direct affairs of persons non compos mentis, implies that any discretionary power of committee of an incompetent must be exercised under supervision of the appointing court. *Id.*

5. Hearing to be allowed relatives

Appointment before hearing relatives is voidable and not void. *Coleman v. Schwartz* (1921, 268 F. 701, 50 App. D.C. 111).

6. Lunatic's suit for annulment of marriage

Lunatic may file suit for annulment of marriage, through next friend, but committee should be joined as party defendant. *Mackey v. Peters* (22 App. D. C. 341).

7. Procedural requirements

Procedural requirements of civil insanity statute were enacted by Congress for protection of all persons alleged to be insane in civil proceedings, and those statutory safeguards are not to be withheld from those with criminal records. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U. S. App. D. C. 248).

8. Procedure for commitment

This section dealing with court's power to superintend and direct affairs of persons who have been adjudged non compos mentis provides no procedure for commitment of

insane persons. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

9. Property, jurisdiction over

District of Columbia courts have power to grant protection to property of insane persons wherever they may be at a particular time, if the property itself is located in the District. *Cooper v. Burton* (1942, 127 F. 2d 741, 75 U. S. App. D. C. 298).

10. Property rights of surviving co-owner

Where one purchased United States Savings Bonds in her own name and in name of her son as co-owners, and mother then became incompetent and her committee unnecessarily redeemed bonds without authorization of court or notice to co-owner son, and mother then died, son was entitled to substituted bearer bonds or to whatever funds could be traced to bearer bonds which existed at time of mother's death. *In re Estate of Church* (1956, 141 F. Supp. 703).

11. Reimbursement

Under section 21-318 providing for commitment of insane person and that committee of such person, if estate is sufficient for purpose, shall pay cost to District of Columbia for maintenance, and that, if it appears that insane person has not sufficient estate out of which his maintenance may "properly" be fully met, then court may order payment by relatives of such sum necessary to provide for maintenance, the word "properly" does not refer to adequacy of estate after making allowance for support of dependents, but refers to general equity power of court to make such orders and decrees for management and preservation of insane person's estate as to court may seem proper, and hence act does not give authority to fix payments by committee at less than full cost of care where funds of estate are adequate. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

Provision that the committee or trustee of insane person shall reimburse the District for care and expenses up to the time of the appointment of such committee or trustee was intended to relate back to the date of the passage of the act and no further. *Baker v. District of Columbia* (39 App. D. C. 42).

12. Residence

The United States District Court for the District of Columbia has no power to adjudicate the mental condition of a lunatic in New Jersey because she formerly lived in the District. *Cooper v. Burton* (1942, 127 F. 2d 741, 75 U. S. App. D. C. 298).

13. Selection of committee

Court has discretion in selection of committee. *Coleman v. Schwartz* (1921, 268 F. 701, 50 App. D.C. 111).

§ 21-302. No committee to be appointed for more than five wards.

No person shall be appointed by any court of the District of Columbia as committee or trustee if such person is serving as committee or trustee of as many as five non compos mentis persons. (Mar. 3, 1927, 44 Stat. 1383, ch. 349.)

§ 21-303. Power of court over lunatics' estates—Conversion of proceeds of sale.

The equity court shall have the same power in respect of the freehold or leasehold estates of such persons as is provided for in relation to the estates of infants, to be exercised upon the application of the guardian, trustee, or committee of such person; and upon the death of any such person non compos mentis the proceeds of any sale of his estate which may have been invested otherwise than in real estate shall be deemed real estate, and shall descend as the property or estate would if it had not been sold. (Mar. 3, 1901, ch. 854, § 115c, as added June 30, 1902, 32 Stat. 524, ch. 1329.)

NOTE TO DECISION

1. Jurisdiction of court

Courts of equity have no inherent jurisdiction to decree sale of lunatic's property for better investment. *Clark v. Mathewson* (7 App. D. C. 382).

§ 21-304. Sale of estate for maintenance or to pay judgment—Mortgage.

The said court may order any part of the estate of a person non compos mentis, for whom a committee, guardian, or trustee has been appointed, to be sold, when necessary for his maintenance, upon application of said committee, guardian, or trustee, and full proof of the necessity of such sale. Upon the application of any judgment creditor or mortgagee of a person non compos mentis the court may decree a sale of the real or personal estate of such non compos mentis, or such part thereof as may be necessary to pay the claim of such creditor, upon being satisfied that such claim is just and there are no other means of paying the same. (Mar. 3, 1901, ch. 854, § 115d, as added June 30, 1902, 32 Stat. 524, ch. 1329.)

CROSS REFERENCE

Liability of relatives or committee for costs of maintenance and treatment, see § 21-318.

NOTES TO DECISIONS

1. Payment of expenses of incompetent

It is the duty of the committee or trustee to pay maintenance charges up to the date of appointment, and the expense thereafter becomes a liability of the lunatic's estate, to be enforced under the general statutes for the administration of lunatic's property. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

St. Elizabeths Hospital is a United States Government institution, but insane persons residing in the District of Columbia are admitted and the expense of their support and treatment is chargeable to the District of Columbia. *Id.*

§ 21-305. Sales to be ratified by court.

No sales of the property of infants or persons non compos mentis made by authority of sections 21-301 to 21-304 shall be valid and effectual to pass title to the property sold until they have been reported to and ratified by the court. (Mar. 3, 1901, ch. 854, § 115e, as added June 30, 1902, 32 Stat. 524, ch. 1329.)

§ 21-306. Proceedings by Commissioners to determine mental condition.

Proceedings instituted upon petition of the commissioners of the District of Columbia to determine the mental condition of alleged indigent insane persons and persons alleged to be insane, with homicidal or otherwise dangerous tendencies shall be according to the provisions of the code of law for the District of Columbia relating to lunacy proceedings. (Feb. 23, 1905, 33 Stat. 740, ch. 738, § 1.)

CODIFICATION

Act Mar. 3, 1903, 32 Stat. 1043, ch. 1006, § 1, which required proceedings to commit indigent insane persons, and insane persons having violent or dangerous tendencies to be taken in the equity court of the District and to be in conformity with the law in force in the District on Jan. 30, 1899, is omitted as superseded by this section. Insanity proceedings are presently covered by act Aug. 9, 1939, 53 Stat. 1293, ch. 620, which is classified to section 21-310 et seq.

§ 21-307. Jury in lunacy proceedings instituted by Commissioners—Appointment of committee or trustee—Costs and expense of maintenance—Payment.

The jury to be used in case the commissioners of the District of Columbia are the petitioners shall be impaneled by the United States marshal for said District, upon order of the court, from the jurors in attendance upon the criminal courts of said District, who shall perform such services in addition to and as part of their duties in said criminal courts: *Provided*, That during such time as jurors are not in attendance upon said criminal courts the court may direct the said marshal to impanel the jurors in attendance upon the municipal court of said District, who shall perform such duties in addition to and as part of their duties in said municipal court; or the said court may direct a special jury to be summoned for such inquisitions. In case any such person adjudged to be of unsound mind has property, real or personal, the equity court of said District shall have full power in the same cause to appoint a committee or trustee of the person and estate of such person, according to the provisions of section 21-301, and such committee or trustee shall reimburse, out of the funds of the lunatic, the District of Columbia for all court costs expended or incurred by it and for all moneys by it expended or costs incurred in caring for and treating such insane person up to the time of such appointment. (Feb. 23, 1905, 33 Stat. 740, ch. 738, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Jury in lunacy proceedings when instituted by persons other than commissioners of district, see § 21-313.

Liability of relatives for cost of maintenance, see § 21-318.

NOTES TO DECISIONS

Claim against veterans' committee 1
Reimbursement 2

1. Claim against veterans' committee

District of Columbia could not recover, out of funds paid by Veterans' Administration to committee of veteran, for payments made to hospital for veteran's maintenance and treatment prior to appointment of committee for veteran. *District of Columbia v. Reilly etc.* (1957, 249 F. 2d 524, 102 U. S. App. D. C. 9).

2. Reimbursement

Where insane person was committed to hospital and committee was appointed of person and estate, and committee was ordered to pay certain sum, less than actual cost, to District of Columbia for hospital care, upon death of insane person, even if estate were inadequate to satisfy entire amount of balance of cost of care, District would be entitled to judgment for entire balance and to be paid its pro rata share out of proceeds of estate on same basis as any other creditor. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

§ 21-308. Commission on Mental Health.

There is hereby established a Commission on Mental Health (hereinafter referred to as the commission), which shall examine alleged insane persons, inquire into the affairs of such persons, and the affairs of those persons legally liable as hereinafter provided for the support of said alleged insane persons, and make reports and recommendations to

the court as to the necessity of treatment, the commitment, and payment of the expense of maintenance and treatment of such insane persons. The said commission shall be drawn from a panel of nine, who shall be appointed by the judges of the United States District Court for the District of Columbia.

Eight members of said panel shall be physicians who have been practicing medicine in the District of Columbia, and who have had not less than five years' experience in the diagnosis and treatment of mental diseases, none of whom is financially interested in the hospital in which the alleged insane person is to be confined, and the ninth member shall be a member of the bar of the District Court of the United States for the District of Columbia who has been engaged in the general active practice of law in the District of Columbia for a period of at least five years prior to his appointment. Each physician member of the panel shall be assigned by the Chief Judge of the United States District Court for the District of Columbia to active service on the commission for three months in each calendar year, and the Chief Judge may change such assignments at any time at his discretion. The two physician members on active service and the lawyer member shall constitute the commission for the purposes of this section. The members to whom any case is referred shall continue to act in respect to that case until its final disposition, unless the court shall otherwise order. Physician members of the commission may practice their profession during their tenure of office. The lawyer member of the commission shall be chairman thereof, and it shall be his duty, and he shall have authority to direct the proceedings and hearings in such a manner as to insure dependable ascertainment of the facts, by relevant, competent, and material evidence, and so as to insure a fair and lawful conduct and disposition of the case. The lawyer member shall devote his entire time to the work of the commission. The judges shall also appoint an alternate lawyer member of the commission, who shall have the same qualifications as that member, and who may be designated by the Chief Judge to act as a member of the commission in absence of the lawyer member; for such service the alternate shall receive for each day of actual service the same compensation as fixed in accordance with the provisions of the Classification Act of 1949, as amended, for the lawyer member of the commission. Original appointments of physicians shall be two each for one, two, three, and four years, respectively, the lawyer member to be appointed for four years. Thereafter appointments shall be for four years each. The salaries of the members of the commission and of employees shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended.

The said commission shall act in all respects under the direction of the equity court. The court may compel, by subpoena, the appearance of alleged insane persons before the commission for examination, and may compel the attendance of witnesses before the commission. If it shall appear to the satisfaction of the commission that the appearance before it of any alleged insane person is prevented by rea-

son of the mental or physical condition of such person, the commission may, in its discretion, examine such person at the hospital in which such person may be confined, or, with the consent of the relatives, or of the person with whom such person may reside, at the residence of the alleged insane person.

The court may in its discretion appoint an attorney or guardian ad litem to represent the alleged insane person at any hearing before the commission or before the court, or before the court and jury, and shall allow the attorney or guardian ad litem so appointed a reasonable fee for his services. Such fees may be charged against the estate or property, if any, of the alleged insane person, or taxed as costs against the petitioner in the proceedings, or, in the case of an indigent person, charged against the funds of the commission, as the court, in its discretion may direct.

The office and records of the sanitary officer, District of Columbia, are hereby transferred from the Metropolitan Police Department to the commission and the sanitary officer shall be secretary of the commission. Suitable quarters shall be provided for the commission by the commissioners of the District of Columbia. (June 8, 1938, 52 Stat. 625, ch. 326, § 2; Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 16; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 2, 1949, 63 Stat. 889, ch. 383, § 8; Oct. 25, 1949, 63 Stat. 889, ch. 710; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

Act Oct. 25, 1949, amended the first paragraph by striking out, after the words "panel of nine" the words "bona fide residents of the District of Columbia who have resided in said District for a continuous period of three years immediately preceding their appointment" and changed "District Court of the United States" to "United States District Court," which change was previously executed to conform to act June 25, 1948, as amended by act May 24, 1949.

Act Aug. 2, 1949, deleted provisions which required the Commissioners to include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized.

1939—Act Aug. 9, 1939, deleted the words "for such service the alternate shall receive \$10 for each day of actual service" and inserted in lieu thereof the following: "For such service the alternate shall receive, for each day of actual service, the same compensation as fixed in accordance with the provisions of the Classification Act of 1923, as amended, for the lawyer member of the Commission."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice" in three instances.

CROSS REFERENCES

Annual estimates of expenditures, see § 47-213.

Compensation of executive secretary and physician-members, see § 21-308.

Drunkards and drug addicts, see § 21-401.

NOTES TO DECISIONS

Appointment of counsel 1
Habeas corpus proceeding 2
Representation by counsel 3

1. Appointment of counsel

Alleged insane person has a right to be represented by counsel in proceeding to commit him as a person of unsound mind, and if he is not so represented independently the court shall appoint either an attorney or guardian ad litem. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U. S. App. D. C. 247).

Where proceeding was commenced to commit person to hospital as a person of unsound mind, and court appointed counsel for such person and granted her request that counsel be discharged, such person was not represented by counsel or guardian ad litem at proceeding, and her commitment was invalid. *Id.*

2. Habeas corpus proceeding

Even though it appears factually on a habeas corpus hearing that petitioner is insane, if he has been confined under a void statute or a void proceeding, he is entitled to order of discharge so far as his then confinement is concerned. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U. S. App. D. C. 247).

Where person of unsound mind had been committed to hospital under invalid proceeding, habeas corpus proceeding would be remanded to district court for discharge of party from custody unless within five days after entry of order new incompetency proceedings were instituted. *Id.*

Where petitioner seeks writ of habeas corpus to obtain release from confinement in mental hospital on ground that his mental health is restored, and petitioner demands an examination by independent experts, or in a doubtful case, even in absence of such a demand, it is the right of court to seek assistance of Commission on Mental Health in determining sanity of petitioner. *De Marcos v. Overholser* (1943, 137 F. 2d 698, 78 U.S. App. D.C. 131, certiorari denied 64 S. Ct. 157, 320 U. S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U. S. 813, 88 L. Ed. 491).

This section establishing the Commission of Mental Health vests a discretion in court to require the Commission's expert assistance in a habeas corpus proceeding in which by reason of his poverty petitioner is unable to secure the testimony of other professional witnesses. *Id.*

In habeas corpus proceeding where petitioner sought release from confinement on ground that his mental health was restored, and requested that court provide expert witnesses in petitioner's behalf, not members of Commission on Mental Health, court denying request should have offered petitioner an examination by the Commission, but defect was cured by petitioner's insistence in appellate court that such relief if offered would be refused. *Id.*

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to this chapter, the record raised sufficient doubt as to petitioner's insanity at present time to require a re-examination of his mental condition by the Commission on Mental Health in accordance with this chapter, under which he was committed. *Ex parte De Marcos* (1946, 65 F. Supp. 231).

Where evidence of petitioner seeking release from detention and of doctor-psychiatrist in charge of petitioner was insufficient to create doubt on judgment of those detaining petitioner as insane, trial judge did not abuse his discretion in failing to submit without request, question of petitioner's mental condition to the Commission on Mental Health. *Appel v. Overholser* (1948, 164 F. 2d 511, 82 U.S. App. D.C. 379).

3. Representation by counsel

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always be an attorney, he may be a relative or friend selected by the court. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U. S. App. D. C. 247).

Where question was raised whether representation by counsel or guardian ad litem was required in incompetency proceeding before Mental Health Commission and Court of Appeals held the commitment invalid because of absence of representation before both the commission and the court, the ruling as to need for representation before commission was not obiter dictum

even if commitment could have been found to be invalid for lack of representation in court alone. *Id.*

§ 21-309. Salaries of executive secretary and physician-members of Commission.

The salary of the executive secretary of the Commission on Mental Health shall be at the rate of \$3,000 per annum and the salary of each physician-member shall be at the rate of \$3,800 per annum. (July 15, 1939, 53 Stat. 1007, ch. 281, § 1; June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

CODIFICATION

Provisions relating to the salary of each physician-member were inserted by act June 12, 1940.

§ 21-310. Insanity proceedings—Application for writ de lunatico inquirendo, and for observation.

Any person with whom an alleged insane person may reside, or at whose house he may be, or the father or mother, husband or wife, brother or sister, or the child of lawful age of any such person, or the nearest relative or friend available, or the committee of such person, or an officer of any charitable institution, home, or hospital in which such person may be, or any duly accredited officer or agent of the Board of Public Welfare, or any officer authorized to make arrests in the District of Columbia who has arrested any alleged insane person under the provisions of sections 21-326 to 21-331, may apply for a writ de lunatico inquirendo and an order of commitment, or either thereof, for any alleged insane person in the District of Columbia, by filing in the United States District Court for the District of Columbia a verified petition therefor, containing a statement of the facts upon which the allegation of insanity is based.

Any person believing he has, or is about to, become mentally ill may, upon his own written application, in the discretion of the chief psychiatrist of Gallinger Municipal Hospital, enter Gallinger Municipal Hospital for observation and place himself subject to examination and commitment as hereinafter provided. (Aug. 9, 1939, 53 Stat. 1293, ch. 620, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred to Department of Health and Department of Public Welfare, see note under § 3-102.

REPEALS

Section 17 of act Aug. 9, 1939, provided that: "All Acts or parts of Acts in conflict herewith are hereby repealed."

SEPARABILITY OF PROVISIONS

Section 18 of act Aug. 9, 1939, provided that: "If any provision of this Act [adding sections 21-310 to 21-318, 21-320 to 21-325 and amending section 21-308] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

PRIOR PROVISIONS

Act Mar. 3, 1901, ch. 854, § 115a, as added June 30, 1902, 32 Stat. 524, ch. 1329, and amended Apr. 19, 1920, 41 Stat.

556, ch. 153, provided that: "All writs de lunatico inquirendo shall issue from the equity court, and a justice holding said court shall preside at all inquisitions of lunacy, and may impanel a jury from among the petit jurors in attendance in the Supreme Court of the District of Columbia."

APPOINTMENT OF FIDUCIARIES OF PROPERTY LOCATED OUTSIDE DISTRICT OF COLUMBIA OR BELONGING TO CORPORATIONS OR PERSONS HAVING LEGAL RESIDENCE OR LOCATION OUTSIDE DISTRICT OF COLUMBIA

Act Oct. 1, 1890, 26 Stat. 632, ch. 1246, provided in part that: "The courts of the District of Columbia shall not have power to appoint any trustee, trustees, guardians, receivers, or other trustee of a fund or property located outside of the District of Columbia, or belonging to a corporation or person having a legal residence or location outside of said District."

CROSS REFERENCES

Commitment of feeble-minded persons, see § 32-622.

General provisions concerning feeble-minded person, including inquests, commitment, and discharge, see §§ 32-603 to 32-629.

Other provisions concerning insane persons, criminally insane, inquests, commitment, payment of expenses, see §§ 24-301 to 24-303, 32-401 to 32-407.

FEDERAL RULES OF CIVIL PROCEDURE

The rules do not apply to lunacy proceedings, see Rule 81(a) (1), U.S. Code, title 28, Appendix.

NOTES TO DECISIONS

Commitment procedure	2
Community interest	9
Construction	3
With other laws	4
Decision under prior law	1
Habeas corpus	5
Nearest relative available	6
Right to counsel	7
Sufficiency of petition	8

1. Decision under prior law

The United States District Court is not shown to have lost jurisdiction over either the subject matter of the criminal prosecution or the person of petitioner, by reason of the proceedings to determine his sanity, or those connected therewith or consequent thereon (D. C. 1901 Edit. § 927). *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

2. Commitment procedure

When person suspected of insanity is also accused of crime, trial court is not to be permitted to commit such person to a mental hospital without benefit of a jury or of the Mental Health Commission, even though the person is competent to stand trial, but there must be a report and recommendation by the commission, a jury's verdict if demanded, and a district court order. *Williams v. Overholser, Sup't etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

3. Construction

Where aunt was of unsound mind, she could not care for herself and her property, niece was interested in her welfare, and suitable committee had been appointed after proceedings in which all relatives took part and to which none objected, the description under this section of the person who may file petition for appointment of committee should be liberally construed. *Duvall v. Humphrey* (1946, 153 F. 2d 798, 80 U.S. App. D.C. 403).

4. Construction with other laws

Section 21-326 providing for apprehension and detention by police of insane persons found in public places must be read together with other sections of civil insanity statute, and particularly this section and section 21-311 implementing procedure initiated under section 21-326. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

5. Habeas corpus

Where, after setting aside accused's plea of guilty to charge of public drunkenness, and committing accused to hospital for examination and observation, the municipal court found accused of unsound mind and ordered him confined to another hospital but did not determine whether accused was competent to stand trial, accused

would be entitled to release on writ of habeas corpus unless the municipal court determined that he was mentally incompetent to stand trial and ordered him confined on that ground or unless proper lunacy proceedings were instituted. *Williams v. Overholser, Sup't etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

Even though it appears factually on a habeas corpus hearing that petitioner is insane, if he has been confined under a void statute or a void proceeding, he is entitled to order of discharge so far as his then confinement is concerned. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D.C. 247).

Where person of unsound mind had been committed to hospital under invalid proceeding, habeas corpus proceeding would be remanded to district court for discharge of party from custody unless within five days after entry of order new incompetency proceedings were instituted. *Id.*

6. Nearest relative available

Under this section authorizing "nearest relative available" to file petition for writ of de lunatico inquirendo and for appointment of committee, the quoted phrase is an elastic term, and is not intended to require an aged relative, who might make himself available, if no one else were available, to bear the burden of starting a proceeding, but it is intended to exclude officious intermeddling. *Duvall v. Humphrey* (1946, 153 F. 2d 798, 80 U.S. App. D.C. 403).

Niece was "nearest relative available" entitled to file petition for writ of de lunatico inquirendo and for appointment of committee for aunt, where her 81-year-old brother and her 84-year-old sister joined with other relatives in requesting appointment of a committee. *Id.*

7. Right to counsel

Alleged insane person has a right to be represented by counsel in proceeding to commit him as a person of unsound mind, and if he is not so represented independently the court shall appoint either an attorney or guardian ad litem. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D.C. 247).

Where proceeding was commenced to commit person to hospital as a person of unsound mind, and court appointed counsel for such person and granted her request that counsel be discharged, such person was not represented by counsel or guardian ad litem at proceeding, and her commitment was invalid. *Id.*

8. Sufficiency of petition

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with this section permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. Williams* (1958, 252 F. 2d 629, 102 U.S. App. D.C. 248).

9. Community interest

The community is not without means of protecting itself if at time that a prisoner's sentence ends he is found to be a sexual psychopath, or to be insane or mentally incompetent. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

The existence of possibilities to protect society from, and to treat, prisoner convicted of sodomy, or other sexual crimes, in the event he is found to be a sexual psychopath, or insane, of unsound mind or otherwise defective during imprisonment or at time his sentence ends, does not relieve bench and bar of responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. *Id.*

§ 21-311. Issuance of attachment—Examination.

Upon the filing with the court of a verified petition as hereinabove provided, accompanied by the affidavits of two or more responsible residents of the District of Columbia setting forth that they believe the

person therein named to be insane or of unsound mind, the length of time they have known such person, that they believe such person to be incapable of managing his own affairs, and that such person is not fit to be at large or go unrestrained, and that if such person be permitted to remain at liberty the rights of persons and property will be jeopardized or the preservation of public peace imperiled or the commission of crime rendered probable, and that such person is a fit subject for treatment by reason of his or her mental condition, the court, or any judge thereof in vacation, may, in its or his discretion, issue an attachment for the immediate apprehension and detention, for preliminary examination, of such person in Saint Elizabeths Hospital and, unless found by the staff of Saint Elizabeths Hospital to be of sound mind, therein for a period not exceeding thirty days. Any person so apprehended and detained shall be given an examination within five days of his admission into Saint Elizabeths Hospital by the staff of Saint Elizabeths Hospital. The Superintendent of Saint Elizabeths Hospital is hereby authorized to receive and detain such persons, at the expense of the District of Columbia.

If any person while a patient in Gallinger Municipal Hospital being observed for his or her mental condition can not be cared for or treated adequately in said hospital or if such person be in need of treatment which can not be given properly in said hospital, then the superintendent of Gallinger Municipal Hospital may effect the transfer and temporary commitment of such person to Saint Elizabeths Hospital by executing a petition as provided by section 21-310, accompanied by the certificate of the chief psychiatrist of Gallinger Municipal Hospital setting forth that said patient is of unsound mind, can not be cared for or treated adequately in Gallinger Municipal Hospital, should not be allowed to remain at liberty and go unrestrained, and that said patient is a fit subject for treatment in Saint Elizabeths Hospital on account of his mental condition. The superintendent of Saint Elizabeths Hospital is authorized to receive and detain any patient so transferred from Gallinger Municipal Hospital at the expense of the District of Columbia pending his formal commitment or other order of the court.

Persons arrested under the provisions of sections 21-326 to 21-331 shall be detained in Gallinger Municipal Hospital pending the filing of a petition as provided in section 21-310. Such petition shall be filed within forty-eight hours after such person shall have been admitted into Gallinger Municipal Hospital, or, if such forty-eight-hour period shall expire on a Sunday or legal holiday, then not later than noon of the next succeeding day which is not a Sunday or legal holiday. The court, or any judge thereof in vacation, may, upon being satisfied of the sufficiency of the petition, sign an order authorizing the continued detention of said person in Gallinger Municipal Hospital and, unless found by the staff of Gallinger Municipal Hospital to be of sound mind, in Saint Elizabeths Hospital for a period not exceeding thirty days from the time of his apprehension and detention. If such petition be not filed, and such order of court obtained within the aforementioned period, the person shall be discharged forth-

with. If said staff shall find that such person is of unsound mind and suitable for treatment by reason of mental illness, the superintendent of said hospital may immediately transfer such person to Saint Elizabeths Hospital, and shall report the fact of such transfer to the Commission. The superintendent of Saint Elizabeths Hospital is hereby authorized to receive and detain persons so transferred, at the expense of the District of Columbia.

If as a result of examination, the staff of Gallinger Municipal Hospital or Saint Elizabeths Hospital shall find that any person detained in Gallinger Municipal Hospital or Saint Elizabeths Hospital pursuant to the provisions of this section is of sound mind, he shall be discharged forthwith by said Gallinger Municipal Hospital or Saint Elizabeths Hospital, and the petition, if any, shall be dismissed.

Any petition filed in the equity court for a writ de lunatico inquirendo or for an order of commitment of any alleged insane person, shall be referred by the court to the Commission for report and recommendation within such time as the court may designate, not exceeding seven days, which time may be extended by the court for good cause shown, and in such event the period of temporary commitment in Saint Elizabeths Hospital may be extended by the court for such additional time as the court shall deem necessary. The Commission shall examine the alleged insane person and any other person, including any suggested by the alleged insane person, his relatives, friends, or representatives, whose testimony may be relevant, competent, and material upon the issue of insanity; and the Commission shall afford opportunity for hearing to any alleged insane person, his relatives, friends, or representatives. At all hearings the alleged insane person shall have the right to be represented by counsel.

The Commission is hereby authorized to conduct its examination and hearings of cases elsewhere than at the offices of said Commission in its discretion, according to the circumstances of the case.

If in the determination of the Commission he be found not to be sane, then it shall be the duty of the Commission to apply to the court for a date for a hearing. In all cases before said hearing, the said Commission shall cause to be served personally upon the patient a written notice of the time and place of final hearing at least five days before the date fixed. Five days' notice of the time and place of the hearing shall in all cases be mailed to or served upon the applicant, but in case the applicant is not the husband, wife, or nearest relative, the notice shall be mailed to or served upon the husband, wife, or nearest relative, if possible. The notice shall contain a statement that if the patient desires to oppose the application for a final order of commitment, he may appear personally or by attorney at the time and place fixed for the hearing. Proof of service shall be made at the hearing. The court may in its discretion appoint an attorney or guardian ad litem to represent the alleged insane person at any hearing before the court, or before the court and jury, and shall allow the attorney or guardian ad litem so appointed a reasonable fee for his services. Such fees may be charged against the estate or property, if any, of the alleged insane person.

If a demand is made for a jury trial, the superintendent of Gallinger Municipal Hospital or Saint Elizabeths Hospital shall see that the patient has been given opportunity to appear personally or by attorney at the hearing and assist him in communicating with his friends, relatives, or attorney. If the superintendent shall certify that in his opinion it would be prejudicial to the health of the patient or unsafe to produce the patient at the inquiry, then such patient shall not be required to be produced.

Proof of service of the required notices shall be made at the hearing. (Aug. 9, 1939, 53 Stat. 1294, ch. 620, § 2; June 30, 1948, 62 Stat. 1195, ch. 774, §§ 1, 2.)

CODIFICATION

As enacted, the opening provision of this section read: "Upon the filing with the court of a verified petition as provided in section 1 of the act approved June 8, 1938." This referred to D.C. Code, 1929 ed., Supp. V, title 16, § 41, which has been superseded by § 1 of ch. 620 of act Aug. 9, 1939, 53 Stat. 1293, which appears in this Code as § 21-310.

AMENDMENT

1948—Act June 30, 1948, amended first paragraph to require persons apprehended to be examined by the staff of Saint Elizabeths Hospital rather than by the Staff of Gallinger Municipal Hospital, and amended fourth paragraph to provide for the release of such person if found to be of sound mind.

CROSS REFERENCE

Care and commitment of insane persons to St. Elizabeths Hospital, see also § 32-401 et seq.

NOTES TO DECISIONS

Appointment of counsel 1
Construction with other laws 2
Costs and attorney's fees 3
Grounds for commitment 4
Habeas corpus 5
Hearing 6
Interim detention 7
Representation by counsel 8
Sufficiency of petition 9

1. Appointment of counsel

Alleged insane person has a right to be represented by counsel in proceeding to commit him as a person of unsound mind, and if he is not so represented independently the court shall appoint either an attorney or guardian ad litem. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D. C. 247).

Where proceeding was commenced to commit person to hospital as a person of unsound mind, and court appointed counsel for such person and granted her request that counsel be discharged, such person was not represented by counsel or guardian ad litem at proceeding, and her commitment was invalid. *Id.*

2. Construction with other laws

Section 21-326 providing for apprehension and detention by police of insane persons found in public places must be read together with other sections of civil insanity statute, and particularly this section and section 21-310 implementing procedure initiated under section 21-326. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U. S. App. D. C. 248).

3. Costs and attorney's fees

Petitioner for writ de lunatico inquirendi, who contracted with counsel voluntarily, must bear expense of counsel and taxable costs of proceedings and costs and expense of petitioner's counsel were not chargeable against patient. *In re Colohan* (1950, 93 F. Supp. 641).

Petitioner for writ de lunatico inquirendi was not required to rely on corporation counsel but could secure counsel of own choice. *Id.*

4. Grounds for commitment

No District of Columbia statute or inherent equity power permits commitment to institution upon mere showing that man is potentially dangerous to others. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U. S. App. D. C. 248).

5. Habeas corpus

Even though it appears factually on a habeas corpus hearing that petitioner is insane, if he has been confined under a void statute or a void proceeding, he is entitled to order of discharge so far as his then confinement is concerned. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U. S. App. D. C. 247).

Where person of unsound mind had been committed to hospital under invalid proceeding, habeas corpus proceeding would be remanded to district court for discharge of party from custody unless within five days after entry of order new incompetency proceedings were instituted. *Id.*

6. Hearing

This section providing that when mental health commission has made determination that person is found not to be sane, commission has duty to apply to court for hearing and commission shall cause to be served personally upon patient written notice of time and place of final hearing, hearing for which notice is required is hearing before court rather than hearing before mental health commission. *Lafferty v. District of Columbia* (1960, 277 F. 2d 348, 107 U.S. App. D.C. 318).

Where patient was not given required statutory notice of court hearing leading to adjudication that he was of unsound mind and he did not learn of decree until he returned to District of Columbia, after an absence, about a year after its date, he was entitled to have decree set aside, and court's denial of a petition which he had filed before he had learned that he had been adjudged of unsound mind and which sought review of mental health commission report and recommendations did not make issues presented on petition for review of decree adjudging him of unsound mind res judicata. *Id.*

Petitioner's delay of some two and one-half years in instituting proceedings for review of decree adjudging him to have been of unsound mind after he learned of decree which was entered without his having been afforded required statutory notice of hearing did not, under circumstances, constitute an unreasonable delay or a ground for denial of relief. *Id.*

7. Interim detention

Where police officer had woman, who cut her wrist taken to hospital where she was placed in psychiatric ward, on ground that she had attempted suicide, doctors at hospital were not civilly liable in false imprisonment action for interim detention of woman prior to receipt of court order. *Orvis v. Brickman* (1952, 196 F. 2d 762, 90 U. S. App. D. C. 266).

8. Representation by counsel

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always be an attorney, he may be a relative or friend selected by the court. *Dooling v. Overholser* (1957, 243 F. 2d 825, 100 U. S. App. D. C. 247).

Where question was raised whether representation by counsel or guardian ad litem was required in incompetency proceeding before Mental Health Commission and Court of Appeals held the commitment invalid because of absence of representation before both the commission and the court, the ruling as to need for representation before commission was not obiter dictum even if commitment could be found to be invalid for lack of representation in court alone. *Id.*

9. Sufficiency of petition

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with section 21-310 permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. Williams* (1958, 252 F. 2d 629, 102 U. S. App. D. C. 248).

§ 21-312. Report to be served—Demand for jury trial—Trial.

Upon the receipt of the report and recommendation of the commission, a copy shall be served personally upon the alleged insane person, his guardian ad litem, or his attorney, if he has one, together with notice that he has five days within which to demand a jury trial. A demand for hearing by the court, or a demand for jury trial for the purpose of determining the sanity or insanity of the alleged insane person may be made by the said alleged insane person or by anyone in his behalf, or a jury trial may be ordered by the court upon its own motion. If demand be made for a jury trial, or such trial be ordered by the court on its own motion, the case shall be calendared for trial not more than ten days after demand for hearing by the court for a jury trial, unless the time is extended by the court. The commission, or any of the members thereof, shall be competent and compellable witnesses at any trial or hearing of an alleged insane person. In any case in which a commitment at public expense, in whole or in part, is sought, the corporation counsel or one of his assistants shall represent the petitioner unless said petitioner shall be represented by counsel of his or her own choice. (Aug. 9, 1939, 53 Stat. 1296, ch. 620, § 3.)

NOTES TO DECISIONS

Confinement without trial 1
Costs and attorney's fees 2
Habeas corpus 3
Presumptions 4

1. Confinement without trial

Where petitioner, seeking writ of habeas corpus, was under indictment for an assault but court found that he was of unsound mind and dangerous, his confinement without criminal trial in ward of hospital which resembled a prison did not deprive him of constitutional rights, since confinement was not due to the indictment. *Knighton v. Overholser* (1945, 145 F. 2d 860, 79 U.S. App. D. C. 294).

2. Costs and attorney's fees

Petitioner for writ de lunatico inquirendi, who contracted with counsel voluntarily, must bear expense of counsel and taxable costs of proceedings and costs and expense of petitioner's counsel were not chargeable against patient. *In re Colohan* (1950, 93 F. Supp. 641).

3. Habeas corpus

Where question arose regarding whether procedure in lunacy proceedings was proper but order of adjudication and commitment was set aside and procedure thereafter adopted conformed to legal requirements and resulted in order of adjudication of insanity and of commitment, the allegedly insane person was not entitled to writ of habeas corpus. *Wrobel v. Overholser* (1945, 145 F. 2d 859, 79 U. S. App. D. C. 293, certiorari denied 65 S. Ct. 712, 324 U. S. 854, 89 L. Ed. 1413).

4. Presumptions

Adjudication of insanity, as long as not rescinded, creates rebuttable presumption that mental incapacity of person continues thereafter, and strength of such presumption is affected by character and causes of the mental disturbance, possibility of lucid intervals, and various other considerations. *Life Ins. Co. of Virginia v. Herrmann* (D. C. Mun. App. 1944, 35 A. 2d 828).

§ 21-313. Jury.

The jury to be used in lunacy inquisitions in those cases where a jury trial shall be demanded or ordered shall be empaneled, upon order of the court, from the jurors in attendance upon other branches of the United States District Court for the District of Columbia, who shall perform such services in addition to and as part of their duties in said court. (Aug. 9,

1939, 53 Stat. 1296, ch. 620, § 4; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 21-314. Procedure if no jury trial demanded.

If no demand be made for a jury trial, the judge holding court shall determine the sanity or insanity of said alleged insane person, but such judge may, in his discretion, require other proofs, in addition to the petition and report of the commission, or such judge may order the temporary commitment of said alleged insane person for observation or treatment for an additional period of not more than thirty days. The judge may, in his discretion, dismiss the petition notwithstanding the recommendation of the commission. If the judge be satisfied that the alleged insane person is of sound mind, he shall forthwith discharge such person and dismiss the petition. (Aug. 9, 1939, 53 Stat. 1296, ch. 620, § 5.)

NOTE TO DECISION

1. In general

The statute as a whole makes clear that a proceeding in equity is contemplated for initial determination of insanity, and not the writ of habeas corpus. *Barry v. Hall* (1938, 98 F. 2d 222, 68 App. D.C., 350).

§ 21-315. Commitment after trial.

If the judge be satisfied that the alleged insane person is insane, or if a jury shall so find, the judge may commit the insane person as he in his discretion shall find to be for the best interests of the public and of the insane person. In case of a temporary commitment, the court may make additional temporary commitments upon further examination by, and recommendation of, the commission.

The judge may commit the insane person to the custody of the Veterans' Administration for care and treatment in a Veterans' Administration facility, if there has been filed with the court or the Commission on Mental Health, acting under the direction of the court, a certificate executed by the Administrator of Veterans' Affairs, or his duly authorized representative, showing said insane person to be entitled to such care and treatment, and that facilities therefor are available. (Aug. 9, 1939, 53 Stat. 1296, ch. 620, § 6.)

NOTES TO DECISIONS

Findings of court 1
Habeas corpus 2

1. Findings of court

Appointment of committee was not invalid because of absence of finding that ward was dangerous, unfit to be at large, and in need of treatment, where ward was not arrested and detained pending trial. *Duvall v. Humphrey* (1946, 153 F. 2d 798, 80 U.S. App. D.C. 403).

2. Habeas corpus

The issue of sanity or insanity cannot be determined on merits on habeas corpus proceeding instituted by person confined in a hospital for insane, but, if petitioner makes a sufficient showing that he was committed improperly, the judge may enter an order providing for discharge of petitioner unless within a reasonable time a proper proceeding is initiated. *Overholser v. Treibly* (1945, 147 F. 2d 705, 79 U.S. App. D.C. 389, certiorari denied 66 S. Ct. 38, 326 U.S. 730, 90 L. Ed. 434).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to

statutory provisions therefor, the only question before court was whether record raised sufficient doubt as to petitioner's insanity at present time to justify reopening commitment proceeding. *Ex parte De Marcos* (1946, 65 F. Supp. 231).

The trial court still has the authority which it has always had to order the immediate discharge of a patient if, after a hearing on habeas corpus proceeding, it be of the opinion that the patient is of sound mind. such remedy is expressly reserved to it by § 21-325. Prior cases to the contrary are overruled. *Overholser v. Boddie* (1950, 184 F. 2d 240, 87 U.S. App. D.C. 186, 21 A.L.R. 2d 999).

§ 21-316. Recommendations of Commission.

Recommendations of the commission must be made by the unanimous recommendation of the three members acting upon the case. If the three members of the commission be unable to agree upon the recommendation to be made in any case, they shall immediately file with the court a report setting forth the fact that they are unable to agree on the case, and in that event the court shall hear and determine the case, unless the alleged insane person, or someone in his behalf, shall demand a jury trial, in which event the case shall be heard and determined by the court and a jury.

If the commission shall agree upon a recommendation, it shall file with the court a report setting forth its findings of fact and conclusions of law and its recommendation based thereon which recommendation shall be in one of the following forms:

(A) That the person is of sound mind and should be discharged forthwith and the petition dismissed.

(B) That the mental condition of the alleged insane person is such that a definite diagnosis can not be made without further study, or that the mental incapacity of said person will probably be of short duration, and that said person should be further detained and committed in Saint Elizabeths Hospital as hereinbefore provided for, or in any other hospital in the District of Columbia as provided in sections 21-326 to 21-331, for further observation or treatment for such period of time as the court may determine, during which said time the commission shall from time to time examine said person and make a recommendation to the court as to the final disposition of the case.

(C) That the person is of unsound mind and (1) should be committed to Saint Elizabeths Hospital, or any other hospital provided by section 21-329, (a) at public expense, or (b) at the expense of those persons who are required by law, or who will agree to pay for the maintenance and treatment of said insane person, or (c) that the relatives of said insane person, mentioned in section 21-321 are able to pay a specified sum per month toward the support and maintenance of said insane person; (2) is harmless and may safely be committed to the care of his relatives or friends (naming them) who are willing to accept the custody, care, and maintenance of said insane person under conditions specified by the commission; (3) should be committed to the Administrator of Veterans' Affairs for care and treatment in a Veterans' Administration facility: *Provided*, That there shall be filed with the court or commission a certificate executed by said administrator or his duly authorized representative, showing said person is entitled to such care and treatment

and that facilities therefor are available. (Aug. 9, 1939, 53 Stat. 1297, ch. 620, § 7.)

NOTE TO DECISION

1. Indigent insane

In contemplation of the law, the public health service is a friend of the indigent insane. *Barry v. Hall* (1938, 98 F. 2d 222, 68 App. D.C. 350).

§ 21-317. Transfer of nonresident insane—Confinement of residents—Custody of harmless insane.

If an insane person be found by the commission, subject to the review of the court, not to be a resident of the District of Columbia, he may be committed by the court to Saint Elizabeths Hospital as a District of Columbia patient until such time as his residence shall have been ascertained. Upon the ascertainment of such insane person's residence in some other jurisdiction, he shall be transferred to the state of such residence. The expense of transferring such patient, including the traveling expenses of necessary attendants to insure his safe transfer, shall be borne by the District of Columbia only if the patient be indigent.

Any insane person found by the commission to have been a resident of the District of Columbia for more than one year prior to the filing of the petition, and any person found within the District of Columbia whose residence can not be ascertained, who is not in confinement on a criminal charge, may be committed by the court to, and confined in, said Saint Elizabeths Hospital, or any other hospital in said District, which, in the judgment of the commission of said District, is properly constructed and equipped for the reception and care of such persons, and the official in charge of which, for the time being, is willing to receive such persons.

"Resident of the District of Columbia," as used in this section, means a person who has maintained his principal place of abode in the District of Columbia for more than one year prior to the filing of the petition provided for in section 21-310.

If it appears that a person found to be insane is harmless and his or her relatives or committee of his or her person are willing and able properly to care for such insane person at some place or institution other than Saint Elizabeths Hospital, the judge may order that such insane person be placed in the care and custody of such relatives or such committee upon their entering into an undertaking to provide for such insane person as the court may direct. (Aug. 9, 1939, 53 Stat. 1297, ch. 620, § 8.)

NOTES TO DECISIONS

In general 1
Burden of proof 2
Commission's report 3
Evidence 4
Jurisdiction 5
Petition 6
Principal place of abode 7
Procedure 8
Waiver 9

1. In general

This section providing for commitment of an insane person found not to be a resident of the District of Columbia and for transfer to the state of his residence does not purport to confer the right of transfer on persons found to be resident in the District or whose residence cannot be ascertained, and the finding referred to is the one made in the commitment proceedings. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

This section providing for commitment of an insane person found not to be a resident of the District of Columbia and for transfer to the state of his residence does not

contemplate that a committed insane person shall be transferred in any case to the state of his residence without regard to its willingness to receive him, and it is intended that the person shall be delivered into the hands of state officials charged with custody of insane residents. *Id.*

2. Burden of proof

A committed insane person to establish and enforce his right to be transferred to Colorado as the state of his residence was required to show either that Colorado was willing to receive him into its custody or that there was means of enforcing his right to be received as against the state and its officials. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U. S. App. D. C. 166).

3. Commission's report

Where petitioner made no demand for a jury trial or a further hearing by the court under this section after Commission on Mental Health adjudged him of unsound mind and ordered his commitment, the District Court, in habeas corpus proceeding brought to effect petitioner's transfer to Colorado, was authorized to act on commission's report and recommendations without more, except to examine them and find them sufficient. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

4. Evidence

In habeas corpus proceeding brought to effect transfer of petitioner, a committed insane person, to Colorado as the state of his residence, petitioner was not entitled to relief in absence of evidence that Colorado was willing to receive him as a legal resident entitled to admission into the custody of Colorado officials having charge of insane persons. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U. S. App. D. C. 166).

Where an inmate of National Soldiers' Home in Togus, Maine, shot and killed one of the physicians of the home and was thereafter committed to St. Elizabeths Hospital in the District of Columbia on finding that he was insane, such person was not entitled to be transferred to Maine on ground that he was a citizen and resident of the State of Maine and not a resident of the District of Columbia in absence of proof that State of Maine was willing to receive and care for him, or to be discharged without proper provision for his care and restraint. *Williams v. Overholser* (1943, 137 F. 2d 545, 78 U.S. App. D.C. 95).

5. Jurisdiction

In habeas corpus proceeding brought to effect transfer of committed insane person to Colorado as the state of his residence under this section, District of Columbia courts had no power or jurisdiction to enforce Colorado's obligation, even if section obligated Colorado to receive person on showing of residence made, where neither Colorado nor its officials were made parties to proceeding. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

6. Petition

Where petition for writ of habeas corpus to effect transfer of petitioner, a committed insane person, to Colorado did not state a cause of action in that respect, petitioner was not prejudiced by inadequacy of hearing conducted by petitioner in his own behalf with regard to the admission of evidence and other action which competent counsel would have taken, except in a procedural sense, and that was not sufficient to require another hearing. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U.S. App. D.C. 166).

7. Principal place of abode

The phrase "principal place of abode" as used in this section providing that a resident of the District of Columbia, as used in such section, means a person who has maintained his principal place of abode in the District of Columbia for more than one year prior to filing of petition for commitment, does not require physical presence. *District of Columbia v. Stackhouse* (1956, 239 F. 2d 62, 99 U. S. App. D. C. 242).

Where defendant, who was committed to a hospital as an insane person, had her residence in the District of Columbia during her childhood, her subsequent confinement in numerous mental institutions did not effect a change in her residence, nor did the fact that she lived in college towns as a student, during which times she returned home for summer vacations, result in the loss of her District of Columbia residence. *Id.*

8. Procedure

Where a motion to amend findings of fact and a decree of adjudication and commitment as a person of unsound mind was made eight months after entry of such order, relief from part of judgment ruling that defendant was not a resident of the District of Columbia could be granted by court under rule providing for relief from judgment or order by a court, rather than under rule providing that motions to amend findings of fact must be made not later than ten days after entry of judgment. *District of Columbia v. Stackhouse* (1956, 239 F. 2d 62, 99 U. S. App. D. C. 242).

9. Waiver

Where committed insane person was ably represented on appeal from judgment dismissing habeas corpus petition by counsel who raised no issue concerning sanity and conceded at argument that a hearing on question of sanity could result only in remand to custody, and adequacy of hearing was questioned only in respect to alleged right of transfer of person to Colorado, counsel's action constituted a "waiver" of any right to further hearing on question of sanity. *Howard v. Overholser* (1942, 130 F. 2d 429, 76 U. S. App. D. C. 166).

§ 21-318. Liability of relatives for costs of maintenance and treatment.

The father, mother, husband, wife, and adult children of an insane person, if of sufficient ability, and the committee or guardian of his or her person and estate, if his or her estate is sufficient for the purpose, shall pay the cost to the District of Columbia of his or her maintenance, including treatment in Saint Elizabeths Hospital or in any other hospital to which the insane person may be committed. It shall be the further duty of said commission, to examine under oath, the father, mother, husband, wife, adult children, and committee, if any, of any alleged insane person whenever such relatives live within the District of Columbia, and to ascertain the ability of such relatives or committee, if any, to maintain or contribute toward the maintenance of such alleged insane person: *Provided*, That in no case shall said relatives or committee be required to pay more than the actual cost to the District of Columbia of maintenance of such alleged insane person.

If any person hereinabove made liable for the maintenance of an insane person shall fail so to provide or pay for such maintenance, the court shall issue to such person a citation to show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of such patient. The citation shall be served at least ten days before the hearing thereon. If, upon such hearing, it shall appear to the court that the insane person has not sufficient estate out of which his maintenance may properly be fully met and that he has relatives of the degrees hereinabove mentioned who are parties to the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by such relatives of such sum or sums as it may find they are reasonably able to pay and as may be necessary to provide for the maintenance of such insane person. Said order shall require the payment of such sums to the Board of Public Welfare annually, semiannually, or quarterly as the court may direct. It shall be the duty of the board to collect the said sums due under this section, and to turn the same into the treasury of the United States to the credit of the District of Columbia. Any such order may be enforced against any property of the insane person or of the person liable or undertaking to maintain

him in the same way as if it were an order for temporary alimony in a divorce case. (Aug. 9, 1939, 53 Stat. 1298, ch. 620, § 9.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

CROSS REFERENCE

Payment of hospitalization expense of criminally insane, see § 24-301.

NOTES TO DECISIONS

Claim against veterans' committee 1
Construction with other laws 2
Liability for expenses of incompetent 3
Reimbursement 4
Support of dependents 5

1. Claim against veterans' committee

District of Columbia could not recover, out of funds paid by Veterans' Administration to committee of veteran, for payments made to hospital for veteran's maintenance and treatment prior to appointment of committee for veteran. *District of Columbia v. Reilly etc.* (1957, 249 F. 2d 524, 102 U. S. App. D. C. 9).

2. Construction with other laws

Section 21-319 giving consideration to support of insane person's dependents in fixing amount of payments to be made to hospital caring for such insane person was repealed by sections 21-310 to 21-318, 21-320 to 21-325, which provide in terms for repeal of inconsistent statutes and which do not authorize giving consideration to support of insane person's dependents in fixing payments to be made by committee of insane person's estate to hospital for cost of care. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

3. Liability for expenses of incompetent

The question of a husband's liability for the maintenance of an insane wife in a public institution, "when it shall arise in the future, will be settled" under the act of June 8, 1938, ch. 326. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

4. Reimbursement

Where insane person was committed to hospital and committee appointed of his person and estate, and committee was ordered to pay certain sum to District of Columbia for hospital care, which sum was less than actual cost because of need of support of insane person's wife, upon insane person's death, estate was liable for portion of cost of care for which District had not been reimbursed, and in rendering judgment for unpaid balance District Court had no authority to consider need of deceased insane person's dependents for support. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

Under section 21-310 et seq., providing for commitment of insane person and that committee of such person, if estate is sufficient for purpose, shall pay cost to District of Columbia for maintenance, and that, if it appears that insane person has not sufficient estate out of which his maintenance may "properly" be fully met, then court may order payment by relatives of such sum necessary to provide for maintenance, the word "properly" does not refer to adequacy of estate after making allowance for support of dependents, but refers to general equity power of court to make such orders and decrees for management and preservation of insane person's estate as to court may seem proper, and hence act does not give authority to fix payments by committee at less than full cost of care where funds of estate are adequate. *Id.*

Where insane person was committed to hospital and committee was appointed of person and estate, and committee was ordered to pay certain sum, less than actual cost, to District of Columbia for hospital care, upon death of insane person, even if estate were inadequate to satisfy entire amount of balance of cost of care, District of Columbia would be entitled to judgment for entire balance and to be paid its pro rata share of proceeds of estate on same basis as any other creditor. *Id.*

5. Support of dependents

In committing insane person to hospital and appointing committee of his person and estate and in fixing amount

of payments to District of Columbia on account of cost of care of insane person to be made out of insane person's estate, there is no authority to consider support of dependents. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

§ 21-319. Insane persons having property—Inquiry by board—Charge for care.

Whenever it appears in the case of any insane person whose insanity commenced while he was a resident of the District of Columbia that he is able to defray a portion, but not the whole of the expenses of his support and treatment in Saint Elizabeths Hospital, the board of visitors of the hospital is authorized to inquire into the facts of the case; and if it appears to the board, upon such inquiry, that such insane person has property and no family, or has more property than is required for the support of his family, then, as a condition upon which such insane person, admitted or to be admitted upon the order of the Secretary of the Interior, shall receive or continue to receive the benefits of the hospital, there shall be paid to the superintendent from the income, property, or estate of such insane person such portion of his expenses in the hospital as a majority of the board shall determine to be just and reasonable, under all the circumstances. (R. S. § 4849; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

CHANGE OF NAME

Act July 1, 1916, changed the name of the Government Hospital for the Insane to Saint Elizabeths Hospital.

NOTES TO DECISIONS

In general 1
Construction 2

1. In general

The effect of act Feb. 23, 1905, 33 Stat. 740, ch. 738, requiring the committee or trustee of an incompetent to reimburse the District for care and expenses up to time of appointment of committee was to prevent the running of the statute of limitations. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

2. Construction

This section giving consideration to support of insane person's dependents in fixing amount of payments to be made to hospital caring for such insane person was repealed by sections 21-310 to 21-318, 21-320 to 21-325 which provide in terms for repeal of inconsistent statutes and which do not authorize giving consideration to support of insane person's dependents in fixing payments to be made by committee of insane person's estate to hospital for cost of care. *District of Columbia v. Graves* (1952, 104 F. Supp. 538).

§ 21-320. Hearing to restore status of paroled person—Petition—Trial—Decision.

Any insane person who has been committed to Saint Elizabeths Hospital or any other hospital, and who shall have been released from such hospital as improved, or who shall have been paroled from such hospital (but who shall not have been discharged as cured), and who shall have been absent from the hospital on release or parole for a period of six months or longer, shall have the right to appear before the United States District Court for the District of Columbia for a hearing to determine the sanity and right to restoration to the status of a person of sound mind of said insane person by filing a petition therefor with the court upon a form to be provided by the commission for that purpose. It shall be the duty of the commission to make an examination of the records of Saint Elizabeths Hospital of the insane person as may be

necessary to determine such questions, and if necessary have the person examined by the members of the staff of Saint Elizabeths Hospital and to make a report and recommendation to the court. In the event the commission shall find from the records and examination that the said person is of sound mind and shall recommend to the court the restoration of said person to the status of a person of sound mind such recommendation shall be sufficient to authorize the court to enter an order declaring such person to be restored to his or her former legal status as a person of sound mind. In the event the commission shall find such person to be of unsound mind, it shall report that finding to the court. Upon the filing by the commission of a report finding such person to be of unsound mind, the insane person shall have the right to a hearing by the court or by the court and a jury. For the purpose of making the examination and observations required by this section, the commission shall have the right to examine the records and to interrogate the physicians and attendants at Saint Elizabeths Hospital or any other hospital in which such patient shall have been confined, who have had the insane person under their care, and the commission may recommend to the court the temporary recommitment of such person for said purpose. At such trial by the court or by the court and jury, an adjudication shall be made as to whether the person is of sound mind or is still of unsound mind. (Aug. 9, 1939, 53 Stat. 1298, ch. 620, § 10; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Commitment by Secretary of Navy 1 Habeas corpus 2

1. Commitment by Secretary of Navy

Where retired officer in military service had been committed on order of Secretary of Navy to hospital for insane and statutes made no provision for reexamination of person committed on order of Secretary, or for initiation, by the person committed of a proceeding to secure such reexamination, procedure of habeas corpus was available for the latter purpose. *Overholser v. Treibly* (1945, 147 F. 2d 705, 79 U.S. App. D.C. 389, certiorari denied 66 S. Ct. 38, 326 U.S. 730, 90 L. Ed. 434).

2. Habeas corpus proceedings

Where a petition for writ of habeas corpus has been presented, legally sufficient on its face to start the court's machinery in motion, the judge should appoint either a guardian or counsel to represent the petitioner in the further stages of the proceeding. *Overholser v. Treibly* (1945, 147 F. 2d 705, 79 U.S. App. D.C. 389, certiorari denied 66 S. Ct. 38, 326 U.S. 730, 90 L. Ed. 434).

§ 21-321. Witness fees.

The same fees and mileage as are paid in the courts of the United States shall be paid in the case of witnesses subpoenaed under the provisions of sections 21-310 to 21-318, 21-320 to 21-325. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 11.)

§ 21-322. Undertaking.

The court in its discretion may require the petitioner to file an undertaking with surety to be approved by the court in such amount as the court

may deem proper, conditioned to save harmless the respondent by reason of costs incurred, including attorneys' fees, if any, and damages suffered by the respondent as a result of any such action. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 12.)

§ 21-323. Applications and certificates for commitment and confinement.

All applications and certificates for commitment and confinement of any patient to any hospital in the District of Columbia for the care and the treatment of the insane must be made on forms approved by the commission and furnished by it. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 13.)

§ 21-324. Penalty for false petition or affidavit.

Any person who executes a verified petition or affidavit as provided in sections 21-310 to 21-318, 21-320 to 21-325, by which he or she secures or attempts to secure the apprehension, detention, or restraint of any other person in the District of Columbia without probable cause for believing such person to be insane or of unsound mind, or any physician who knowingly makes any false certificate or affidavit as to the sanity or insanity of any other person, shall, upon conviction thereof, be fined not more than \$500 or imprisoned not more than three years, or both. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 14.)

§ 21-325. Existing remedies preserved.

Nothing contained in sections 21-310 to 21-318, 21-320 to 21-325 shall deprive the alleged insane person of the benefit of existing remedies to secure his release or to prove his sanity, or of any other legal remedies he may have. (Aug. 9, 1939, 53 Stat. 1299, ch. 620, § 15.)

§ 21-326. Apprehension and detention by police, without warrant, of insane persons found in public places.

Any member of the Metropolitan police of the District of Columbia or any other officer in said District authorized to make arrests is authorized and empowered to apprehend and detain, without warrant, any insane person or person of unsound mind found on any street, avenue, alley, or other public highway, or found in any public building or other public place within the District of Columbia; and it shall be the duty of the policeman or officer so apprehending or detaining any such person to immediately file his affidavit with the major and superintendent of said Metropolitan police that he believes said person to be insane or of unsound mind, incapable of taking care of himself or herself or his or her property, and if permitted to remain at large or to go unrestrained in the District of Columbia the rights of persons and of property will be jeopardized or the preservation of public peace imperiled and the commission of crime rendered probable: *Provided, however*, That it shall be the duty of the major and superintendent of the said Metropolitan police to forthwith notify the husband or wife or some near relative or friend of the person so apprehended and detained whose address may be known to the said major and superintendent or whose address can by reasonable inquiry be ascertained by him. (Apr. 27, 1904, 33 Stat. 316, ch. 1618, § 1.)

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of Metropolitan police, see note under § 4-103.

NOTES TO DECISIONS

Arrest 1
Construction with other laws 2
False imprisonment 3
Grounds for apprehension 4
Petition 5

1. Arrest

A policeman may not make, without the superintendent's order, an arrest which he may not make with such order. *Jillson v. Caprio* (1950, 181 F. 2d 523, 86 U.S. App. D.C. 168).

2. Construction with other laws

This section providing for apprehension and detention by police of insane persons found in public places must be read together with other sections of civil insanity statute, and particularly sections 21-310 and 21-311 implementing procedure initiated under this section. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

3. False imprisonment

Where the basis in action for false imprisonment was an arrest made at the request of appellee physician, the arrest was unlawful since such arrests of alleged insane persons have been permitted by Congress in only two sorts of circumstances, both absent here. *Jillson v. Caprio* (1950, 181 F. 2d 523, 86 U.S. App. D.C. 168).

4. Grounds for apprehension

This section providing emergency procedure for apprehension of persons thought to be insane should not be defeated by over-technical construction, but it does require that arresting officer reasonably believe that person apprehended is insane and incapable of managing his own affairs or that he is a menace to public peace; and such section authorizes only initial arrest and detention. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

5. Petition

Government's verified petition which failed to allege that person arrested by police was of unsound mind or insane did not comply with this section permitting a commitment proceeding to be commenced by arrest of an alleged insane person and defect in petition was not remedied by two psychiatric reports attached thereto where such reports were unverified and ambiguous in terms employed and conclusions reached. *Overholser Supt. etc. v. Williams* (1958, 252 F. 2d 629, 102 U.S. App. D.C. 248).

Under no statute is court authorized to commit any person for mental examination on petition which fails to state facts upon which an allegation of present insanity is based. *In the Matter of Dallas O. Williams* (1958, 157 F. Supp. 871, affirmed 252 F. 2d 629, 102 U.S. App. D.C. 248).

§ 21-327. Arrest at other than public places.

The major and superintendent of said Metropolitan police is authorized to order the apprehension and detention, without warrant, of any indigent person alleged to be insane or of unsound mind or any alleged insane person of homicidal or otherwise dangerous tendencies found elsewhere in the District of Columbia than in the places mentioned in section 21-326 whenever two or more responsible residents of the District of Columbia shall make and file affidavits with said major and superintendent of the Metropolitan police setting forth that they believe the person therein named to be insane or of unsound mind, the length of time they have known such person, that they believe such person to be incapable of managing his or her own affairs, and that such person is not fit to be at large or to go unrestrained, and if such person is permitted to remain at liberty in the District of Columbia the rights of persons and of property will be jeopardized or the

preservation of public peace imperiled and the commission of crime rendered probable, and that such person is a fit subject for treatment on account of his or her mental condition: *Provided, however*, That before the major and superintendent of the said Metropolitan police shall order the apprehension and detention of any person upon the affidavits of the aforesaid residents or in case of arrest as provided in section 21-326, he shall, in addition thereto, require the certificate of at least two physicians who shall certify that they have examined the person alleged to be insane or of unsound mind, and that such person should not be allowed to remain at liberty and go unrestrained, and that such person is a fit subject for treatment on account of his or her mental condition. (Apr. 27, 1904, 33 Stat. 317, ch. 1618, § 2.)

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of police, see note under § 4-103.

NOTES TO DECISIONS

Arrest 1
False imprisonment 2

1. Arrest

A policeman may not make, without the superintendent's order, an arrest which he may not make with such order. *Jillson v. Caprio* (1950, 181 F. 2d 523, 86 U.S. App. D.C. 168).

2. False imprisonment

Where the basis in action for false imprisonment was an arrest made at the request of appellee physician, the arrest was unlawful since such arrests of alleged insane persons have been permitted by Congress in only two sorts of circumstances, both absent here. *Jillson v. Caprio* (1950, 181 F. 2d 523, 86 U.S. App. D.C. 168).

§§ 21-328, 21-329. Omitted.

CODIFICATION

Section 21-328, acts Apr. 27, 1904, 33 Stat. 317, ch. 1618, § 3; July 1, 1916, 39 Stat. 309, ch. 209, § 1, related to the temporary detention of alleged insane persons, and is omitted as superseded by § 21-311.

Section 21-329, acts Apr. 27, 1904, 33 Stat. 317, ch. 1618, § 4; July 1, 1916, 39 Stat. 309, ch. 209, related to temporary commitment of persons to other hospital; detention in police station; and discharge of person certified not insane, and is omitted as superseded by § 21-311.

§ 21-330. Certificate by physician as to sanity or insanity—Qualifications of physician.

For the purpose of this chapter no certificate as to the sanity or the insanity of any person shall be valid which has been issued (a) by a physician who has not been regularly licensed to practice medicine in the District of Columbia, unless he be a commissioned surgeon of the United States Army, Navy, Air Force, or Public Health Service, or a physician employed by the Veterans' Administration; or (b) by a physician who is related by blood or by marriage to the person whose mental condition is in question. No certificate alleging the insanity of any person shall be valid, which has been issued by a physician who is financially interested in the hospital or asylum in which the alleged insane person is to be confined; nor, except in the case of physicians employed by the United States or the District of Columbia, shall any such certificate be valid which has been issued by a physician who is professionally or officially connected with such hospital or asylum. (Apr. 27, 1904, 33 Stat. 318, ch. 1618, § 5; Aug. 14, 1912, 37 Stat. 309, ch. 288, § 1; Aug. 1, 1951, 65 Stat. 150, ch. 282, § 1.)

AMENDMENT

1951—Act Aug. 1, 1951, added the reference to a physician employed by the Veterans' Administration in subsection (a) and deleted former subsections (b) and (c) which provided: "or (b) by a physician who is not a permanent resident of the District of Columbia; or (c) by a physician who has not been actively engaged in the practice of his profession for at least three years."

CHANGE OF NAME

Act Aug. 14, 1912, changed the name of the Public Health and Marine-Hospital Service to the Public Health Service. Act July 1, 1944, ch. 373, title VI, § 611, 58 Stat. 714, repealed act Aug. 14, 1912, which changed the name Public Health and Marine Hospital Service to Public Health Service. Said act July 1, 1944, retained name as Public Health Service.

§ 21-331. Making false affidavit or certificate—Penalty.

CODIFICATION

Section, act Apr. 27, 1904, 33 Stat. 318, ch. 1618, § 6, related to penalty for making false affidavit or certificate, and is omitted as superseded by § 21-324.

§ 21-332. Discharge of patients on bond.

If any person will give bond with sufficient security, to be approved by the United States District Court for the District of Columbia, or by any judge thereof in vacation, payable to the United States, with condition to restrain and take care of any independent or indigent insane person not charged with a breach of the peace, whether in the hospital or not, until the insane person is restored to sanity, such court or judge thereof may deliver such insane person to the party giving such bond. (R.S., § 4856; June 25, 1936, 49 Stat. 1921, ch. 804; July 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 21-333. Insane persons not to be confined in jail.

No insane person not charged with any breach of the peace shall ever be confined in the United States jail in the District of Columbia. (R. S., § 4857.)

Chapter 4.—DRUNKARDS AND DRUG ADDICTS

Sec.

21-401. Appointment of committee—Petition—Petitioners—Determination—Jury—Bond—Powers—Duties—Discharge.

§ 21-401. Appointment of committee—Petition—Petitioners—Determination—Jury—Bond—Powers—Duties—Discharge.

Whenever any person residing in said District, and owning any estate, real or personal, situate therein, is unfit from the habitual use of intoxicating liquors, or from the habitual use of opium, cocaine, or any similar substance, or any compound or derivative thereof, to properly manage or control the same, the equity court, on the petition of any creditor or relative of such person, or if there be no creditor or relative, upon the petition of any person living in said District, and upon summons being regularly served upon such person so alleged to be unfit to manage or control his property as aforesaid, com-

manding him to appear and answer such petition, may order a jury to be summoned to ascertain whether such person be an habitual drunkard or addicted to the habitual use of opium, cocaine, or any similar substance or any compound or derivative thereof and unfit from any of these causes to manage and control his property, and if the jury shall find that such person is an habitual drunkard or an habitual user of opium, cocaine, or any similar substance or any compound or derivative thereof and unfit to manage or control his property, such finding, when confirmed by the court, shall be entered of record in said cause, and it shall be the duty of the court thereupon to appoint some fit person to be committee of the person so declared unfit to manage or control his property as aforesaid.

Such committee before entering upon the discharge of his duties shall execute a bond, with surety, to be approved by the said court or one of the judges thereof, to the United States in a penalty equal to the amount of the personal property and the yearly rents to be derived from the real estate of such person, conditioned for the faithful performance of his duties as such committee; and he shall have control of the said estate, real and personal, with power to collect all debts due said drunkard, and to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply the annual income of the estate of such habitual drunkard to the support of said person, and the maintenance of his family and education of his children; and shall in all other respects perform the same duties and have the same rights as pertain to committees of lunatics and idiots.

When any person for whom a committee has been appointed under the provisions of this section shall become competent to manage his property on account of reformation in his habits, he may apply to said court to have said committee discharged and the care and control of his property restored to him; and if it shall appear by the verdict of a jury summoned therefor, or by affidavits, or other evidence to the satisfaction of the court, that said applicant is a fit person to have the care or control of his property, an order shall be entered restoring such person to all the rights and privileges enjoyed before said committee was appointed. And as to the property of any person for whom a committee has been so appointed the court shall have the same powers that are herein given to it in respect of the property of infants. (June 30, 1902, 32 Stat. 524, ch. 1329, § 115f; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

"Judge" was substituted for "justice" to conform to the provisions of act June 25, 1948, as amended by act May 24, 1949.

CROSS REFERENCE

Exemption from military service, see § 39-101.

NOTE TO DECISION

1. Unfitness to manage property

Finding of unfitness to manage property in a proceeding under this section is conclusive of condition on date of rendition; "it is not so as of a date prior thereto, but at the same time it has the tendency to raise some inference that the helpless condition must have existed for some space of time." *Knott v. Giles* (27 App. D. C. 581).

Chapter 5.—CONSERVATORS

Sec.

21-501. Appointment of conservators.

21-502. Filing of petition—Requirements—Time and place of hearing—Appointment of guardian ad litem.

21-503. Powers and duties of conservator.

21-504. Application for discharge—Powers of court.

21-505. Appointment of temporary conservator.

21-506. Personal welfare of person under conservatorship—Responsibility.

21-507. Lis pendens.

§ 21-501. Appointment of conservators.

If an adult person residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness (not amounting to unsoundness of mind), or physical incapacity properly to care for his property, the United States District Court for the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint some fit person to be conservator of his property. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 1.)

§ 21-502. Filing of petition—Requirements—Time and place of hearing—Appointment of guardian ad litem.

Upon the filing of such petition, the court shall fix a time and place for a hearing thereon; and shall cause at least fourteen days' notice thereof to be given to the person for whom a conservator is sought to be appointed, if he is not the petitioner, and to such other persons as the court shall direct. The petition shall include, among other things—

(1) the reasons for the appointment of a conservator;

(2) the name and address of the person for whom the conservator is sought;

(3) the date and place of his birth, if known; and

(4) the names and addresses of the nearest known heirs at law, or the next of kin, if any.

The court in its discretion may appoint some disinterested person to act as guardian ad litem in any proceeding hereunder. Upon a finding that the person for whom the conservator is sought is incapable of caring for his property, the court shall appoint a conservator who shall have the charge and management of the property of such person subject to the direction of the court. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 2.)

NOTES TO DECISIONS

Appointment of guardian 1
Selection of private counsel 2

1. Appointment of guardian

Under this section providing for appointment of a guardian ad litem in a proceeding to have a conservator appointed, selection and supervision of guardian ad litem are matters within sound discretion of trial court. *Mazza v. Pechacek* (1956, 233 F. 2d 666, 98 U.S. App. D.C. 175).

2. Selection of private counsel

Person for whose estate appointment of a conservator is sought may select private counsel of his own choice to advocate his position in opposition to appointment of a conservator. *Mazza v. Pechacek* (1956, 233 F. 2d 666, 98 U.S. App. D.C. 175).

§ 21-503. Powers and duties of conservator.

Such conservator before entering upon the discharge of his duties shall execute an undertaking

with surety to be approved by the court in such maximum amount as the court may order, conditioned on the faithful performance of his duties as such conservator; and he shall have control of the estate, real and personal, of the person for whom he has been appointed conservator, with power to collect all debts due such person, and upon authority of the court to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply such part of the annual income and such part of the principal of the estate of such person as the court may authorize to the support of such person and the maintenance and education of his family and children; and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of such person as have guardians of the estates of infants. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 3.)

NOTE TO DECISION

1. Compensation

In view of facts that duties of conservator and guardian are basically the same, and that this chapter, providing for appointment of conservators is silent as to compensation of conservators and merely provides that conservators shall have same rights and powers as guardians and that court shall have the same powers with respect to property of any person for whom conservator has been appointed as it has with respect to property of infants under guardianships, compensation of conservator should be fixed under section 21-126 limiting compensation of guardians to fixed percentage of amounts actually collected if and when disbursed. *In re Seale* (1954, 118 F. Supp. 273).

§ 21-504. Application for discharge—Powers of court.

When any person for whom a conservator has been appointed under the provisions of this chapter shall become competent to manage his property, he may apply to such court to have such conservator discharged and to be restored to the care and control of his property. If the court finds him to be competent, an order shall be entered restoring the care and control of his property to such person. The court shall have the same powers with respect to the property of any person for whom a conservator has been appointed as it has with respect to the property of infants under guardianships. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 4.)

§ 21-505. Appointment of temporary conservator.

Upon filing of a petition as provided by this chapter the court may, with or without notice or hearing, appoint a temporary conservator of the estate of any person hereunder, if it deems such action necessary for the protection of such estate, subject to the provisions for an undertaking contained in section 21-503. Such temporary conservator shall serve only until such time as a permanent conservator can be appointed or until sooner discharged. (Oct. 24, 1951, 65 Stat. 608, ch. 545, § 5.)

NOTE TO DECISION

1. Compensation of temporary conservator

Compensation of temporary conservator would not be determined under section 21-126 fixing compensation of guardian but would be determined by considering the

character of services rendered, the size of the estate, and the compensation awarded guardian ad litem and attorney for the guardian. *In re Searle* (1954, 118 F. Supp. 273).

§ 21-506. Personal welfare of person under conservatorship—Responsibility.

The court, in its discretion, may at any time order that the conservator or some other person shall be responsible for the personal welfare of the person whose property is under conservatorship. In such event the conservator or such other person, subject to the direction and control of the Civil Division of the court, shall have the same powers and duties with respect to the personal welfare of the said per-

son as have the guardians of the persons of infants under guardianships. (Oct. 24, 1951, 65 Stat. 609, ch. 545, § 6.)

§ 21-507. Lis pendens.

Lis pendens: Upon the filing of a petition under this chapter, a certified copy of such petition may be filed for record in the office of the Recorder of Deeds of the District of Columbia. If a conservator be appointed on such petition, all contracts, except for necessities, and all transfers of real and personal property made by the ward after such filing and before the termination of the conservatorship shall be void. (Oct. 24, 1951, 65 Stat. 609, ch. 545, § 7.)



PART IV

CRIMINAL LAW AND PROCEDURE

TITLE 22.—CRIMINAL OFFENSES

Chap.	Sec.
1. General Provisions.....	22-101
2. Abortion	22-201
3. Adultery	22-301
4. Arson	22-401
5. Assault—Mayhem—Threat of Bodily Harm.....	22-501
6. Bigamy	22-601
7. Bribery—Obstructing Justice.....	22-701
8. Cruelty to Animals.....	22-801
9. Domestic Relations.....	22-901
10. Fornication	22-1001
11. Disorderly Conduct.....	22-1101
12. Embezzlement	22-1201
13. False Pretenses—False Personation.....	22-1301
14. Forgery—Frauds	22-1401
15. Gambling	22-1501
16. Game and Fish Laws.....	22-1601
17. Harbor Regulations.....	22-1701
18. Housebreaking	22-1801
19. Incest	22-1901
20. Indecent Publications.....	22-2001
21. Kidnaping	22-2101
22. Larceny—Receiving Stolen Goods.....	22-2201
23. Libel—Blackmail	22-2301
24. Murder—Manslaughter	22-2401
25. Perjury	22-2501
26. Prison Breach—Misprisions.....	22-2601
27. Prostitution—Pandering	22-2701
28. Rape	22-2801
29. Robbery	22-2901
30. Seduction	22-3001
31. Trespass—Injuries to Property.....	22-3101
32. Weapons	22-3201
33. Vagrancy	22-3301
34. Miscellaneous	22-3401
35. Sexual Psychopaths.....	22-3501
36. Implements of Crime.....	22-3601

Chapter 1.—GENERAL PROVISIONS

Sec.
22-101. "Writing" and "paper" defined.
22-102. "Anything of value" defined.
22-103. Attempts to commit crime.
22-104. Second conviction.
22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.
22-106. Accessories after the fact.
22-107. Punishment for offenses not covered by provisions of code.
22-108. Offenses committed beyond District of Columbia.
22-109. Prosecutions.

§ 22-101. "Writing" and "paper" defined.

Except where such a construction would be unreasonable, the words "writing" and "paper," wherever

mentioned in this title, are to be taken to include instruments wholly in writing or wholly printed, or partly printed and partly in writing. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 904.)

§ 22-102. "Anything of value" defined.

The words "anything of value," wherever they occur in this title, shall be held to include not only things possessing intrinsic value, but bank notes and other forms of paper money, and commercial paper and other writings which represent value. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 905.)

§ 22-103. Attempts to commit crime.

Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by this title, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 906.)

NOTES TO DECISIONS

In general 1
Assault 2
False pretenses 3
Prostitution 4

1. In general

Mere preparation is not an attempt, but preparation may progress to the point of attempt, and question whether it has is one of degree which can be resolved only on basis of facts of each case. *Sellers Jr. v. United States* (D.C. Mun. App. 1957, 131 A. 2d 300).

2. Assault

One who assaults a female under 16 years of age, with intent to carnally know her, is punishable under 1901 Code, § 803 (§ 22-501) and not 1901 Code, § 906 (§ 22-103). *Sanselo v. United States* (44 App. D. C. 508).

3. False pretenses

In prosecution for attempting by false pretenses to obtain money from an insurance company on a fraudulent claim for stolen furs evidence of defendants' guilt was sufficient for the jury. *Cooper and Williams v. United States* (D.C. Mun. App. 1956, 123 A. 2d 918).

4. Prostitution

Where defendant, upon obtaining affirmative reply to his question whether police officers were looking for girls, inquired what type they wanted, priced the girls at \$10 each, and revealed, in answer to question put by one officer, that defendant's fee was \$2, fact that defendant's actions never progressed beyond stage of conversation and that no money was received was not fatal to a conviction for an attempt to receive money for arranging for a female to have sexual intercourse, and, had the money passed, the principal crime itself would have been consummated. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

Evidence sustained conviction for attempt to receive money for arranging for a female to have sexual intercourse. *Id.*

§ 22-104. Second conviction.

Every person upon his second conviction of any criminal offense punishable by fine or imprisonment or both may be sentenced to pay a fine not exceeding fifty per centum greater, and to suffer imprisonment for a period not more than one half longer than the maximum fine and imprisonment for the first offense. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 907.)

NOTE TO DECISION

1. Attack on former indictment

When defendant appeared and pleaded to an information for petit larceny, and was tried in the police court without objection, he admits the validity of the information, and, if convicted, can not afterwards, when indicted for petit larceny as a second offense, deny the legal sufficiency of the information as not being sworn to, or claim that his first arrest was illegal. *Latney v. United States* (18 App. D. C. 265).

§ 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 908.)

NOTES TO DECISIONS

Accessory before the fact 1
 Accomplice 2
 Aid and abet 3
 Charged as principal 4
 Design or plan 5
 Instructions 6
 Intent 7
 Lender of automobile 8
 Participation 9
 Presence at commission 10
 Testimony of accomplice 11

1. Accessory before the fact

Under this section a person shown to be an accessory before the fact is chargeable and criminally responsible as a principal. *Williams v. United States* (1925, 4 F. 2d 432, 55 App. D.C. 239).

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where there was sufficient evidence to justify the jury's conclusion that doctor was an accessory before the fact to the attempt at bribery by his wife, he was properly found guilty as a principal. *Ladrey v. U.S.* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

2. Accomplice

In cases of carnal knowledge, the prosecutrix is not an accomplice of the defendant. "An accomplice is one who is associated with another, or others, in the commission of a crime. Liability to indictment, under ordinary conditions, is a reasonable test of the legal relation of the party to the crime and its perpetrator." *Yeager v. United States* (16 App. D.C. 356, certiorari denied 20 S. Ct. 1031, 178 U.S. 615, 44 L. Ed. 1217).

Woman upon whom a miscarriage is produced in violation of 1901 Code, § 809 (§ 22-201), is not an accomplice of the person who produces it. *Thompson v. United States* (30 App. D.C. 352, 12 Ann. Cas. 1004).

"Persons engaged in wagering contests are not accomplices." *Paylor v. United States* (42 App. D.C. 428, LRA 1915D, 682, certiorari denied 35 S. Ct. 209, 235 U.S. 704, 59 L. Ed. 434).

The giver of a bribe is an accomplice of the person bribed. *Egan v. United States* (1923, 287 F. 958, 52 App. D.C. 384).

"Anyone knowingly and voluntarily co-operating with, aiding, assisting, advising, or encouraging another in the commission of a crime is an accomplice; and this is true, regardless of the degree of his guilt." *Egan v. United States* (1923, 287 F. 958, 52 App. D.C. 384). See, also, *Tomlinson v. United States* (1935, 93 F. 2d 652, 68 App. D.C. 106, 114 ALR 1315, certiorari denied 58 S. Ct. 645, 303 U.S. 646, 82 L. Ed. 1102).

3. Aid and abet

One aiding and abetting unauthorized use of automobile stands in same shoes as principal offender. *Allen v. United States* (1958, 257 F. 2d 188, 103 U.S. App. D.C. 184).

Defendant who aided and abetted the taking of an automobile and other property within the District of Columbia was liable as a principal. *Williams v. United States* (1954, 215 F. 2d 35, 94 U. S. App. D. C. 219).

Without determining whether each of defendants was then displaying a placard in front of embassy, all are guilty under provisions of the local law making it an offense to aid and abet in a violation of a law. *Frend v. United States* (1939, 100 F. 2d 691, 69 App. D.C. 281, certiorari denied 59 S. Ct. 488, 306 U.S. 640, 83 L. Ed. 1040).

Public utilities commission regulation, forbidding owner or operator of vehicle for hire to authorize any person to operate such vehicle unless such person possessed a valid character license, was directed only to owners and operators who permitted unlicensed persons to drive; and defendant, who had an arrangement with corporation to rent taxicabs or to provide drivers but did not himself operate taxicabs and had no proprietary interest in corporation or its vehicles, could not properly be convicted under statute, where he was not accused of aiding and abetting corporation, and evidence did not comport with that of a case tried on theory of aiding and abetting. *Sellers v. District of Columbia* (D.C. Mun. App. 1958, 143 A. 2d 96).

Although an offense may be so defined by statute or regulation that it can only be committed by members of a certain class, one outside the class may, by aiding or abetting another who is within the scope of the definition, render himself criminally liable for the offense. *Jack Berman Inc., et al. v. District of Columbia* (D.C. Mun. App. 1957, 132 A. 2d 147).

Under statute, although one may not be the principal actor, he may be charged as a principal under the same information in conjunction with principal offender for acts of aiding and abetting. *Id.*

The District of Columbia vehicle title and registration regulations and the commissioners' order concerning automobile conditional sales contracts were applicable only to licensed automobile dealers, and unlicensed dealer, even though he aided and abetted a licensed dealer, could not be convicted for violations of regulations and order on the sole basis that he was a dealer under their purview. *Id.*

4. Charged as principal

"One who procures, commands, advises, instigates, or incites the commission of an offense, though not personally present at its commission, is, by the common law, an accessory before the fact. * * * The section of the code above quoted (§ 22-105) makes all such persons principals. And it is not essential that any specific time or mode of committing the offense shall have been advised or commanded, or, if so, that it shall have been committed in the particular way instigated. * * * Nor is it necessary that there shall have been any direct communication between the actual perpetrator and the accessory, who, under the code, is now a principal." *Mazey v. United States* (30 App. D. C. 63).

Indictment charging that A, B, and C made an assault on X with a brick held in the hand of B is not defective as charging A and C with an impossible act. "The defendants were charged as principals. They were acting together and the act of one was the act of each. The question is set at rest by section 908 of the code (this section)." *Polen v. United States* (41 App. D. C. 4).

In an indictment charging defendants with engaging in unlawful prize fight, for which appellant charged an admission fee, the appellant was rightly indicted as a principal. *Dane v. United States* (1927, 18 F. 2d 811, 57

App. D.C. 161, certiorari denied 48 S. Ct. 35, 275 U.S. 538, 72 L. Ed. 413).

One who procures, commands, advises, instigates or incites the commission of an offense, though not personally present at its commission is by the common law an accessory before the fact, and by this section all such persons are made principals. *Ladrey v. U.S.* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

Where tenant of premises, wherein gaming tables were kept, was an incorporated club, but there was evidence that defendants took part in carrying on its gambling activities, defendants were responsible as principals. *Warde v. U.S.* (1947, 158 F. 2d 651, 81 U.S. App. D.C. 355).

5. Design or plan

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, jury, in determining whether the killing by defendant's companion was within design or plan of defendant and his companion, was entitled to consider whether it was a natural and probable result of the acts which defendant and his companion concerted to perform. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

6. Instructions

In action against two defendants for murder a requested instruction was properly refused which stated that "if no force of arms was contemplated, then defendant was not liable for the consequences of the shot by the codefendant," for the testimony and instruction must show that before the crime has been done he honestly and in good faith withdraws and tries to get away and does not take any part in the offense. *Marcus v. United States* (1937, 86 F. 2d 854, 66 App. D.C. 298).

Fact that there was evidence that one of the three defendants jointly indicted on charge of murder in perpetration of robbery threw away the gun and bullets after the murder did not require an instruction that jury could find such defendant guilty as accessory after the fact, where such defendant's testimony and other circumstances stamped him as an accessory before the fact and therefore guilty as a principal. *Hall v. U.S.* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

Defendants were not entitled to complain that the trial court erroneously failed to tell the jury that a defendant was an accomplice rather than a principal where the trial judge gave instructions which were full and correct and reflected the statutory provision that all who aid or abet in the commission of a crime are charged as principals. *Cooper and Williams v. United States* (D.C. Mun. App. 1956, 123 A. 2d 918).

7. Intent

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, defendant was properly allowed to testify as to his own intent. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

8. Lender of automobile

"If the owner of a dangerous instrumentality like an automobile knowingly puts that instrumentality in the immediate control of a careless and reckless driver, sits by his side, and permits him without protest so carelessly and negligently to operate the car as to cause the death of another, he is as much responsible as the man at the wheel." *Story v. United States* (1927, 16 F. 2d 342, 57 App. D.C. 3, 53 A.L.R. 246, certiorari denied 47 S. Ct. 576, 274 U.S. 739, 71 L. Ed. 1318).

9. Participation

Evidence was sufficient to establish defendant's guilty participation in crime of housebreaking and larceny. *Lanham v. United States* (1951, 185 F. 2d 435, 87 U. S. App. D. C. 357).

10. Presence at commission

When defendant was not present when the actual conversion took place, he was a mere artificial principal and not an actual one, that is, he was subject to the same punishment as though he actually had assisted in the final act of larceny; but that does not prevent his prosecution for the distinct offense of receiving stolen goods. *Weisberg v. United States* (1919, 258 F. 284, 49 App. D.C. 28).

11. Testimony of accomplice

There may be a conviction on the uncorroborated testimony of an accomplice, "provided the jury is admonished by the court that the testimony of an accomplice 'ought to be received with suspicion, and with the very greatest care and caution.'" *Egan v. United States* (1923, 287 F. 958, 52 App. D.C. 384).

§ 22-106. Accessories after the fact.

Whoever shall be convicted of being an accessory after the fact to any crime punishable by death shall be punished by imprisonment for not more than twenty years. Whoever shall be convicted of being accessory after the fact to any crime punishable by imprisonment shall be punished by a fine or imprisonment, or both, as the case may be, not more than one-half the maximum fine or imprisonment, or both, to which the principal offender may be subjected. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 909.)

§ 22-107. Punishment for offenses not covered by provisions of code.

Whoever shall be convicted of any criminal offense not covered by the provisions of any section of this code, or of any general law of the United States not locally inapplicable in the District of Columbia, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than five years, or both. (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 910.)

NOTES TO DECISIONS

In general 1
Conspiracy 2
Disorderly house 3
Negligent escape 4

1. In general

"This section obviously was enacted to cover offenses not embraced in any other section of the District Code or of any general law of the United States not locally inapplicable. It was enacted out of abundant caution, and to cover any offense for which no other provision had been made. * * * A prosecution under this section, when the facts show that the offense is covered by some specific statute, is clearly unauthorized. In other words, this section was intended to supplement, and not supersede or modify, specific statutory provisions." *Fletcher v. United States* (42 App. D.C. 53, certiorari denied 35 S. Ct. 283, 235 U.S. 706, 59 L. Ed. 434).

2. Conspiracy

Defendant convicted of common-law conspiracy was properly sentenced under this section, for no overt act being charged, the indictment was not under § 37 of the federal penal code, section 371 of title 18, U.S. Code, and the rule that there are no common-law offenses against the United States is not applicable in the District of Columbia. *Harrison v. Moyer* (D.C. Ga. 1915, 224 F. 224).

3. Disorderly house

Offense of keeping a disorderly house being punishable under this section of the Code by imprisonment, its prosecution is exclusively within jurisdiction of the District Court, and a conviction therefor in the police court is void. *Palmer v. Lenovitz* (35 App. D. C. 303).

4. Negligent escape

Under this section prescribing fine not exceeding \$1,000 or imprisonment for not more than five years or both as punishment for any offense not specifically covered by statute, conviction of negligent escape, punishment for which is not specifically prescribed, invokes the punishment of a felony, although it was apparently classified as a misdemeanor at common law. *U.S. v. Davis* (1948, 167 F. 2d 228, 83 U.S. App. D.C. 99, certiorari denied 68 S. Ct. 1501, 334 U.S. 849, 92 L. Ed. 1772).

§ 22-108. Offenses committed beyond District of Columbia.

Any person who by the commission outside of the District of Columbia of any act which, if committed within the District of Columbia, would be a criminal offense under the laws of said District, thereby obtains any property or other thing of value, and is afterwards found with any such property or other such thing of value in his possession in said District, or who brings any such property or other such thing of value into said District, shall, upon conviction, be punished in the same manner as if said act had been committed wholly within said District. (Mar. 3, 1901, ch. 854, § 836a, as added Dec. 21, 1911, 37 Stat. 45, ch. 2.)

NOTE TO DECISION

1. Stolen goods

District Court for the District of Columbia has jurisdiction of case involving conspiracy to bring stolen stock into the District, as such court is a District Court of the United States. *Arnstein v. United States* (1924, 296 F. 946, 54 App. D.C. 199, certiorari denied 44 S. Ct. 454, 264 U.S. 595, 68 L. Ed. 867).

§ 22-109. Prosecutions.

All prosecutions for violations of section 22-1121 or any of the provisions of any of the laws or ordinances provided for by this Act shall be conducted in the name of and for the benefit of the District of Columbia, and in the same manner as provided by law for the prosecution of offenses against the laws and ordinances of the said District. Any person convicted of any violation of section 22-1121 or any of the provisions of this Act, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the workhouse of the District of Columbia for a term not exceeding six months for each and every offense. The second sentence of this section shall not apply with respect to any violation of section 22-1112 (b). (July 29, 1892, 27 Stat. 325, ch. 320, § 18; June 29, 1953, 67 Stat. 93, 98, ch. 159, §§ 202 (a) (2), 211 (b).)

REFERENCES IN TEXT

This Act, referred to in the text, refers to act July 29, 1892. Existing provisions of act July 29, 1892, are classified to sections 4-120, 22-109, 22-1107 to 22-1110, 22-1112 to 22-1114, 22-1117, 22-1118 and 22-3110 to 22-3113. Provisions of section 7 of act July 29, 1892, were repealed by act Aug. 15, 1935, 49 Stat. 652, ch. 546, § 4, and are now covered by section 22-2701. Provisions of section 8 of act July 29, 1892, were repealed by act Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5, and are now covered by sections 22-3302 and 22-3304. Provisions of section 12 of act July 29, 1892, prohibited the fast riding and driving of any animal of the horse kind and imposed a maximum penalty of twenty-five dollars for violation thereof and were superseded by act June 29, 1906, 34 Stat. 621, ch. 3615, § 1, which was repealed by act Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16(a).

AMENDMENT

1953—Act June 29, 1953, added the last sentence which excepted application of the section to a violation of section 22-1112 (b) and inserted references to section 22-1121 in two instances, respectively.

CROSS REFERENCES

Adulteration of food and drugs, see § 33-101 et seq.
Alcoholic Beverage Control Act, see § 25-101 et seq.
Fines and penalties accruing to United States under laws of State of Maryland, see § 13-222.
Institutions of learning, penal provisions, see § 29-419.
Public utilities, penal provisions, see § 43-901 et seq.
Traffic Act, penalties, see § 40-601 et seq.
Uniform Narcotic Drug Act, see § 33-401 et seq.
Warehouse Receipts Act, criminal offenses, see § 28-2101 et seq.

Chapter 2.—ABORTION

Sec.

22-201. Definition and penalty.

§ 22-201. Definition and penalty.

Whoever, by means of any instrument, medicine, drug or other means whatever, procures or produces, or attempts to procure or produce an abortion or miscarriage on any woman, unless the same were done as necessary for the preservation of the mother's life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned in the penitentiary not less than one year or not more than ten years; or if the death of the mother results therefrom, the person procuring or producing, or attempting to procure or produce the abortion or miscarriage shall be guilty of second degree murder. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 809; June 29, 1953, 67 Stat. 93, ch. 159, § 203.)

AMENDMENT

1953—Act June 29, 1953, provided for a penalty of imprisonment for from one to ten years in lieu of the previous provision of "not more than five years" and that in the event of death, the person procuring the abortion would be guilty of second degree murder whereas the previous provision was for imprisonment of from three to twenty years.

CROSS REFERENCE

Nonmailable matter pertaining to abortion, penalties, see U. S. Code, title 18, § 1461.

NOTES TO DECISIONS

Attempt 1
Burden of proof 2
Contempt 3
Evidence 4
Indictment 5
Instructions 6
License, revocation of 7
Prejudicial error 8
Sentence 9
Woman not accomplice 10

1. Attempt

Crime as denounced by this section and charged by the indictment does not necessarily contemplate an actual miscarriage by the woman, but is complete when an attempt to procure a miscarriage by such means is made, regardless of whether it results in an actual miscarriage of the pregnant woman or not. *Crichton v. United States* (1937, 92 F. 2d 224, 67 App. D.C. 300, certiorari denied 58 S. Ct. 22, 302 U.S. 707, 82 L. Ed. 542).

2. Burden of proof

In abortion prosecution brought under this section and containing exception in case abortion is performed to preserve life or health, the burden of proving that act was justified on therapeutic grounds was on defendants and the prosecution was not required as part of its case to negative application of the exception. *Williams v. U.S.* (1943, 138 F. 2d 81, 78 U.S. App. D.C. 147, 153 A.L.R. 1213).

3. Contempt

Where trial judge in abortion prosecution permitted himself to become personally embroiled with defense

counsel throughout trial and made statement to jury indicating his hostility toward counsel, trial judge, instead of finding counsel guilty of criminal contempt and imposing punishment, should have invited the Chief Judge of the District Court to assign another judge to sit in hearing of charge against counsel. *Offutt v. United States* (1954, 75 S. Ct. 11, 348 U. S. 11, 99 L. Ed. 11).

4. Evidence

In abortion prosecution of physician, wherein physician admitted treating complaining witness at time and place alleged by her and in manner described by her, but claimed that the treatment was not designed to cause an abortion, trial court properly permitted introduction of the testimony of two other women that physician agreed to and did perform an abortion on each in substantially the same manner as described by the complaining witness about the same time as the alleged abortion testified to by the complaining witness. *Harper v. United States* (1956, 239 F. 2d 945, 99 U. S. App. D. C. 324).

It was not error to admit evidence concerning three treatments by defendant when only one was charged in the indictment, as the three treatments, taken together, and their joint result, constituted the crime with which the defendant was charged. *Harrod v. United States* (1929, 29 F. 2d 454, 58 App. D.C. 254).

Evidence was sufficient to sustain conviction. *Harrod v. United States* (1929, 29 F. 2d 454, 58 App. D.C. 254). See, also, *Hart v. United States* (1939, 105 F. 2d 792, 70 App. D.C. 269).

Evidence supported conviction of criminal abortion as against defendant's claim that there was no evidence that the crime had been committed in the District of Columbia. *Miller v. U.S.* (1948, 169 F. 2d 967, 83 U.S. App. D.C. 367).

5. Indictment

The preservation of life or health provisions in this section forbidding the prescribing or administering of medicine, drug or other substance or use of instrument to procure miscarriage unless when necessary to preserve woman's life or health and under direction of competent licensed medical practitioner are intended to furnish the defense an opportunity for justification and are not part of description of offense required to be alleged or proved by prosecution. *Peckham v. United States* (1954, 210 F. 2d 693, 93 U.S. App. D.C. 136).

6. Instructions

In prosecution for using instruments upon and administering drugs to named woman, then pregnant, with intent to procure her miscarriage, charge of court that it was immaterial whether or not woman was pregnant, if at time defendant believed she was pregnant, was not erroneous. *Peckham v. United States* (1955, 226 F. 2d 34, 96 U.S. App. D.C. 312, certiorari denied 76 S. Ct. 195, 350 U.S. 912, 100 L. Ed. 800, rehearing denied 76 S. Ct. 341, 350 U.S. 955, 100 L. Ed. 831).

Instruction on necessity of finding guilt beyond reasonable doubt and instruction requiring government to establish that defendant prescribed or administered a medicine, drug or other substance or used on the woman some instrument or means, that she was pregnant at the time and that defendant did the act with intent to procure a miscarriage adequately defined all essential elements of crime of abortion and adequately instructed jury as to necessity of proof beyond reasonable doubt that complaining witness was pregnant and that defendant did some act or administered some treatment or drug with intent to procure an abortion. *Peckham v. United States* (1954, 210 F. 2d 693, 93 U. S. App. D. C. 136).

In prosecution for abortion in May 1951, and in January 1952, instruction that witness who testified that he had assisted in arranging and furthering the first alleged abortion must be deemed an accomplice and that his testimony should be received with care and scrutinized with caution was not erroneous as carrying inference that defendant was guilty. *Id.*

Fact that disproportionate amount of charge was devoted to outlining Government's side of case in connection with second count of indictment alleging abortion as to which the defense won acquittal did not require reversal of conviction on first count alleging abortion on

different date where defense of such first count consisted almost entirely of case as outlined in the charge. *Id.*

7. License, revocation of

District of Columbia Code provision authorizing revocation of license of person convicted in United States District Court for the District of Columbia of any felony, without further hearing or procedure, provides an additional remedy for revocation of license and did not preclude resort to action in equity by Commission on Licensure to Practice the Healing Art for revocation of license under statute authorizing same in case of misconduct. *Ladrey v. Commission on Licensure, etc.* (1958, 261 F. 2d 68, 104 U.S. App. D.C. 239, certiorari denied 79 S. Ct. 288, 358 U.S. 920, 3 L. Ed. 2d 239, rehearing denied 79 S. St. 351, 358 U.S. 948, 3 L. Ed. 2d 353).

Under District of Columbia Code permitting revocation of license because of misconduct after institution of action in United States District Court for the District of Columbia sitting as a court of equity, where complaint charged in words of criminal statute that physician had performed an abortion physician could not contend that the word "misconduct" was too vague and indefinite to meet requirements of due process. *Id.*

Under statute authorizing District Court of the United States for the District of Columbia sitting as a court of equity to suspend license upon evidence showing that licentiate has been guilty of misconduct, licentiate has available to him full protection of rules and "misconduct" as a ground for suspension or revocation is not left as a matter of opinion but is susceptible to complete exposition under rules and requires proof as a matter of fact accordingly. *Id.*

8. Prejudicial error

In prosecution for abortion, excessive injection of trial judge into examination of witnesses and judge's numerous comments to defense counsel, indicating at times hostility, though under provocation, demonstrated a bias and lack of impartiality which may well have influenced the jury and required reversal of conviction. *Peckham v. United States* (1954, 210 F. 2d 693, 93 U. S. App. D. C. 136).

In prosecution for abortion on two counts, refusal to allow defense counsel to examine whole file of hospital records of doctor who examined prosecuting witness at hospital and who used a part of file to refresh his recollection and who expressed opinion as to induced abortion relating only to second count of which defendant was acquitted was not prejudicial error. *Id.*

9. Sentence

Where defendant was indicted on two charges and pled guilty to both, and the court inadvertently pronounced the sentences to run concurrently, the court had power to amend the sentences to run consecutively where defendant was still in the custody of the officers of the court. *Rowley v. Welch* (1940, 114 F. 2d 499, 72 App. D.C. 351).

10. Woman not accomplice

"This section applies to the person or persons committing the act which produces the miscarriage, and not to the person upon whom it is committed, notwithstanding it may be done with her knowledge and consent. Not being liable to indictment thereunder, she is not an accomplice in the legal sense." *Marey v. United States* (30 App. D.C. 63). See, also, *Thompson v. United States* (30 App. D.C. 352, 12 Ann. Cas. 1004).

Chapter 3.—ADULTERY

Sec.

22-301. Definition and penalty.

§ 22-301. Definition and penalty.

Whoever commits adultery in the District shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or both; and when the act is committed between a married woman and a man who is unmarried both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman

who is unmarried, the man only shall be deemed guilty of adultery. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 874.)

NOTES TO DECISIONS

Credibility of testimony 1
 Indictment 2
 Law governing 3
 Proof 4
 Unmarried woman 5

1. Credibility of testimony

Where two women who later became witnesses for prosecution first told police sergeant they knew nothing about the case and gave unsworn statements to that effect but later each gave a second statement in which full story was told, after which sergeant destroyed first statements in belief that they had become valueless, officer's act in destroying first statement did not afford basis for instruction that jury might disregard all or any portion of officer's testimony. *Miller v. U.S.* (1948, 169 F. 2d 967, 83 U.S. App. D.C. 367).

Where two women who testified as witnesses for prosecution did not admit having falsified as to any issue but merely stated that they had first refrained from giving any information because they did not want to become publicly involved in a scandalous situation, defendant was not entitled to an instruction requiring jury to give careful scrutiny to testimony of the two women on ground that they had admitted swearing falsely. *Id.*

2. Indictment

Two charges of adultery with the same person may be joined under R.S. § 1024, now covered by Fed. Rules Cr. Proc. rules 8, 13, 14, U.S. Code, title 18, Appendix. *Kleindienst v. United States* (48 App. D. C. 190).

3. Law governing

One convicted of adultery should be sentenced under this section and not under section 316 of the Penal Code (U.S.C., title 18, former § 516). *Kleindienst v. United States* (48 App. D.C. 190).

On an indictment for adultery, which under the District Code is a misdemeanor and under the Federal Penal Code a felony, the accused on his conviction should be sentenced under the former and not the latter. *O'Brien v. United States* (1938, 99 F. 2d 368, 69 App. D.C. 135, certiorari denied 59 S. Ct. 95, 305 U.S. 562, 83 L. Ed. 354).

4. Proof

When indictment charges two specific acts of adultery, and the proof shows "repeated offenses of adultery" extending over a period of more than a year, it is error to refuse to require the government to specify, at the close of its case, the specific acts for which the government asks a conviction. *Kleindienst v. United States* (48 App. D. C. 190).

5. Unmarried woman

If committed by her while unmarried, the act would not have been indictable; but such act would have been indictable if committed by her while married. *O'Neil v. O'Neil* (1924, 299 F. 914, 55 App. D.C. 40).

Chapter 4.—ARSON

Sec.

- 22-401. Definition and penalty.
- 22-402. Burning one's own property with intent to defraud or injure another.
- 22-403. Malicious burning, destruction or injury of another's movable property.
- 22-404. Malicious burning of fences, woods, crops.

§ 22-401. Definition and penalty.

Whoever shall maliciously burn or attempt to burn any dwelling, or house, barn, or stable adjoining thereto, or any store, barn, or outhouse, or any shop, office, stable, store, warehouse, or any other building, or any steamboat, vessel, canal boat, or other watercraft, or any railroad car, the property, in whole or in part, of another person, or any church, meetinghouse, schoolhouse, or any of the

public buildings in the District, belonging to the United States or to the District of Columbia, shall suffer imprisonment for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 820.)

CROSS REFERENCE

Kindling bonfires, see § 22-1113.

NOTES TO DECISIONS

Evidence 1
 Indictment 2
 Part owner 3
 Review 4
 Tenant 5

1. Evidence

In arson and murder prosecution, evidence was sufficient to establish that victim's death had been caused by the fire in house in which her body was found. *Green v. United States* (1955, 218 F. 2d 856, 95 U.S. App. D.C. 45).

Evidence sustained conviction for arson committed by malicious burning of building of another. *Lichtenwalter v. United States* (1951, 190 F. 2d 36, 89 U. S. App. D. C. 187).

2. Indictment

Counts are properly joined in the same indictment which charge defendant with setting fire to his own property and with attempt to burn another person's property. *Posey v. United States* (26 App. D. C. 302).

4. Review

Errors in trial of charge of arson require reversal. *Parlton v. United States* (1896, 75 F. 2d 772, 64 App. D.C. 169).

3. Part owner

One burning a dwelling-house occupied in part by him and in part by another, with intent to defraud an insurance company, is guilty of arson. *Posey v. United States* (26 App. D. C. 302).

5. Tenant

"It is not to be presumed that Congress intended to exempt from liability a tenant who should maliciously burn, or attempt to burn, a building belonging to another, though temporarily occupied by him." *Posey v. United States* (26 App. D. C. 302).

§ 22-402. Burning one's own property with intent to defraud or injure another.

Whoever maliciously burns or sets fire to any dwelling, shop, barn, stable, store, or warehouse or other building, or any steamboat, vessel, canal boat, or other watercraft, or any goods, wares, or merchandise, the same being his own property, in whole or in part, with intent to defraud or injure any other person, shall be imprisoned for not more than fifteen years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 821.)

§ 22-403. Malicious burning, destruction, or injury of another's movable property.

Whoever maliciously injures or destroys, or attempts to injure or destroy, by fire or otherwise, any movable property not his own, of the value of \$50 or more, shall be imprisoned for not less than one year and not more than ten years, and if the value of the property be less than \$50 by a fine not exceeding \$200 or by imprisonment not exceeding one year, or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 848; Aug. 12, 1937, 50 Stat. 629, ch. 599.)

AMENDMENT

1937—Act Aug. 12, 1937, substituted \$50 for \$35 in two instances.

NOTES TO DECISIONS

Admissibility of evidence 1
 Evidence
 Admissibility 1
 Sufficiency of 2

Indictment 3
 Prejudicial error 4
 Sufficiency of evidence 2
 Supersedeance 5

1. Evidence—Admissibility

In prosecution for malicious burning of another's property, record sustained trial court's ruling that defendant had failed to prove unnecessary delay in presentment to committing magistrate or that unnecessary delay had induced confession, and confession was properly admitted. *Gladys M. Tillotson v. United States* (1956, 231 F. 2d 736, 97 U. S. App. D. C. 402, certiorari denied 76 S. Ct. 1055, 351 U. S. 989, 100 L. Ed. 1502).

2. — Sufficiency of

Evidence was sufficient to sustain conviction for house-breaking, larceny and destroying movable property. *Braddy v. United States* (1955, 225 F. 2d 551, 96 U. S. App. D. C. 251).

3. Indictment

Quaere: Whether prosecution can be in the name of the District of Columbia, if value of property is more than \$35, not decided by appellate court, but it did say, it is very doubtful under Code of 1929, title 6, § 351 (§ 23-101) which provides that prosecutions of "all penal regulations, where the maximum punishment is a fine only or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia, and by the city solicitor or his assistants." *Nation v. District of Columbia* (34 App. D.C. 453, 26 L.R.A., N.S., 996).

Indictment or information must allege value of property injured. *Id.*

4. Prejudicial error

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 247 F. 2d 583, 101 U. S. App. D. C. 177).

5. Supersedeance

Insofar as § 22-3112 may have applied to movable property, it has been superseded by this section. *Nation v. District of Columbia* (34 App. D.C. 453, 26 L.R.A., N.S., 996).

§ 22-404. Malicious burning of fences, woods, crops.

Whoever shall maliciously burn or set fire to any fences, woods, stacks of hay, grain, or straw, or growing crops, the property, in whole or in part, of another, shall be imprisoned for not more than thirty days or be fined not more than five hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 822.)

Chapter 5.—ASSAULT — MAYHEM — THREAT OF BODILY HARM

Sec.

- 22-501. Assault with intent to kill, rob, rape, or poison.
- 22-502. Assault with intent to commit mayhem or with dangerous weapon.
- 22-503. Assault with intent to commit any other offense.
- 22-504. Assault or threatened assault in a menacing manner.
- 22-505. Assault on member of police force.
- 22-506. Mayhem or maliciously disfiguring.
- 22-507. Threats to do bodily harm.

§ 22-501. Assault with intent to kill, rob, rape, or poison.

Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not more than fifteen years. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 803.)

CROSS REFERENCES

Gaming losses, assaults because of, see § 16-705.

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

Possession of firearm, additional penalty, §§ 22-3201. 22-3202.

NOTES TO DECISIONS

Admissibility of evidence 2

Assistance of counsel 1

Evidence

Admissibility 2

Sufficiency 3

Indictment 4

Insanity 5

Instruction 6

Intent to rape 7

Presumptions 8

Review 9

Sentence 10

Submission or resistance 11

Sufficiency of evidence 3

1. Assistance of counsel

Where defendant charged with assault of an indecent character on young lady in theatre was arrested at 12:15 a. m., on May 27, his counsel was retained for him at 10:20 that morning, counsel had no opportunity to consult with defendant, investigate charge, or otherwise prepare for trial and case was called for trial at 10:30, defendant was deprived of his right to effective assistance of counsel. *Creed v. United States* (D.C. Mun. App. 1959, 156 A. 2d 676).

2. Evidence—Admissibility

In prosecution for assault on a girl three years and eight months of age, the mother's testimony repeating the child's story to mother more than three hours after the alleged occurrence was hearsay and was not within doctrine of spontaneous statements. *Brown v. U.S.* (1946, 152 F. 2d 138, 80 U.S. App. D.C. 270).

In prosecution for assault on a girl three years and eight months of age, testimony of police officers regarding what the child had said a day or two after the alleged assault and an officer's belief as to what defendant had done was inadmissible. *Id.*

3. — Sufficiency

In prosecution for assault with intent to commit robbery, evidence on issue of defendant's sanity at time of commission of crime was sufficient to support conviction. *Jordan v. United States* (1955, 217 F. 2d 670, 95 U. S. App. D. C. 27).

The evidence must show beyond reasonable doubt an assault, an intent to have carnal knowledge of a female, and a purpose to carry out the intent with force and against the will of the female, to make out a case of "assault with intent to commit rape". *Robinson v. U.S.* (1943, 136 F. 2d 283, 78 U.S. App. D.C. 63).

In prosecution for assault with intent to commit rape, evidence was sufficient for jury. *Id.*

To make out a case of "assault with intent to commit rape," the evidence must show beyond a reasonable doubt an assault, and an intent to have carnal knowledge of the female and a purpose to carry into effect the intent with force and against the consent of the female. *Hammond v. U.S.* (1942, 127 F. 2d 752, 75 U.S. App. D.C. 397).

Evidence that defendant went to the home of his mother-in-law, with whom his wife and baby were living, went to the bedroom of his 17-year-old sister-in-law, pulled off the covers and touched her private parts with his hand, that she awakened and screamed, and that defendant ran from the house was insufficient to sustain conviction for "assault with intent to commit rape." *Id.*

4. Indictment

In an indictment for assault with intent to kill "it is not required that in the indictment it should be alleged and set forth with what means or instrument the killing was attempted to be perpetrated." *Davis v. United States* (16 App. D. C. 442). Otherwise, if attempt was by poisoning or drowning. *Coratola v. United States* (24 App. D. C. 229).

5. Insanity

A general verdict of not guilty by reason of insanity carried with it a finding that, except for the question as to his sanity, defendant was guilty as charged. *Rucker*

v. *United States* (C.A.D.C. 1960, 280 F. 2d 623).

In prosecution for assault with intent to kill and possession of a rifle with intent to use it unlawfully against another, where the court found the defendant not guilty by reason of insanity and it did not appear that defendant actually understood and acquiesced that the question of his guilt was being tried in that it did not appear that he understood and acquiesced in what was being accomplished without witnesses or evidence and he protested promptly a few days after the verdict, the defendant was entitled to a new trial. *Id.*

Post-conviction change in standards with regard to defense of insanity did not entitle person tried and convicted under previous standard to reversal. *Jordan v. United States* (1955, 217 F. 2d 670, 95 U. S. App. D. C. 27).

6. Instructions

Where defendant was charged with offense of assault upon female child with intent to commit carnal knowledge, trial court properly instructed jury that if it found defendant not guilty on count as charged, jury should then consider lesser included offense of taking improper and indecent liberties with a child. *Younger Jr. v. United States* (1959, 263 F. 2d 735, 105 U.S. App. D.C. 51).

Crimes of a revolting nature, especially where victim is a young child, arouse a strong feeling of disgust and hostility toward an accused, requiring court to exercise utmost care in giving its instructions to the end that justice may not miscarry. *Brown v. U. S.* (D. C. Mun. App. 1945, 40 A. 2d 832).

7. Intent to rape

An assault with intent to commit carnal knowledge on a child is certainly the taking of indecent liberties with a child, but with intent of going beyond the liberties referred to in statute, and intent to commit carnal knowledge is to take indecent liberties plus an intent much more vicious, violent or aggravated. *Younger Jr. v. United States* (1959, 263 F. 2d 735, 105 U.S. App. D.C. 51).

Assault on a female under the age of 16 years, with intent to carnally know her, is punishable under this section as an assault with intent to rape. *Sanselo v. United States* (44 App. D. C. 508).

8. Presumptions

In prosecution for assault with intent to commit rape a legal presumption exists that defendant was innocent until proved guilty beyond a reasonable doubt. *Hammond v. U.S.* (1942, 127 F. 2d 752, 75 U.S. App. D.C. 397).

9. Review

The rule in criminal as in civil cases is that a basis for an assignment of error must be laid in the trial court, but the court will sometimes in the exercise of a sound discretion notice error in a criminal case where the question was not properly raised at the trial. *Miller v. United States* (1927, 19 F. 2d 702, 57 App. D.C. 228).

10. Sentence

Defendant's motion, filed before expiration of minimum time of indeterminate sentence imposed by District Court on his conviction of rape, to correct later indeterminate sentence on his subsequent unrelated conviction of assault with intent to rape, will not be dismissed by Court of Appeals as premature, thereby relegating defendant to refile identical motion in District Court, in view of statute and criminal procedure rule authorizing motion attacking sentence and correction of illegal sentence at any time. *Hollaway v. United States* (1951, 191 F. 2d 504, 89 U.S. App. D. C. 332).

11. Submission or resistance

An assault may be committed upon a child irrespective of whether there is submission or resistance thereto. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

§ 22-502. Assault with intent to commit mayhem or with dangerous weapon

Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon, shall be sentenced to imprisonment for not

more than ten years. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 804.)

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Argument of counsel 1
Dangerous weapon 2
Evidence 3
Injury suffered 4
Instructions 5
Legislative intent 6
Review 7
Sentences 8

1. Argument of counsel

In prosecution for assault with a dangerous weapon, district attorney's argument to jury that "from the testimony of the doctor, the wound was a serious one and if it had been an inch lower the defendant might be here for murder" was permissible on question whether the weapon, a razor blade, was a dangerous one and whether it was likely to produce death or great bodily harm. *Josev v. U.S.* (1943, 135 F. 2d 809, 77 U.S. App. D.C. 321).

2. Dangerous weapon

Lye is a "dangerous weapon" within meaning of this section. *Tatum v. United States* (1940, 110 F. 2d 555, 7 App. D.C. 393).

3. Evidence

In prosecution for assault with a dangerous weapon, permitting district attorney to cross-examine defendant as to why defendant didn't run into house to avoid trouble if she believed complaining witness was going to do defendant some harm was proper, since the cross-examination was calculated to search for nature of defendant's belief and was proper to determine whether defendant went further than she was justified in doing. *Josev v. U.S.* (1943, 135 F. 2d 809, 77 U.S. App. D.C. 321).

4. Injury suffered

Threat or danger of physical suffering or injury in the ordinary sense is not necessary; the injury suffered by the innocent victim may be the fear, shame, humiliation, and mental anguish caused by the assault, neither is it necessary that such a victim should be aware of the nature of the act or of the danger. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

5. Instructions

In trial for assault with dangerous weapon, District Court is not required by criminal procedure rule to instruct jury that they may find defendant guilty of lesser offense of simple assault and should not so instruct them, in absence of evidence justifying conviction of simple assault. *MacIllrath v. United States* (1951, 188 F. 2d 1009, 88 U.S. App. D.C. 270).

In prosecution for assaults on three persons with deadly weapon, evidence that defendant shot one of such persons with a pistol and then clubbed the others on their heads therewith, causing serious injuries, established assaults with dangerous weapon and did not justify instruction on simple assault. *Id.*

In prosecution for assault with a dangerous weapon, requested instruction that if defendant had reasonable grounds to believe that complaining witness was about to inflict violence on her and was coming at her with a knife in a menacing manner, defendant was justified in defending herself and didn't have to retreat was fatally defective and was properly refused. *Josev v. U.S.* (1943, 135 F. 2d 809, 77 U.S. App. D.C. 321).

6. Legislative intent

Acquittal by defendant of assault with a dangerous weapon, did not require his acquittal on companion charge of carrying a pistol which he used to defend himself on ground that such acquittal demonstrated conclusively that defendant was carrying pistol for a lawful purpose notwithstanding defendant was exposed to a serious current threat by victim, that he did not have time to get a license and that he made a serious attempt to secure police protection, in light of the history of antiweapon legislation evidencing the clearest intent to drastically tighten ban on carrying dangerous weapons. *Cooke v. United States* (1960, 275 F. 2d 887, 107 U.S. App. D.C. 223).

7. Review

An assignment of error in failing to instruct jury on simple assault in prosecution for assaults with dangerous weapon comes too late on appeal from district court's judgment, in absence of request during trial for such instruction. *Mac Illrath v. United States* (1951, 188 F. 2d 1009, '88 U. S. App. D. C. 270).

8. Sentences

Consecutive penitentiary sentences on four counts, and concurrent sentence on fifth count do not violate the Indeterminate Sentence law. *United States ex rel. Bracey v. Hill* (C.C.A. 3, 1935, 77 F. 2d 970).

As maximum sentence imposed on each count was ten years and as none exceeded the maximum of ten years fixed by the statute, and as the minimum sentence on each count was two years and none exceeded one-fifth of the maximum of ten years fixed by the statute, the sentences are, therefore, in accord with the Indeterminate Sentence and Parole Act. *Bracey v. Zerbst* (C.C.A. 10, 1938, 93 F. 2d 8).

§ 22-503. Assault with intent to commit any other offense.

Whoever assaults another with intent to commit any other offense which may be punished by imprisonment in the penitentiary shall be imprisoned not more than five years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 805.)

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Burden of proof 1
Evidence 2
Force 3
Indictment 4
Instructions 5
Sentences 6

1. Burden of proof

In prosecution for unlawfully assaulting 15-year-old girl, burden was on the government to prove not only the touching, but that such touching was unlawful, or, in other words that the touching was not accidental or innocent. *Davenport v. U. S.* (D. C. Mun. App. 1948, 60 A. 2d 226).

2. Evidence

In prosecution for assault of an indecent nature on a ten-year-old boy, evidence of what occurred between boy and defendant in defendant's apartment on date preceding and day after date charged in the information was admissible as an exception to general rule. *Posey v. U. S.* (D. C. Mun. App. 1945, 41 A. 2d 300).

In prosecution for assault of an indecent nature on a ten-year-old boy, where record showed that what transpired between defendant and the boy on three consecutive days in defendant's apartment was so closely connected as to constitute composite parts of a single picture, evidence of what occurred on day preceding and day after the date charged in the information was relevant even though it revealed separate offenses on those days. *Id.*

3. Force

Application of force, or threat of application thereof, in an assault may be made indirectly as well as directly. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

4. Indictment

"It is not necessary to the charge of a joint assault by several persons that they be specifically charged as acting 'together and with each other.'" *Polen v. United States* (41 App. D. C. 4).

5. Instructions

In prosecution for assaulting a 15-year-old girl, defendant was entitled to an instruction that, if jury had any reasonable doubt about any material point or question in the case, they must resolve such doubt in favor of defendant, and an instruction that, if jury had any reasonable doubt finally after considering evidence both for and against defendant as to defendant's guilt, jury

must bring verdict of not guilty, was error. *Davenport v. U. S.* (D. C. Mun. App. 1948, 60 A. 2d 226).

6. Sentences

When sentences imposed were ten years and eight years, respectively, on the first two indictments, and five years on the assault charge, the sentences to run consecutively in the order named, but since the first sentence of ten years had not expired, the application for habeas corpus was premature, as validity of other two sentences was not properly raised. *Johnson v. Aderhold* (C.C.A. 5 1934, 73 F. 2d 102).

§ 22-504. Assault or threatened assault in a menacing manner.

Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than five hundred dollars or be imprisoned not more than twelve months, or both. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806.)

NOTES TO DECISIONS

Admissibility of evidence 6
Arresting officer, testimony of 7
Arresting officer's liability 1
Burden of proof 8
Common law 2
Consent 3
Corroboration 9
Counsel, right to 4
Defenses 5
Evidence 6-10
Admissibility 6
Arresting officer, testimony of 7
Burden of proof 8
Corroboration 9
Sufficiency 10
Force 11
Homosexual overture 12
Indictment 13
Injury suffered 14
Instructions 15
Motion of acquittal 16
Official conduct 17
Reversible error 18
Review 19
Sufficiency of evidence 10

1. Arresting officer's liability

If the officer has reason to believe that the person he is about to arrest is a desperate character and acts accordingly, the officer is not to be convicted of assault because it subsequently develops that he was mistaken. *Barrett v. United States* (1933, 64 F. 2d 148, 62 App. D.C. 25).

2. Common law

The assault contemplated by this section providing that whoever unlawfully assaults or threatens another in a menacing manner shall be fined or imprisoned is common law assault. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D.C. 97).

"Assault" at common law is an attempt with force or violence to do a corporal injury to another; and may consist of any act tending to such corporal injury, accompanied with such circumstances as denote at time an intention, coupled with present ability, of using actual violence against person. *Id.*

3. Consent

Unless there is consent, a sexual touching is sufficiently offensive to constitute an assault. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D. C. 97).

Even assuming that defendant might both deny offense of indecent assault on member of morals squad of police department and rely on apparent consent, evidence did not require finding as a matter of law that there had been apparent consent on part of police officer. *Day v. United States* (D.C. Mun. App. 1959, 148 A. 2d 463).

A case of assault by a man touching another man's genital organ with invitation to homosexual act can be made out only by proof that complaining witness did not consent. *McDermett v. United States* (D. C. Mun. App. 1953, 98 A. 2d 287).

A police officer, by his own insidious conduct in patiently and cleverly encouraging and setting stage for furtive homosexual gesture by another man, charged with assault, placed himself in position of consenting to touching of his genital organ by such man, with invitation to homosexual act, and should not be heard to say,

as prosecuting witness, that he was assaulted by accused. *Id.*

4. Counsel, right to

Though due process does not absolutely require appointment of counsel in all cases where person is deprived of his liberty because of unsound mind, where person charged with criminal offense of assault was subjected to lunacy inquisition prior to trial, due process required that defendant be represented by counsel in spite of ostensible waiver of that right or privilege. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

Where appellant was asked if he wished counsel and each time he stated he did not and was advised of the seriousness of the charge against him but steadfastly retained his position that counsel was not desired, he was not deprived of his constitutional right, since in the exercise of a free and intelligent choice and with the considered approval of the court, a defendant may competently and intelligently waive the right to counsel. *Humphries v. United States* (D.C. Mun. App. 1949, 68 A. 2d 803).

5. Defenses

Fact that police officer specifically denied being hurt, embarrassed or humiliated by alleged touching of his private parts did not negative assault. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D.C. 97).

Even though defendant, who was charged with making threats in a menacing manner and with unlawfully possessing an automatic pistol, had been discharged from hospital as having recovered from a mental disorder less than two months before date of alleged crimes, usual presumption of defendant's sanity, under District of Columbia law, existed at the time of trial. *Williams v. United States* (D. C. Mun. App. 1954, 104 A. 2d 828).

Where 13-year-old boy committed an indecent act upon a girl 4 years and 8 months old, act clearly constituted an assault, since child's acquiescence or submission was immaterial. *In re Lewis* (D. C. Mun. App. 1952, 88 A. 2d 582).

6. Evidence—Admissibility

In assault prosecution of defendant, evidence of an offense of sexual nature was admissible and a proper basis for conviction. *Guarro v. United States* (D. C. Mun. App. 1955, 116 A. 2d 408).

In assault prosecution of defendant who allegedly approached prosecution witness and placed his hand on witness' privates and squeezed them, the sexual nature of the alleged assault rendered admissible testimony by prosecution witness, who was an officer assigned to morals division of police department, that defendant had, after his arrest, admitted to officer the prior commission of acts of sodomy. *Dyson v. United States* (D.C. Mun. App. 1953, 97 A. 2d 135).

In prosecution for assault, where government witness admitted on cross-examination that she had waited two weeks after the incident before reporting it to police, testimony on redirect examination that she had not intended to report the incident but later saw defendant commit a similar assault upon another woman and then reported her experience to the police was competent to rebut the issue of delay raised by defendant. *Stitely v. U. S.* (D. C. Mun. App. 1948, 61 A. 2d 491).

7. — Arresting officer, testimony of

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U. S. App. D. C. 97).

8. — Burden or proof

In prosecution for assault of a homosexual nature upon a child, child's accusation against defendant must be treated with great caution and government's proof must be of the most convincing kind. *Konvalinka v. United States* (D.C. Mun. App. 1960, 162 A. 2d 778).

In assault prosecution, it was incumbent upon Government to show that the act of the defendant was not accidental and that he had necessary criminal intent.

Dyson v. United States (D. C. Mun. App. 1953, 97 A. 2d 135).

9. — Corroboration

Testimony of complaining witness in prosecution for assault need not be corroborated. *Ingram v. United States* (D.C. Mun. App. 1955, 110 A. 2d 693).

Where testimony of certain witnesses would have been merely cumulative if they had been produced, defendants were not entitled to an adverse witness charge. *Id.*

10. — Sufficiency

Before use of assault statute to cover conduct that appears to fall within bounds of misdemeanor statutes can be countenanced court must be certain that elements of assault had been established. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D.C. 97).

Evidence in support of claimed nonviolent sexual touching was not sufficient to support conviction under general assault statute. *Id.*

Evidence sustained conviction for assault. *Hensley v. United States* (D.C. Mun. App. 1959, 155 A. 2d 77).

Evidence did not sustain conviction for indecent assault upon a police officer. *Thomas v. United States* (D. C. Mun. App. 1957, 129 A. 2d 852).

Evidence sustained conviction for assault. *Goodman v. United States of America* (D. C. Mun. App. 1955, 118 A. 2d 517).

11. Force

Application of force, or threat of application thereof, in an assault may be made indirectly as well as directly. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

12. Homosexual overture

A prosecution for assault may be sustained under this section for homosexual overture. *Alleyne Anderson v. United States* (D.C. Mun. App. 1955, 117 A. 2d 456).

Assault conviction, predicated upon homosexual overture, was sustained. *Id.*

13. Indictment

Where defendant was charged with committing "indecent assault" upon girl 4 years and 8 months old and laws in jurisdiction made an unlawful assault a misdemeanor and did not use term "indecent assault", addition of word "indecent" to charge could be treated as surplusage and neither added to nor detracted from the charge. *In re Lewis* (D. C. Mun. App. 1952, 88 A. 2d 582).

14. Injury suffered

Threat or danger of physical suffering in the ordinary sense is not necessary; the injury suffered by the innocent victim may be the fear, shame, humiliation, and mental anguish caused by the assault. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

15. Instructions

In prosecution for an assault committed upon a woman in a street car, where woman involved explained her delay in complaining to police by stating that she had not intended to complain until she saw defendant commit the same act upon another woman two weeks later, defendant was entitled, upon a timely request, to have jury instructed that testimony in explanation of delay was to be considered only in respect to delay in making complaint and not as evidence that offense charged was committed but where he failed to do so, no complaint could be made. *Stitely v. U. S.* (D. C. Mun. App. 1948, 61 A. 2d 491).

16. Motion of acquittal

In assault prosecution, defendant, by offering evidence subsequent to denial of motion of acquittal, waived his rights regarding that motion. *Ernesto Guarro v. United States* (D. C. Mun. App. 1955, 116 A. 2d 408).

17. Official conduct

Where plainclothes police officer was member of morals squad, conduct of officer just before alleged sexual assault was of crucial significance bearing on criminal responsibility of assailant. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U. S. App. D. C. 97).

18. Reversible error

In prosecution for simple assault where defendant, a policeman, testified concerning incidents of his patrol, and where government cross-examined and brought on rebuttal evidence of other assaults under the theory of impeachment, and where upon appeal that theory was abandoned and that of identification substituted and both theories were of tenuous application upon the facts, thus affording the trial court no opportunity to rule upon admissibility under the new theory nor to give proper limiting instruction under it, there was reversible error. *Martin v. U.S.* (1942, 127 F. 2d 865, 75 U.S. App. D.C. 399).

In simple assault prosecution, arresting officer's testimony, in response to question whether defendant had denied the assault, that denial took place in presence of defendant's parol officer constituted reversible error, and, when officer volunteered such information, court should have cautioned him and instructed jury to disregard the information or should have granted defendant's motion for mistrial. *Yeldell v. United States* (D.C. Mun. App. 1959, 153 A. 2d 637).

Where in a prosecution for assault, defendant's counsel was deprived of the opportunity of examining defendant again on redirect examination and of the opportunity to call additional defense witnesses who had been sworn at the beginning of the trial, it constitutes reversible error, notwithstanding the absence of objection and exception taken at the trial court. *Varrella v. United States* (D. C. Mun. App. 1949, 64 A. 2d 310).

19. Review

Defendant convicted of indecent assault had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas v. United States* (D. C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assault and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding statute providing that where penalty imposed is less than \$50 review shall be by application. *Id.*

Party seeking review of alleged erroneous instructions cannot raise objection for the first time on appeal. *James Hale v. United States* (D. C. Mun. App. 1955, 114 A. 2d 74).

In prosecution wherein defendant was convicted of assault, there was no plain error in court's instructions to the jury which would enable defendant to raise error on appeal for the first time. *Id.*

§ 22-505. Assault on member of police force.

(a) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with any officer or member of any police force operating in the District of Columbia while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than five years or both.

(b) Whoever in the commission of any such acts uses a deadly or dangerous weapon shall be imprisoned not more than ten years. (R. S., D. C., § 432; June 29, 1953, 67 Stat. 95, ch. 159, § 205.)

AMENDMENT

1953—Act June 29, 1953, increased the penalty for violation of the section from a fine of \$500 or imprisonment for 2 years to a fine of \$5,000 or imprisonment for 5 years or both, and a maximum of 10 years imprisonment if a dangerous weapon is used.

CROSS REFERENCES

Minimum sentence of one year, see § 24-203.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Assistance of counsel 1
Instructions 2

1. Assistance of counsel

In prosecution for assault with a deadly weapon upon a member of the police department, under the circumstances, failure of defendant's counsel in the trial court to pursue his attempt to impeach a government witness did not constitute ineffective assistance of counsel, nor, under the circumstances, did trial court err in permitting introduction of evidence on the doctrine of flight or in giving an erroneous instruction thereon. *Tolliver v. United States* (1959, 273 F. 2d 523, 106 U.S. App. D.C. 398).

2. Instructions

In prosecution for assaulting police officer, requested instruction as to defendant's right to resist unlawful arrest and use such force as was at his command and necessary to prevent such arrest was properly refused as being too broad and inapplicable to issues of case. *Abrams v. United States* (1956, 237 F. 2d 42, 99 U.S. App. D.C. 46, certiorari denied 77 S. Ct. 575, 352 U.S. 1018, 1 L. Ed. 2d 554).

§ 22-506. Mayhem or maliciously disfiguring.

Every person convicted of mayhem or of maliciously disfiguring another shall be imprisoned for not more than ten years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 807.)

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

1. Intent

So long as an act of mayhem is done maliciously and willfully, a specific intent is not necessary to constitute the crime, since the common-law definition, which is applicable, does not include a specific intention. *Brown v. United States* (1949, 171 F. 2d 832, 84 U.S. App. D.C. 222).

If an assault be so malicious and willful as to result in the loss of an eye, leg, or arm, it is immaterial to the gravity of the offense of mayhem that the assailant had no specific intention of depriving his victim of the eye, leg, or arm. *Id.*

Indictment and proof were not insufficient in prosecution for mayhem because a specific intent to maim and disfigure the complainant was neither alleged nor proved, since specific intent was not necessary to constitute mayhem. *Id.*

§ 22-507. Threats to do bodily harm.

A person convicted of threats to do bodily harm shall be sentenced to imprisonment not exceeding six months or a fine not exceeding \$500, or both, and, in addition thereto or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding one year. (July 16, 1912, 37 Stat. 193, ch. 235, § 2; June 29, 1953, 67 Stat. 98, ch. 159, § 212.)

CODIFICATION

Section is comprised of part of section 2 of act July 16, 1912. Remainder of section 2 is classified to section 11-605.

AMENDMENT

1953—Act June 29, 1953, substituted provisions for imprisonment not exceeding six months or fine not exceeding \$500 or both and requirement of a bond to keep the peace for one year for former requirement of a peace bond not to exceed six months or, in default of bond, for imprisonment not exceeding six months.

Chapter 6.—BIGAMY

Sec.
22-601 Definition and penalty.

§ 22-601. Definition and penalty.

Whoever, having a husband or wife living, marries another shall be deemed guilty of bigamy, and on conviction thereof shall suffer imprisonment for not less than two nor more than seven years: *Provided*,

That this section shall not apply to any person whose husband or wife has been continually absent for five successive years next before such marriage without being known to such person to be living within that time, or whose marriage to said living husband or wife shall have been dissolved by a valid decree of a competent court, or shall have been pronounced void by a valid decree of a competent court on the ground of the nullity of the marriage contract. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 870.)

NOTES TO DECISIONS

Conclusions of defendant 1
Evidence 2
Instructions 3
Plea of guilty 4

1. Conclusions of defendant

There must be some honest and effective effort made to ascertain truth before it can be claimed that conclusion of defendant, charged with bigamy, that first wife had obtained divorce had been reached in good faith. *Alexander v. U.S.* (1943, 136 F. 2d 783, 78 U.S. App. D.C. 34).

2. Evidence

Testimony of police officer in bigamy prosecution concerning admissions made to him by defendant was admissible although defendant was not advised that anything he said might be used against him and that he need not make a statement. *Matz v. U.S.* (1947, 158 F. 2d 190, 81 U.S. App. D.C. 326).

In prosecution for bigamy, court did not err in compelling the second wife to testify where the certificate of the prior marriage was in evidence, together with testimony as to defendant's admissions directed toward that certificate, and other testimony that defendant and first wife had lived together as husband and wife. *Id.*

3. Instructions

Where defendant, charged with bigamy, testified that he received letter stating that first wife had obtained divorce, but defendant made no effort to ascertain true facts, refusing instruction that defendant must be acquitted if he believed at time of second marriage that his first wife had procured a divorce and giving instruction that if jury believed beyond reasonable doubt that at time of second marriage first wife was living and that marriage had not been dissolved by valid decree jury should find defendant guilty was not prejudicial error. *Alexander v. U.S.* (1943, 136 F. 2d 783, 78 U.S. App. D.C. 34).

4. Plea of guilty

The fact that defendant entered a plea of guilty to charge of bigamy without advice of counsel and that not until some time later in the day was counsel, at his request, appointed for him, was not fatal under circumstances. *Alexander v. U.S.* (1943, 136 F. 2d 783, 78 U.S. App. D.C. 34).

Chapter 7.—BRIBERY—OBSTRUCTING JUSTICE

Sec.

22-701. Definition and penalty.

22-702. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.

22-703. Obstructing justice.

22-704. Corrupt influence—Officials.

§ 22-701. Definition and penalty.

Whoever promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, credit, or security for the payment of money, or for the delivery or conveyance of anything of value, to any executive, judicial, or other officer, or to any person acting in any official function, or to any juror or witness, with intent to influence the decision, action, verdict, or evidence of any such person on any question, matter, cause, or

proceeding or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make any opportunity for the commission of any fraud, shall be fined not more than five hundred dollars, or be imprisoned not more than three years, or both. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 861.)

NOTES TO DECISIONS

Accessory before the fact 1
Admissibility of evidence 2
Counsel, right to 3
Indictment 4
Jail guard 5
Official act 6

1. Accessory before the fact

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where there was sufficient evidence to justify the jury's conclusion that doctor was an accessory before the fact to the attempt at bribery by his wife, he was properly found guilty as a principal. *Ladrey v. U.S.* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

2. Admissibility of evidence

In prosecution for attempted bribery of witness in abortion case, admission of evidence tending to show that witness was a material witness in the abortion case, consisting of her testimony that she was the person upon whom the operation had been performed, and statement showing the nature of the operation was proper. *Ladrey v. U.S.* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, where facts, other than the statements and acts of wife, were shown from which it could be concluded that a conspiracy between doctor and his wife in fact existed, the evidence of witness and police sergeant concerning the declarations of wife, including the offer of the bribe, was admissible against the doctor, though the declarations were made out of the doctor's presence. *Id.*

3. Counsel, right to

Under Constitution's prohibition against unreasonable searches, and its guaranties of due process of law and effective representation by counsel, government agent's intrusion upon conferences between accused and his counsel invalidated conviction under federal "obstruction of justice" statute and District of Columbia bribery statute. *Caldwell v. United States* (1953, 205 F. 2d 879, 92 U.S. App. D.C. 355).

4. Indictment

Although the act of asking, accepting, or receiving, in violation of § 117 of the Criminal Code (section 202 of title 18, U.S. Code) may each constitute a separate offense, it is not duplicious to charge them all in a single count. *Egan v. United States* (1923, 287 F. 958, 52 App. D.C. 384).

In prosecution of doctor and his wife for attempted bribery of witness in abortion case against the doctor, evidence that doctor took his wife to a point near the scene of her attempt at bribery, that after her arrest he was found with his automobile parked at a nearby corner, that he made a statement so incredible as to be prima facie false, as well as conflicting statements, together with fact that doctor had a strong motive to eliminate the witness, tended to show a secret combination or conspiracy between doctor and his wife, notwithstanding that indictment did not specifically charge that they had conspired. *Ladrey v. U.S.* (1946, 155 F. 2d 417, 81 U.S. App. D.C. 127, certiorari denied 67 S. Ct. 68, 329 U.S. 723, 91 L. Ed. 627).

5. Jail guard

Affirmance of conviction of bribery of jail guard to falsify records to establish alibi. *Siegal v. United States* (1933, 61 F. 2d 923, 61 App. D.C. 282, certiorari denied 53 S. Ct. 386, 288 U.S. 602, 77 L. Ed. 978).

Defendant was a person acting in an official function, exercising by delegation a part of the official authority possessed by the superintendent of the jail and if he had corruptly accepted the money, he would have been guilty of accepting a bribe to influence his official conduct. *Id.*

6. Official act

"There can be no bribery of any official to do a particular act, unless the law requires or imposes upon him the duty of acting." *Thomson v. United States* (37 App. D.C. 461). See, also, *Benson v. United States* (27 App. D.C. 331).

§ 22-702. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.

Every person who directly or indirectly takes, receives, or agrees to receive any money, property, or other valuable consideration whatever from any person for giving, procuring, or aiding to give or procure any office, place, or promotion in office from the Commissioners of the District of Columbia, or from any officer under them, and every person who, directly or indirectly, offers to give, or gives any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such office, place, or promotion in office shall be deemed guilty of a misdemeanor, and on conviction thereof in the municipal court shall be punished by a fine not exceeding one thousand dollars or imprisonment in the jail for not more than twelve months, or both, in the discretion of the court. (July 1, 1902, 32 Stat. 591, ch. 1352; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 22-703. Obstructing justice.

Whoever corruptly, by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way obstructs or impedes or endeavors to obstruct or impede the due administration of justice therein, shall be fined not more than two hundred dollars or imprisoned not more than three years, or both. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 862.)

§ 22-704. Corrupt influence—Officials.

Whosoever corruptly, directly or indirectly, gives any money, or other bribe, present, reward, promise, contract, obligation, or security for the payment of any money, present, reward, or thing of value to any ministerial, administrative, executive, or judicial officer of the District of Columbia or any employee or other person acting in any capacity for the District of Columbia, or any agency thereof, either before or after he is qualified, with intent to influence his action on any matter which is then pending, or may by law come or be brought before him in his official capacity, or to cause him to execute any of the powers in him vested, or to perform any duties of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer being authorized in the line of his duty to contract for any advertising or for the furnishing of any labor or material, shall directly or indirectly arrange to receive or shall receive, or shall withhold from the parties so contracted with, any portion of the contract price, whether that price be fixed by law or by agreement, or in consideration that such officer has nominated or appointed any person to any office or exercised any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law; and whosoever,

being such an officer, shall receive any such money, bribe, present, or reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid shall be deemed guilty of bribery and upon conviction thereof shall be punished by imprisonment for a term not less than six months nor more than five years.

Whosoever corrupts or attempts, directly or indirectly, to corrupt any special master, auditor, juror, arbitrator, umpire, or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias the opinion, or influence the decision of such officer, in relation to any matter pending in the court, or before an inquest, or for the decision of which such arbitrator, umpire, or referee has been chosen or appointed, and every official who receives, or offers or agrees to receive, a bribe in any of the cases above mentioned shall be guilty of bribery and upon conviction thereof shall be punished as hereinbefore provided. (Feb. 26, 1936, 49 Stat. 1143, ch. 87.)

NOTES TO DECISIONS

Evidence 1
Indictment 2
Joint trial of separate charges 3
Pre-trial inspection 4
Reversible error 5
Sentence 7
Separate trial 6
Variance 8

1. Evidence

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, even if recordings of conversations between police officer who was subject of bribery, and defendants, were intercepted and recorded, and were introduced in evidence in violation of Federal Communications Act section, such question would not be reached in instant prosecution as instant use made of recordings was for refreshing recollection of police officer before giving his own testimony of the recorded conversations. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, recordings of conversations between police officer and defendants were admissible in evidence, where police officer testified as to operation of recording device, his method of operating such device, accuracy of the recordings, and identities of persons speaking. *Id.*

In prosecution for conspiracy to bribe police officer and also for bribery itself, to influence officer in enforcement of gambling laws, contention that recordings of conversations between police officer, who was subject of the conspiracy and bribery, and defendants were illegally intercepted and used in preparation of Government's trial was without merit where police officer himself made the recordings and transmitted the same information legally to other police officers to be utilized in preparation for trial of defendants. *Id.*

2. Indictment

Where defendants made motion before trial attacking indictment charging them with conspiracy to bribe police officer and also for bribery itself on ground of alleged misjoinder of substantive charges, such motion went to validity of indictment and not to question of advisability of separate trials. *Monroe et al. v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

Where offenses of conspiracy to bribe and bribery charged in indictment were of the same or similar character, and defendants charged with such crimes were

alleged to have participated in same conspiracy, joinder of offenses and defendants in the indictment was permissible under Federal Criminal Procedure Rule. *Id.*

3. Joint trial of separate charges

In prosecution for conspiracy to bribe police officer and also for bribery to influence officer in enforcement of gambling laws, defendants, who were convicted on only part of the substantive counts, and who were not involved in the conspiracy, were not prejudiced by trial of the conspiracy charge and bribery charges together, in view of the different number of convictions entered against the different defendants indicating that the jury was selective and was returning verdicts only upon basis of evidence relevant to each count and each defendant and also where court charged in considerable detail as to the separate substantive counts. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

4. Pre-trial inspection

Under Federal Criminal Procedure Rule providing for pre-trial inspection of books, papers, documents or other objects designated in a subpoena, trial court was well within its discretion in declining to order inspection of original recordings of conversations between police officer and defendants, who were charged with conspiracy to bribe and bribery of police officer, where original recordings were too fragile to be used for discovery playing and where an affidavit was filed in which the accuracy of reproduction from the originals were certified and truth of affidavit was not brought into question. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

5. Reversible error

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, refusal of trial court to grant defendants' request to make stenographic transcripts of recordings between police officers and defendants or to be furnished copies of transcripts by Government was not reversible error, where defendants were given opportunity to hear recordings and where parts of recordings admitted in evidence were played out of presence of jury with defendant's counsel present. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

6. Separate trial

If defendants, who were charged with conspiracy to bribe police officer and also for bribery to influence officer in enforcement of gambling laws, wished to be tried separately on those charges, request for separate trial on such charges should have been made in the trial court by motion under Federal Criminal Procedure Rule providing for such relief. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

Under Federal Criminal Procedure Rule providing for severance of offenses or defendants in event of prejudice as result of such joinder, defendants, who were only ones convicted in prosecution for conspiracy with other defendants, if they had requested separation of the substantive counts from the conspiracy count, would not have been prejudiced by refusal of trial court to grant motion, where evidence of their participation in conspiracy was complete and included other defendants on trial for substantive counts. *Id.*

7. Sentence

Where defendant was convicted on count of conspiracy to bribe police officer, and also was convicted on intimately related bribery counts, and sentence under con-

spiracy count was for longer time than his concurrent sentence for bribery, conspiracy and bribery charges would be affirmed if no reversible error impaired conspiracy conviction. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

8. Variance

If alleged variance existed between count of indictment which charged one conspiracy of all the defendants to bribe police officer, and evidence which allegedly showed several conspiracies, such variance was not reversible error in regard to convictions of two of the defendants on the conspiracy count, where conspiracy of the two convicted embraced the other defendants in the plan, thus preventing surprise, and also in view of fact that the defendants would not be prejudiced by the variance in defending on ground of present conviction in event of attempted second prosecution for same offense, as resort could be had by defendants to record of evidence or even to parol evidence if necessary. *Monroe v. United States* (1956, 234 F. 2d 49, 98 U. S. App. D. C. 228, certiorari denied 77 S. Ct. 94, 352 U. S. 873, 1 L. Ed. 2d 76, rehearing denied 77 S. Ct. 219, 352 U. S. 937, 1 L. Ed. 2d 170, rehearing denied 78 S. Ct. 114, 355 U. S. 875, 2 L. Ed. 2d 79).

Chapter 8.—CRUELTY TO ANIMALS

Sec.

- 22-801 Definition and penalty.
- 22-802. Other cruelties to animals.
- 22-803. Transportation of animals by railroad companies—Rest—Water—Feeding by railroad company—Cost—Penalty.
- 22-804. Arrests without warrant authorized—Notice to owner.
- 22-805. Issuance of search warrants.
- 22-806. Prosecution of offenders—Disposition of fines.
- 22-807. Impounded animals to be supplied with food and water.
- 22-808. Relief of impounded animals.
- 22-809. Keeping or using place for purpose of fighting or baiting of fowls or animals—Arrest without warrant.
- 22-810. Penalty for engaging in cockfighting—Animal fighting.
- 22-811. Neglect of sick or disabled animals.
- 22-812. Abandonment of maimed or diseased animal—Destruction of diseased animals—Disposition of animal or vehicle on arrest of driver—Scientific experiments.
- 22-813. Definitions.
- 22-814. Docking tails of horses.

§ 22-801. Definition and penalty.

Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, or causes or procures to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, or cruelly killed any animal, and whoever, having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 1.)

§ 22-802. Other cruelties to animals.

Every owner, possessor, or person having the charge or custody of any animal, who cruelly drives or

works the same when unfit for labor, or cruelly abandons the same, or who carries the same, or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly and wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished for every such offense in the manner provided in section 22-801. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 2.)

§ 22-803. Transportation of animals by railroad companies—Rest—Water—Feeding by railroad company—Cost—Penalty.

No railroad company, in the carrying or transportation of animals, shall permit the same to be confined in cars for a longer period than twenty-four hours, without unloading the same, for rest, water, and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement the time during which such animals have been confined without such rest on connecting roads from which they are received shall be included; it being the intent of this section to prohibit their continuous confinement beyond the period of twenty-four hours, except upon contingencies hereinbefore stated. Animals so unloaded shall be properly fed, watered, and sheltered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company transporting the same, at the expense of said owner or persons in custody thereof. And said company shall, in such case, have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by this section. Any company, owner, or custodian of such animals who fails to comply with the provisions of this section shall, for each and every such offense, be liable for and forfeit and pay a penalty of not less than one or more than five hundred dollars: *Provided, however,* That when animals shall be carried in cars in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply. (Leg. Assem., Aug. 23, 1871, p. 135, ch. 106, § 3.)

CODIFICATION

This section is probably superseded in part by U.S. Code title 45, §§ 71—74.

§ 22-804. Arrests without warrant authorized—Notice to owner.

Any person found violating the laws in relation to cruelty to animals may be arrested and held without a warrant, in the manner provided by section 32-205, and the person making an arrest, with or without a warrant, shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, and shall properly care and provide for such animals until the owner thereof shall take charge of the same: *Provided,* The owner shall take charge of the same within twenty days from the date of said notice. And the person making such arrest shall have a lien on said animals for the expense of such care and provisions. (Leg. Assem., Aug. 23, 1871, p. 136, ch. 106, § 4.)

CODIFICATION

Section 32-205 is section 5 of the "Charter of the Association for the Prevention of Cruelty to Animals, granted by an Act of Congress, approved June 21, 1870 (16 Stat. 158, ch. 135)." The quoted words are contained in the original text of this section.

§ 22-805. Issuance of search warrants.

When complaint is made by any member of the Washington Humane Society on oath or affirmation, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes, and has reasonable cause to believe, that the laws in relation to cruelty to animals have been or are being violated in any particular building or place, such magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant, authorizing any marshal, deputy marshal, police officer, or any member of the Washington Humane Society to search such building or place. (Leg. Assem., Aug. 23, 1871, p. 136, ch. 106, § 5; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1; Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 41.)

AMENDMENT

1901—Act Mar. 3, 1901, abolished the office of constable, and required all process issued by a justice of the peace to be served by the United States marshal for the District of Columbia, or, if he is disqualified, by the coroner.

§ 22-806. Prosecution of offenders—Disposition of fines.

It shall be the duty of all marshals, deputy marshals, police officers, or any member of the Washington Humane Society, to prosecute all violations of the provisions of sections 22-801 to 22-809 and sections 22-811, 22-813, and 22-814, which shall come to their notice or knowledge, and fines and forfeitures collected upon or resulting from the complaint or information of any member of the Washington Humane Society under sections 22-801 to 22-809 and sections 22-811, 22-813, and 22-814 shall inure and be paid over to said association, in aid of the benevolent objects for which it was incorporated. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 6; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1; Mar. 3, 1901, 31 Stat. 1195, ch. 854, § 41.)

§ 22-807. Impounded animals to be supplied with food and water.

Any person who shall impound, or cause to be impounded in any pound, any creature, shall supply the same, during such confinement, with a sufficient quantity of good and wholesome food and water; and in default thereof shall, upon conviction, be punished for every such offense in the same manner provided in section 22-801. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 7.)

§ 22-808. Relief of impounded animals.

In case any creature shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any officer of the Washington Humane Society, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which such creature shall be so confined, and supply it with necessary food and water so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost for such food

and water may be collected of the owner of such creature, and the said creature shall not be exempt from levy and sale upon execution issued upon a judgment thereof. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 8; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

§ 22-809. Keeping or using place for purpose of fighting or baiting of fowls or animals—Arrest without warrant.

Any person or persons who shall keep or use, or in any way be connected with or interested in the management of, or shall receive money for the admission of any person to any place kept or used for the purpose of fighting or baiting of fowls or animals, may be arrested without a warrant, as provided in section 32-205, and for every such offense be punished in the same manner provided in section 22-801. (Leg. Assem., Aug. 23, 1871, p. 137, ch. 106, § 9.)

§ 22-810. Penalty for engaging in cockfighting—Animal fighting.

Any person who sets on foot, instigates, promotes, carries on, or does any act, as assistant, umpire, or principal, or attends or in any way engages in the furtherance of any fight between cocks, fowls, or other birds, or dogs, bulls, bears, or other animals, premeditated by any persons owning or having custody of such birds or animals, is guilty of a misdemeanor, punishable by a fine of not more than two hundred and fifty dollars or by imprisonment in jail not more than one year, or both. (June 25, 1892, 27 Stat. 61, ch. 135, § 6.)

§ 22-811. Neglect of sick or disabled animals.

If any maimed, sick, infirm, or disabled animal shall fail to receive proper food or shelter from said owner or person in charge of the same for more than five consecutive hours, such person shall, for every such offense, be punished in the same manner provided in section 22-801. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 10; June 25, 1892, 27 Stat. 60, ch. 135, § 4.)

§ 22-812. Abandonment of maimed or diseased animal—Destruction of diseased animals—Disposition of animal or vehicle on arrest of driver—Scientific experiments.

A person being the owner or possessor or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons such animal, or leaves it to lie in the street or road, or public place, more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than two hundred and fifty dollars, or by imprisonment in jail not more than one year, or both. Any agent or officer of the Washington Humane Society may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, appearing, in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered, injured, or diseased past recovery for any useful purpose. When any person arrested is, at the time of such arrest, in charge of any animal, or of any vehicle drawn by any animal, or containing any animal, any agent

of said society may take charge of such animal and such vehicle and its contents and deposit the same in a place of safe custody or deliver the same into the possession of the police authorities, who shall assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a lien thereon.

Nothing contained in sections 22-801 to 22-809, inclusive, and sections 22-811, 22-1109 shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college, university, or scientific society. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 11; June 25, 1892, 27 Stat. 60, ch. 135, § 4.)

§ 22-813. Definitions.

In sections 22-801 to 22-809, inclusive, and section 22-811, the word "animals" or "animal" shall be held to include all living and sentient creatures (human beings excepted), and the words "owner," "persons," and "whoever" shall be held to include corporations and incorporated companies as well as individuals. (Leg. Assem., Aug. 23, 1871, p. 138, ch. 106, § 12; June 25, 1892, 27 Stat. 60, ch. 135, § 3.)

§ 22-814. Docking tails of horses.

Whoever cuts the solid part of the tail of any horse in the operation known as docking, and whoever shall cause the same to be done or assist in doing such cutting (unless the same is proved to be of benefit to the horse), shall, upon conviction thereof, be punished by imprisonment in the Washington Asylum and Jail not exceeding one year or fine of not less than one hundred nor more than two hundred and fifty dollars. (June 25, 1892, 27 Stat. 61, ch. 135, § 5; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

CONSOLIDATION OF JAIL AND WASHINGTON ASYLUM

"Washington Asylum and Jail" was substituted for "jail" to conform to act Mar. 2, 1911, which combined the jail of the District of Columbia and the Washington Asylum. See section 24-407.

Chapter 9.—DOMESTIC RELATIONS

Sec.

- 22-901. Cruelty to children.
- 22-902. Refusal or neglect of guardian to provide for child under 14 years of age.
- 22-903. Wilful neglect or refusal to support wife or minor child—Punishment—Order of allowance—Recognizance—Trial under original charge.
- 22-904. Evidence of marriage—Competency of witnesses—Proof of wilful desertion.
- 22-905. Weekly payments by superintendent of workhouse for each day's confinement.
- 22-906. Collections by clerk of court to be deposited with collector of taxes and covered into Treasury.

§ 22-901. Cruelty to children.

Any person who shall torture, cruelly beat, abuse, or otherwise wilfully maltreat any child under the age of eighteen years; or any person, having the custody and possession of a child under the age of fourteen years, who shall expose, or aid and abet in exposing, such child in any highway, street, field, house, outhouse, or other place, with intent to abandon it; or any person, having in his custody or

control a child under the age of fourteen years, who shall in any way dispose of it with a view to its being employed as an acrobat, or a gymnast, or a contortionist, or a circus rider, or a rope-walker, or in any exhibition of like dangerous character, or as a beggar, or mendicant, or pauper, or street singer, or street musician; or any person who shall take, receive, hire, employ, use, exhibit, or have in custody any child of the age last named for any of the purposes last enumerated, shall be deemed guilty of a misdemeanor, and, when convicted thereof, shall be subject to punishment by a fine of not more than two hundred and fifty dollars, or by imprisonment for a term not exceeding two years, or both. (Feb. 13, 1885, 23 Stat. 303, ch. 58, § 3; Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 814.)

NOTES TO DECISIONS

In general 1
Child as agency for commission of crime 2
Common law 3
Instructions 4
Privileged communication 5

1. In general

This section making it a crime to torture, cruelly beat, abuse, or otherwise willfully maltreat a child calls for something worse than good intentions coupled with bad judgment. *Mullen v. United States* (1959, 263 F. 2d 275, 105 U.S. App. D.C. 25).

2. Child as agency for commission of crime

One may be guilty of a crime where the prohibited act is committed through the agency of mechanical or chemical means, as by instruments, poison or powder, or by an animal, a child, or other innocent agent acting under the direction and compulsion of the accused. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

3. Common law

Offense prescribed while not expressed in terms of assault, comes within the common-law concept of that offense. *Beausoliel v. United States* (1940, 107 F. 2d 292, 71 App. D.C. 111).

4. Instructions

In prosecution of mother, who left her children chained in her home while she was absent, under this section making it a crime to torture, cruelly beat, abuse, or otherwise willfully maltreat a child, instruction that jury should decide whether mother was acting reasonably under the circumstances or whether her action was unreasonable and dangerous was reversibly erroneous because of omission of requirement of an evil state of mind. *Mullen v. United States* (1959, 263 F. 2d 275, 105 U.S. App. D.C. 25).

5. Privileged communication

Admission of defendant to Lutheran minister that she had chained her children after he had urged her to confess her sins, was a "privileged communication" and testimony thereof by minister was inadmissible in prosecution under this section making it a crime to torture, cruelly beat, abuse, or otherwise willfully maltreat a child. *Mullen v. United States* (1959, 263 F. 2d 275, 105 U.S. App. D.C. 25).

§ 22-902. Refusal or neglect of guardian to provide for child under 14 years of age.

Any person within the District of Columbia, of sufficient financial ability, who shall refuse or neglect to provide for any child under the age of fourteen years, of which he or she shall be the parent or guardian, such food, clothing, and shelter as will prevent the suffering and secure the safety of such child, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment by a fine of not more than one hundred dollars, or by imprisonment in the workhouse of the District

of Columbia for not more than three months, or both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 4.)

CODIFICATION

This section may have been partly superseded by sections 22-903 to 22-906.

§ 22-903. Wilful neglect or refusal to support wife or minor child—Punishment—Order of allowance—Recognizance—Trial under original charge.

Any person in the District of Columbia who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances, or any person who shall, without just excuse, desert or wilfully neglect or refuse to provide for the support and maintenance of his or her minor children under the age of sixteen years in destitute or necessitous circumstances, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than \$500 or by imprisonment in the workhouse of the District of Columbia for not more than twelve months, or by both such fine and imprisonment; and should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children: *Provided*, That before the trial, with the consent of the defendant, or after conviction, instead of imposing the punishment hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly for the space of one year to the wife, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court as trustee, and to release the defendant from custody on probation for the space of one year upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so within the year, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise of full force and effect.

If the court be satisfied by information and due proof, under oath, that at any time during the year the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife, or to the guardian or custodian of the minor child or children. The juvenile court is hereby given concurrent jurisdiction with the United States District Court for the District of Columbia in all cases arising under this section. (Mar. 23, 1906, 34 Stat. 86, ch. 1131, § 1; June 10, 1926, 44 Stat. 716, ch. 528; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat.

991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1926—Act June 10, 1926, deleted the words "at hard labor" following the words "workhouse of the District of Columbia."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCES

Concurrent jurisdiction of Juvenile Court of District of Columbia and United States District Court for the District of Columbia in nonsupport cases, see § 11-961.

Suspension of sentence in cases in Juvenile Court, see § 11-968.

Uniform support laws, see chapter 16 of Title 11.

NOTES TO DECISIONS

Constitutionality 1-3
Counsel, right to 2
Double jeopardy 3
Counsel, right to 2
Domicile 4
Double jeopardy 3
Information 5
Jurisdiction 6
Nonresident 7
Presentment or indictment 8
Sentence 9
Separate offenses 10
Support payments 11
Witness 12

1. Constitutionality

The provisions for punishment under the act not being severable, the act is unconstitutional. *United States v. Moreland* (1922, 42 S. Ct. 368, 258 U.S. 433, 66 L. Ed. 700, 24 A.L.R. 992).

2. — Counsel, right to

Where petitioner was convicted in the juvenile court upon a plea of guilty of refusing to provide for the support of his minor child, and at the time of his arraignment he was not told that he was waiving his right to counsel and was not represented by counsel and was not advised of his "right to counsel," he did not under these circumstances "waive" his right to counsel; therefore his constitutional rights to the assistance of counsel were violated with consequent loss of jurisdiction in the juvenile court to convict and sentence him, and he was entitled to discharge on writ of habeas corpus. *Evans v. Rives* (1942, 126 F. 2d 633, 75 U.S. App. D.C. 242).

3. — Double jeopardy

Prisoner sentenced on defective information charging nonsupport was placed in jeopardy and subsequent filing of new information, based on alleged nonsupport during same period, and sentence thereunder was barred. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 348).

4. Domicile

Under this statute a husband domiciled in another state is not chargeable under this act with refusal to support child. *United States ex rel. Smith v. Mathues* (D.C. Pa. 1923, 284 F. 368).

In proceeding against person indicted under this statute, and who is found in another district, technical objections to indictment are for the court where the indictment is lodged. *In re Parker* (D.C. Cal. 1924, 299 F. 1006, affirmed 3 F. 2d 903, certiorari denied 45 S. Ct. 513, 268 U.S. 694, 69 L. Ed. 1161).

Person indicted under this statute may be removed from another district, since a violation of the act is in fact a crime against the United States. *Parker v. United States* (C.C.A. 9, 1925, 3 F. 2d 903, certiorari denied 45 S. Ct. 513, 268 U.S. 694, 69 L. Ed. 1161).

Where husband was not in the District of Columbia at time he allegedly failed to support his children, as charged in indictment, he did not violate this section, and court would deny petition for husband's removal to the District. *U.S. v. Johnson* (D.C. Or. 1946, 63 F. Supp. 615).

A resident of the District of Columbia who had not failed to provide support for wife while within the District, and who left the District for Oregon where he was employed for about two years until he first failed to furnish support, did not violate this section. *Id.*

5. Information

Information charging husband with nonsupport of wife and minor children but omitting word "wilfully" was fatally defective. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 347).

Information charging defendant with nonsupport of wife and minor children but omitting word "wilfully" was defective, but not void, and hence could not have served as basis for application for writ of habeas corpus. *Id.*

Information charging that parent had neglected to provide for support and maintenance of child was fatally defective to charge statutory crime of wilful neglect of children because it failed to charge that neglect was wilful. *Seidenberg v. United States* (D. C. Mun. App. 1953, 97 A. 2d 463).

6. Jurisdiction

Since the jurisdiction conferred upon the juvenile court for the District of Columbia relates only to cases involving children arising under § 11-902 et seq., the juvenile court exceeded its jurisdiction in attempting to hold defendant for nonsupport of his wife only; the welfare of no children being involved. *Ex parte Wilson* (1940, 79 F. Supp. 816).

In cases involving nonsupport of wife and minor children, the jurisdiction of the Juvenile Court of the District of Columbia is concurrent with that of the District Court. *Burke v. United States* (D. C. Mun. App. 1954, 103 A. 2d 347).

7. Nonresident

Where indictment did not describe the accused as a "person in the District of Columbia," and evidence showed he was not a resident of District of Columbia, denial of a motion for warrant of removal to District of Columbia was proper. *United States ex rel. Smith v. Mathues* (D.C. Pa. 1923, 284 F. 368).

8. Presentment or indictment

Fact that prisoner receives maximum sentence under this statute, without having been presented or indicted by grand jury, does not of itself render said sentences void. *United States v. Moreland* (1922, 42 S. Ct. 368, 258 U.S. 433, 66 L. Ed. 700, 24 A. L. R. 992).

9. Sentence

The test of infamy is not the sentence imposed but rather that which may be imposed under the statute. *United States v. Moreland* (1922, 42 S. Ct. 368, 258 U.S. 433, 66 L. Ed. 700, 24 A. L. R. 992).

Court has no jurisdiction to impose a sentence involving hard labor where there has been no indictment or presentment by a grand jury. *Moreland v. United States* (1922, 276 F. 640, 51 App. D. C. 118, affirmed 42 S. Ct. 368, 258 U.S. 433, 66 L. Ed. 700, 24 A. L. R. 992).

10. Separate offenses

This section making it misdemeanor for husband to wilfully neglect or refuse to provide for destitute wife or for any person to desert and wilfully neglect to support minor children under sixteen years of age, by use of disjunctive "or" makes two crimes, one by husband against his wife and the other by any person against his or her minor child, and one may be convicted for both nonsupport of wife and minor children thereunder as separate crimes. *Burke v. United States* (1956, 239 F. 2d 50, 99 U.S. App. D.C. 230).

11. Support payments

Where defendant, found guilty of failing to support his minor child, had agreed with his separated wife to submit their contentions as to amount to be paid for child support to the Juvenile Court for determination, order, made upon the basis of evidence of defendant's salary and expenses, that he pay \$10 a week out of a \$192 net monthly income for child support, did not appear unreasonable and was not an abuse of discretion. *Mack v. United States* (D. C. Mun. App. 1953, 93 A. 2d 567).

12. Witness

Wife is competent witness in proceedings for removal under R.S. § 1014. *Parker v. United States* (C.C.A. 9, 1925, 3 F. 2d 903, certiorari denied 45 S. Ct. 513, 268 U.S. 694, 69 L. Ed. 1161).

§ 22-904. Evidence of marriage—Competency of witnesses—Proof of wilful desertion.

No other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under sections 22-903 to 22-905, any provisions of law in force on March 23, 1906, prohibiting the disclosure of confidential communications between husband and wife shall not apply, and both husband and wife shall be competent and compellable witnesses to testify to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child, or children in destitute or necessitous circumstances, or of neglect to furnish such wife, child, or children necessary and proper food, clothing, or shelter is prima facie evidence that such desertion or neglect is wilful. (Mar. 23, 1906, 34 Stat. 87, ch. 1131, § 2.)

NOTE TO DECISION

1. Witness

State rule as to competency of witnesses does not apply in view of this section. *In re Parker* (D.C. Cal. 1924, 299 F. 1006, affirmed 3 F. 2d 903, certiorari denied 45 S. Ct. 513, 268 U.S. 694, 69 L. Ed. 1161).

§ 22-905. Weekly payments by superintendent of workhouse for each day's confinement.

It shall be the duty of the superintendent in charge of the workhouse of the District of Columbia in which any person is confined on account of a sentence under sections 22-903 to 22-905 to pay, out of any funds available, over to the wife, or to the guardian or custodian of his or her minor child or children, or to an organization or individual approved by the court as trustee, at the end of each week, for the support of such wife, child, or children, a sum equal to 50 cents for each day of the sentence served by said person so confined. (Mar. 23, 1906, 34 Stat. 87, ch. 1131, § 3; June 10, 1926, 44 Stat. 716, ch. 528.)

AMENDMENT

1926—Act June 10, 1926, substituted "each day of the sentence served" for "each day's hard labor performed."

§ 22-906. Collections by clerk of court to be deposited with collector of taxes and covered into Treasury.

All moneys paid by order of the juvenile court under sections 22-903 to 22-905 which are collected and disbursed by the clerk of said court, shall be deposited weekly by said clerk with the collector of taxes of the District of Columbia and covered into the Treasury to the credit of the appropriated trust fund account denominated Miscellaneous Trust Fund Deposits, District of Columbia, and all expenditures therefrom shall be made and accounted for in the manner required by law for other expenditures of the government of the District of Columbia, and the said expenditures shall be made weekly on pay-rolls approved and certified by the juvenile court. (May 18, 1910, 36 Stat. 403, ch. 248.)

Chapter 10.—FORNICATION

Sec.

22-1001. Repealed.

22-1002. Fornication.

§ 22-1001. Repealed. June 25, 1948, 62 Stat. 864, ch. 645, § 21, eff. Sept. 1, 1948.

Section, act Mar. 3, 1887, 24 Stat. 636, ch. 397, § 5, was made applicable to the District of Columbia by act Mar. 4, 1909, 35 Stat. 1149, ch. 321, § 318, and was repealed by the revision of U. S. Code, title 18.

§ 22-1002. Fornication.

If any unmarried man or woman commits fornication in the District, each shall be fined not more than \$300 or imprisoned not more than six months, or both. (June 29, 1953, 67 Stat. 99, ch. 159, § 214.)

CROSS REFERENCE

Definition of District, see note under § 1-319.

NOTE TO DECISION

1. Jurisdiction

The offense here denounced does not fall within the category of those offenses defined as within the admiralty and maritime jurisdiction of the United States, and a single act committed between an unmarried man and an unmarried woman, aboard a ship en route to a foreign country, does not bring such act within the punishment of the courts of the United States. *Ex parte Isojoki* (D.C. Cal. 1915, 222 F. 151).

Chapter 11.—DISORDERLY CONDUCT

Sec.

22-1101. Affrays.

22-1102. Duelling—Challenges.

22-1103. Assault for refusal to accept challenge.

22-1104. Leaving the District to give or receive challenge

22-1105, 22-1106. Repealed.

22-1107. Unlawful assembly—Profane and indecent language.

22-1108. Playing games in streets.

22-1109. Throwing stones or other missiles forbidden.

22-1110. Urging dogs to fight—Create disorder.

22-1111. Penalty for allowing fierce and dangerous dogs to go at large.

22-1112. Lewd, indecent, or obscene acts.

22-1113. Kindling bonfires.

22-1114. Disturbing religious congregation.

22-1115. Interference with foreign diplomatic and consular offices, officers, and property.

22-1116. Penalties for interference with foreign diplomatic and consular offices, officers, and property.

22-1117. Flying kites, balloons, or parachutes forbidden

22-1118. Driving or riding on footways in public grounds.

22-1119. False alarm of fire—Prosecution.

22-1120. Sale of tobacco to minors under 16 years of age.

22-1121. Disorderly conduct—Generally.

§ 22-1101. Affrays.

Any person convicted of an affray shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year or both. (July 16, 1912, 37 Stat. 192, ch. 235, § 1.)

CROSS REFERENCE

Assaults because of gaming losses, see § 16-705.

§ 22-1102. Duelling—Challenges.

If any person shall in the District challenge another to fight a duel, or send or deliver any written or verbal message purporting or intended to be such challenge, or shall accept any such challenge or message, or shall knowingly carry or deliver an acceptance of such challenge or message to fight a duel in or out of the District, he shall be punished by imprisonment for a term not exceeding ten years. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 852.)

§ 22-1103. Assault for refusal to accept challenge.

If any person shall assault, beat, or wound, or cause to be assaulted, beaten, or wounded, any person in the District for refusing to accept such challenge, or cause him to be published or posted as a coward, or use other opprobrious language in such publication tending to degrade and disgrace him for so declining or refusing such challenge, he shall be punished by imprisonment for a term not exceeding three years. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 853.)

§ 22-1104. Leaving the District to give or receive challenge.

If any person, for the purpose of evading the provisions aforesaid, shall leave the District, by previous arrangement or concert within the same, with intent to give or receive any such challenge without the District, and shall give or receive the same accordingly, the person or persons so offending shall be punished in the same manner as if said challenge had been given and received within the District. (Mar. 3, 1901, 31 Stat. 1328, ch. 854, § 854.)

§§ 22-1105, 22-1106. Repealed. June 25, 1948, 62 Stat. 862, ch. 645, § 21, eff. Sept. 1, 1948.

Section 22-1105, act Mar. 4, 1909, 35 Stat. 1150, ch. 321, § 320, prohibited prize fights and animal (including bull) fights in the territories of the United States and the District of Columbia.

Section 22-1106, acts Mar. 4, 1909, 35 Stat. 1150, ch. 321, § 321; Feb. 8, 1929, 45 Stat. 1156, ch. 163, defined pugilistic encounter.

NOTES TO DECISIONS UNDER PRIOR LAW**Applicability 1
Indictment 2****1. Applicability**

Former sections 22-1105 and 22-1106 were applicable to the District of Columbia. *Dane v. United States* (1927, 18 F. 2d 811, 57 App. D. C. 161, certiorari denied 48 S. Ct. 35, 275 U. S. 538, 72 L. Ed. 413).

2. Indictment

Indictment charging promoter of fight between other with "engaging" in fight was not insufficient. *Dane v. United States* (1927, 18 F. 2d 811, 57 App. D. C. 161, certiorari denied 48 S. Ct. 35, 275 U. S. 538, 72 L. Ed. 413).

Acquittal of fighters was not inconsistent with conviction of promoter. *Id.*

§ 22-1107. Unlawful assembly—Profane and indecent language.

It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road, or highway, or in or around any public building or inclosure, or any park or reservation, or at the entrance of any private building or inclosure, and engage in loud and boisterous talking or other disorderly conduct, or to insult or make rude or obscene gestures or comments or observations on persons passing by, or in their hearing, or to crowd, obstruct, or incommode, the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure; it shall not be lawful for any person or persons to curse, swear, or make use of any profane language or indecent or obscene words, or engage in any disorderly conduct in any street, avenue, alley, road, highway, public park or inclosure, public building, church, or assembly room, or in any other public

place, or in any place wherefrom the same may be heard in any street, avenue, alley, road, highway, public park or inclosure, or other building, or in any premises other than those where the offense was committed, under a penalty of not more than \$250 or imprisonment for not more than ninety days, or both for each and every such offense. (July 29, 1892, 27 Stat. 323, ch. 320, § 6; July 8, 1898, 30 Stat. 723, ch. 638; June 29, 1953, 67 Stat. 97, ch. 159, § 210.)

AMENDMENTS

1953—Act June 29, 1953, substituted "\$250 or imprisonment for not more than ninety days, or both" for "twenty-five dollars."

1898—Act July 8, 1898, amended section generally. Prior to the amendment the section read: "It shall not be lawful for any person or persons within the District of Columbia to congregate and assemble at the corners of any of the streets or avenues, or in any street, avenue, or alley, road, or highway, or on the foot pavements or flag footways of any street or avenue, or at the entrance or on the steps, cellar doors, porches, or porticos of any public or private building or office, or at the entrance of any public or private building or office, or at the entrance, or in, on, or around any of the inclosures of the Capitol, Executive Mansion, public squares, District buildings, Judiciary Square, or at the entrance of any church, schoolhouse, theater, or any assembly room, or in or around the same, or any other public or private inclosure within the said District, and be engaged in loud or boisterous talking, or to insult or make rude or obscene comments or remarks or observations on persons passing by the same, or in their hearing, or to so crowd, obstruct, or incommode the said foot pavement or flag footway, or the entrance into or out of any such church, public or private dwelling, city hall, Executive Mansion, Capitol, or such public inclosure, square or alley, highway or road, as to prevent the free and uninterrupted passage thereof, under a penalty of not more than twenty-five dollars for each and every such offense."

CROSS REFERENCES

Disorderly conduct in public buildings and grounds, see § 22-3111.

Prosecutions, see § 22-109.

NOTES TO DECISIONS**Evidence 1
Matters considered 2
Presence of other persons 3
Public place 4****1. Evidence**

Evidence that taxicab driver made certain suggestions to female passenger and repeated the suggestions both en route and on reaching their destination justified finding that such remarks were "indecent" and "obscene" within this section. *Morris v. District of Columbia* (1943, 31 A. 2d 652).

2. Matters considered

In determining whether defendant's remarks were within prohibition of this section, the trial judge was entitled to consider all surrounding circumstances, time of occurrence and manner in which it occurred, repetition of the remarks, as well as lack of previous acquaintance. *Morris v. District of Columbia* (1943, 31 A. 2d 652).

3. Presence of other persons

Under this section making it unlawful for any person to use indecent or obscene language in any public place, the presence of others than offender and person addressed is not necessary to complete the offense. *Morris v. District of Columbia* (1943, 31 A. 2d 652).

4. Public place

A public vehicle, such as a taxicab, plying its business on a public street, is a "public place" within this section making it unlawful for any person to use indecent or obscene words in any public place. *Morris v. District of Columbia* (1943, 31 A. 2d 652).

§ 22-1108. Playing games in streets.

It shall not be lawful for any person or persons to play the game of football, or any other game with a ball, in any of the streets, avenues, or alleys in the city of Washington; nor shall it be lawful for any person or persons to play the game of bandy, shindy, or any other game by which a ball, stone, or other substance is struck or propelled by any stick, cane, or other substance in any street, avenue, or alley in the city of Washington, under a penalty of not more than five dollars for each and every such offense. (July 29, 1892, 27 Stat. 325, ch. 320, § 17; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

1895—Act Feb. 11, 1895, substituted "city of Washington" for "cities of Washington and Georgetown" in two instances.

CROSS REFERENCE

Prosecutions, see § 22-109.

NOTE TO DECISION**1. Civil liability of parent**

In absence of evidence that either of two minor boys had previously played with a football on sidewalk in violation of this section or that their conduct had been such that their parents, with closer supervision, would have been aware that boys were engaging in conduct which was unlawful or which might inflict injury upon others, parents of boys were not chargeable with liability for injuries sustained by pedestrian with whom one of the boys collided while attempting to catch football. *Bateman v. Crim* (D. C. Mun. App. 1943, 34 A. 2d 257).

§ 22-1109. Throwing stones or other missiles forbidden.

It shall not be lawful for any person or persons within the District of Columbia to throw any stone or other missile in any street, avenue, alley, road, or highway, or open space, or public square, or inclosure, or to throw any stone or other missile from any place into any street, avenue, road, or highway, alley, open space, public square, or inclosure, under a penalty of not more than five dollars for every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 3.)

CROSS REFERENCES

Prosecutions, see § 22-109.

Scientific experiments, section inapplicable to, see § 22-812.

§ 22-1110. Urging dogs to fight—Create disorder.

It shall not be lawful for any person or persons to entice, induce, urge, or cause any dogs to engage in a fight in any street, alley, road, or highway, open space, or public square in the District of Columbia, or to urge, entice, or cause such dogs to continue or prolong such fight, under a penalty of not more than five dollars for each and every offense; and any person or persons who shall induce or cause any animal of the dog kind to run after, bark at, frighten, or bite any person, horse, or horses, cows, cattle of any kind, or other animals lawfully passing along or standing in or on any street, avenue, road, or highway, or alley in the District of Columbia, shall forfeit and pay for such offense a sum not exceeding five dollars. (July 29, 1892, 27 Stat. 324, ch. 320, § 10.)

CROSS REFERENCE

Prosecutions, see § 22-109.

§ 22-1111. Penalty for allowing fierce and dangerous dogs to go at large.

If any owner or possessor of a fierce or dangerous dog shall permit the same to go at large, knowing said dog to be fierce or dangerous, to the danger or annoyance of the inhabitants, he shall upon conviction thereof, be punished by a fine not exceeding twenty dollars; and if such animal shall attack or bite any person, the owner or possessor thereof shall, on conviction, be punished by a fine not exceeding fifty dollars, and in addition to such punishment the court shall adjudge and order that such animal be forthwith delivered to the poundmaster, and said poundmaster is hereby authorized and directed to kill such animal so delivered to him.

If any owner or possessor of a female dog shall permit her to go at large in the District of Columbia while in heat he shall, upon conviction thereof, be punished by a fine not exceeding twenty dollars. (June 19, 1878, 20 Stat. 174, ch. 323, § 9; June 30, 1902, 32 Stat. 547, ch. 1332.)

AMENDMENT

1902—Act June 30, 1902, amended section generally. Prior to the amendment the section read as follows: "If any owner or possessor of a fierce or dangerous dog permit the same to go at large in the District of Columbia, to the danger or annoyance of the inhabitants, he shall forfeit and pay, for the first offense, ten dollars; for the second, a sum not exceeding twenty dollars; and upon a third conviction for the same offense, the commissioners shall immediately cause the dog, upon account of which the condition takes place, to be slain and buried."

NOTE TO DECISION**1. Knowledge of owner**

Amendment of 1902 did not modify judicial interpretation of earlier act that owner was not liable for conduct of dog unless he had or was charged with knowledge of its vicious propensities. *Bardwell v. Petty* (1923, 286 F. 772, 52 App. D. C. 310).

§ 22-1112. Lewd, indecent, or obscene acts.

(a) It shall not be lawful for any person or persons to make any obscene or indecent exposure of his or her person, or to make any lewd, obscene, or indecent sexual proposal, or to commit any other lewd, obscene, or indecent act in the District of Columbia, under penalty of not more than \$300 fine, or imprisonment of not more than ninety days, or both, for each and every such offense.

(b) Any person or persons who shall commit an offense described in subsection (a), knowing he or she or they are in the presence of a child under the age of sixteen years, shall be punished by imprisonment of not more than one year, or fined in an amount not to exceed \$1,000, or both, for each and every such offense. (July 29, 1892, 27 Stat. 324, ch. 320, § 9; July 8, 1898, 30 Stat. 724, ch. 638; Sept. 26, 1942, 56 Stat. 760, ch. 565; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 101; June 29, 1953, 67 Stat. 92, ch. 159, § 202(a)(1).)

AMENDMENTS

1953—Subsec. (a) amended by act June 29, 1953, to eliminate "or their persons in any street, avenue, alley, road or highway, open space, public square, or other public place or inclosure, in the District of Columbia, or to make any such obscene or indecent exposure of person in any dwelling or other building or other place wherefrom the same may be seen in any street, avenue, alley, road or highway, open space, public square, or public or private building or inclosure" following "exposure of his or her person", to insert "or to make any

lewd, obscene, or indecent sexual proposal, or to commit any other lewd, obscene, or indecent act in the District of Columbia", and to increase the fine from \$250 to \$300.

Subsec. (b) amended by act June 29, 1953, to increase the punishment by imprisonment for six months to one year and the fine from \$500 to \$1,000 and to provide for punishment by both fine and imprisonment.

1948—Act June 9, 1948, designated existing provisions as subsec. (a) and added subsec. (b).

1942—Act Sept. 26, 1942, added the penalty of imprisonment for not more than ninety days.

1898—Act July 8, 1898, inserted references to "or other public place" and "or public or private building."

CROSS REFERENCE

Prosecutions, see § 22-109.

NOTES TO DECISIONS

Acts committed in privacy 1
Corroboration of evidence 5
Elements of assault 2
Entrapment 3
Evidence 4—6
Corroboration 5
Testimony of arresting officer 6
Homosexuality 7
Intent 8
Resentencing 9
Testimony of arresting officer, evidence 6

1. Acts committed in privacy

Under this section making it unlawful for any person to make any lewd, obscene or indecent sexual proposal, or to commit any other lewd, obscene or indecent act in the District of Columbia, an open or public act in common-law sense is no longer required, but this section is not designed or intended to apply to an act committed in privacy or presence of a single, consenting person. *Rittenour v. District of Columbia* (D.C. Mun. App. 1960, 163 A. 2d 558).

2. Elements of assault

Before use of assault statute to cover conduct that appears to fall within bounds of misdemeanor statutes can be countenanced court must be certain that elements of assault had been established. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U. S. App. D. C. 97).

3. Entrapment

Where police officer made phone call to defendant and went to defendant's house in order to investigate a suspected homosexual and in order to confirm the suspicion led suspect to believe officer would not resist homosexual advances and then arrested him, defendant was entrapped. *Rittenour v. District of Columbia* (D.C. Mun. App. 1960, 163 A. 2d 558).

4. Evidence

Evidence was insufficient to sustain convictions for committing a lewd, obscene, or indecent act. *Caul and Coggins v. District of Columbia* (D.C. Mun. App. 1960, 164 A. 2d 350).

Evidence sustained conviction of committing a lewd, obscene, or indecent act. *McGhee v. District of Columbia* (D.C. Mun. App. 1957, 137 A. 2d 721).

5. — Corroboration

Testimony of complaining witness in prosecution for committing a lewd, obscene or indecent act, which was corroborated by her companion except for the actual identification of defendant, was sufficiently corroborated to secure conviction. *McGhee v. District of Columbia* (D. C. Mun. App. 1957, 137 A. 2d 721).

Evidence showed sufficient corroboration of the circumstances to sustain conviction for making an indecent sexual proposal. *Howard v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 150).

6. — Testimony of arresting officer

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U. S. App. D. C. 97).

7. Homosexuality

Homosexuality is not a crime. *Rittenour v. District of Columbia* (D.C. Mun. App. 1960, 163 A. 2d 558).

8. Intent

A criminal intent must be shown in prosecution for indecent exposure before conviction can be upheld, and though exposure must be intentional and not accidental, the intent required is only a general one and need not be directed toward any specific person or persons. *Peyton v. D.C.* (D.C. Mun. App. 1953, 100 A. 2d 36).

An exposure becomes indecent when defendant exposes himself at such a time and place where as a reasonable man he knows or should know his act will be open to observation by others. *Id.*

9. Resentencing

Where prosecution was under one subsection of statute, the wording of which was followed by the information, but upon conviction sentence was imposed under another subsection of statute which provided for stiffer penalties, and evidence sustained conviction, case would be remanded with instructions to vacate existing sentence and to resentence defendant in accordance with subsection of statute under which he was prosecuted. *Howard v. District of Columbia* (D. C. Mun. App. 1957 132 A. 2d 150).

§ 22-1113. Kindling bonfires.

It shall not be lawful for any person or persons within the limits of the District of Columbia to kindle or set on fire, or be present, aiding, consenting, or causing it to be done, in any street, avenue, road, or highway, alley, open ground, or lot, any box, barrel, straw, shavings, or other combustible, between the setting and rising of the sun; and, any person offending against the provisions of this section shall on conviction thereof, forfeit and pay a sum not exceeding ten dollars for each and every offense. (July 29, 1892, 27 Stat. 325, ch. 320, § 14.)

CROSS REFERENCE

Prosecutions, see § 22-109.

§ 22-1114. Disturbing religious congregation.

It shall not be lawful for any person or persons to molest or disturb any congregation engaged in any religious exercise or proceedings in any church or place of worship in the District of Columbia; and it shall be lawful for any of the authorities of said churches to arrest or cause to be arrested any person or persons so offending, and take him, her, or them to the nearest police station, to be there held for trial; and any person or persons violating the provisions of this section shall forfeit and pay a fine of not more than one hundred dollars for every such offense. (July 29, 1892, 27 Stat. 324, ch. 320, § 11.)

CROSS REFERENCE

Prosecutions, see § 22-109.

§ 22-1115. Interference with foreign diplomatic and consular offices, officers, and property.

It shall be unlawful to display any flag, banner, placard, or device designed or adapted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or any officer or officers thereof, or to bring into public disrepute political, social, or economic acts, views, or purposes of any foreign government, party, or organization, or to intimidate, coerce, harass, or bring into public disrepute any officer or officers or diplomatic or consular representatives of any foreign government, or to interfere with the free and safe pursuit of the duties of any diplomatic or consular representatives of any foreign government, within five hundred feet of any building or premises within the District of Columbia used or occupied by any foreign govern-

ment or its representative or representatives as an embassy, legation, consulate, or for other official purposes, except by, and in accordance with, a permit issued by the superintendent of police of the said District; or to congregate within five hundred feet of any such building or premises, and refuse to disperse after having been ordered so to do by the police authorities of the said District. (Feb. 15, 1938, 52 Stat. 30, ch. 29, § 1.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

NOTES TO DECISIONS

Constitutionality 1 Offenses 2

1. Constitutionality

Congress, in executing power to define and punish offenses against foreign nations, was authorized to prohibit the display, within 500 feet of an embassy, legation, or consulate in District of Columbia, of any flag, banner, placard, or device designed to bring any foreign government into public odium, or to harass any diplomatic or consular representatives. *Frend v. U. S.* (1939, 100 F. 2d 691, 69 App. D. C. 281, certiorari denied 59 S. Ct. 488, 306 U. S. 640, 83 L. Ed. 1040).

The power of Congress to define and punish offenses against law of nations and to exercise police power of a state in District of Columbia authorized it, in seeking to protect foreign embassies from disturbances, to determine how and to whom it would distribute authority to make detailed regulations, and to delegate that power to superintendent of police of District. *Id.*

This section did not violate due process clause of Constitution. *Id.*

This section did not constitute an invalid delegation of authority to superintendent of police to grant permit without establishment of any standard or guide to govern granting of permit. *Id.*

This section did not violate constitutional provision relating to free speech and free assemblage since no restriction was placed upon speech or assembly except to extent that they might constitute offensive public demonstrations immediately adjacent to buildings used for official purposes by foreign government. *Id.*

2. Offenses

Where defendants were part of a congregation of people who paraded in streets in front of Austrian or German embassy with banners or placards pursuant to plan to bring German government into contempt, defendants, under provisions of local law making it an offense to aid and abet in violation of the law, were guilty of violation of this section, regardless of whether each of defendants was then displaying one of placards. *Frend v. U. S.* (1939, 100 F. 2d 691, 69 App. D. C. 281, certiorari denied 59 S. Ct. 488, 306 U. S. 640, 83 L. Ed. 1040).

§ 22-1116. Penalties for interference with foreign diplomatic and consular offices, officers, and property.

The municipal court for the District of Columbia shall have jurisdiction of offenses committed in violation of section 22-1115, and any person convicted of violating any of the provisions of said section shall be punished by a fine not exceeding \$100 or by imprisonment not exceeding sixty days, or both: *Provided, however,* That nothing contained in said section shall be construed to prohibit picketing, as a result of bona fide labor disputes regarding the alteration, repair, or construction of either buildings or premises occupied, for business purposes, wholly or in part, by representatives of foreign governments. (Feb. 15, 1938, 52 Stat. 30, ch. 29, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

§ 22-1117. Flying kites, balloons, or parachutes forbidden.

It shall not be lawful for any person or persons to set up or fly any kite, or set up or fly any fire balloon or parachute in or upon or over any street, avenue, alley, open space, public enclosure, or square within the limits of the city of Washington, under a penalty of not more than ten dollars for each and every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 4; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

1895—Act Feb. 11, 1895, substituted "city of Washington" for "cities of Washington and Georgetown."

CROSS REFERENCE

Prosecutions, see § 22-109.

§ 22-1118. Driving or riding on footways in public grounds.

If any person shall drive or lead any horse, mule, or other animal, or any cart, wagon, or other carriage whatever on any of the paved or graveled footways in and on any of the public grounds belonging to the United States within the District of Columbia, or shall ride thereon, except at the intersection of streets, alleys, and avenues, each and every such offender shall forfeit and pay for each offense a sum not less than one nor more than five dollars. (July 29, 1892, 27 Stat. 325, ch. 320, § 16.)

CROSS REFERENCE

Prosecutions, see § 22-109.

§ 22-1119. False alarm of fire—Prosecution.

It shall be unlawful for any person or persons to wilfully or knowingly give a false alarm of fire within the District of Columbia, and any person or persons violating the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor and be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. Prosecutions for violation of the provisions of this section shall be on information filed in the municipal court by the corporation counsel of the District of Columbia or by any of his assistants. (June 8, 1906, 34 Stat. 220, ch. 3055; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

§ 22-1120. Sale of tobacco to minors under 16 years of age.

No person shall sell, give, or furnish any cigar, cigarette, or tobacco in any of its forms to any minor under sixteen years of age; and for each and every violation of this section the offender shall, on conviction, be fined not less than two dollars nor more than ten dollars or be imprisoned for not less than five days nor more than twenty days. (Feb. 7, 1891, 26 Stat. 736, ch. 117.)

NOTE TO DECISION

1. Reversal

Where a majority of the court did not agree on a specific ground for reversing judgment, conviction of storekeeper for selling cigarettes to minor under 16 years of age was reversed. *Campbell v. District of Columbia* (1943, 32 A. 2d 394).

§ 22-1121. Disorderly conduct—Generally.

Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby—

(1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

(2) congregates with others on a public street and refuses to move on when ordered by the police;

(3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons;

(4) interferes with any person in any place by jostling against such person or unnecessarily crowding him or by placing a hand in the proximity of such person's pocketbook, or handbag; or

(5) causes a disturbance in any streetcar, railroad car, omnibus, or other public conveyance, by running through it, climbing through windows or upon the seats, or otherwise annoying passengers or employees,

shall be fined not more than \$250 or imprisoned not more than ninety days, or both. (June 29, 1953, 67 Stat. 98, ch. 159, § 211a.)

NOTES TO DECISIONS

Construction 1
Indictment 2

1. Construction

This section penalizing acts intended to provoke or likely to occasion breach of peace is penal and must be strictly construed. *Carey v. District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 314).

Peeping in window of occupied, lighted apartment at 1:30 in the morning constituted "disorderly conduct" within breach of peace statute penalizing action tending to "disturb" or be "offensive" to others. *Id.*

2. Indictment

An information alleging that defendant "did then and there engage in disorderly conduct, to wit: was then and there a peeping Tom" was sufficient. *Carey v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 314).

Chapter 12.—EMBEZZLEMENT

Sec.

- 22-1201 Embezzlement of property of District of Columbia.
- 22-1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.
- 22-1203. Embezzlement of note not delivered.
- 22-1204. Receiving embezzled property.
- 22-1205. Embezzlement by carriers and innkeepers.
- 22-1206. Embezzlement by warehouseman, factor, storage, forwarding, or commission merchant.
- 22-1207. Punishment for violations of sections 22-1202 to 22-1206.
- 22-1208 Conversion by commission merchant, consignee, person selling goods on commission, and auctioneers.
- 22-1209 Embezzlement by mortgagor of personal property in possession.
- 22-1210. Embezzlement by executors and other fiduciaries.
- 22-1211. Taking property without right.

§ 22-1201. Embezzlement of property of District of Columbia.

Whoever, being charged with the collection, receipt, safe-keeping, transfer, or disbursement of public money or other property or effects belonging or payable to the District of Columbia or in the custody of the same, fraudulently converts to his own use, or to the use of any other person, body corporate, or association whatever, or uses, by way of investment, in any kind of security, stock, loan, property, or in any other manner or form loans, with or without interest, to any company, corporation, association, or individual, excepting by depositing in bank to said party's own credit, in the usual course of business, any public money, funds, property, bonds, securities, assets, or effects received, controlled, or held by him for safe-keeping or for any other purpose, shall forfeit all right, by way of commissions or compensation, to any part of the said money or other property and shall be deemed guilty of embezzlement of the whole of the money or other property thus converted, used, invested, loaned, deposited, or paid out, and shall be imprisoned for not more than twenty years and fined in a sum not exceeding double the value of the money or property embezzled. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 833.)

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203. Joinder of offenses, see § 23-201.

§ 22-1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

If any agent, attorney, clerk, or servant of a private person or copartnership, or any officer, attorney, agent, clerk, or servant of any association or incorporated company, shall wrongfully convert to his own use, or fraudulently take, make way with, or secrete, with intent to convert to his own use, anything of value which shall come into his possession or under his care by virtue of his employment or office, whether the thing so converted be the property of his master or employer or that of any other person, copartnership, association, or corporation, he shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than ten years, or both. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 834.)

CROSS REFERENCES

Building or homestead association, misappropriation of assets as larceny, see § 26-404.

Conditional sales contract, sale or concealment by conditional vendee with intent to defraud, see § 22-1406.

Larceny of property held for use and benefit of another, see § 22-2203.

Life insurance agent failing to account for premiums, guilty of embezzlement, see § 35-429.

Penalty for violating section when value is less than \$100, see § 22-1207.

NOTES TO DECISIONS

Admissibility of evidence 9

Agency 1

Attorney 2

Broker 3

Classes of acts 4

Definition 5

Demand is necessary 6

Directed verdict 7

Election of offenses 8

Evidence 9-11

Admissibility 9

Parole evidence 10

Sufficiency 11

False pretenses	12
Financial condition	13
Forgery	14
Indictment	15
Instruction	16
Intent	17
Larceny	18
Parol evidence	10
Production of statements and reports	19
Promissory note	20
Railroad conductor	21
Repayment	22
Review	23
Sufficiency of evidence	11
"Under his care"	24
Verdict	25
Wrongful conversion	26

1. Agency

An agent who converts funds delivered to him on the false representation that they are needed in the principal's business is guilty of embezzlement. *Woodward v. United States* (38 App. D. C. 323).

"It is immaterial whether he receives possession of the property from a third person or from his master; for in either case the property is under his care, and if he converts it he is guilty of embezzlement." *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

Preexisting agency was not necessary. "If the agency came into existence contemporaneously with the delivery of the certificates, that would be enough." *Id.*

2. Attorney

Assignment of claim to an attorney for the purpose of collection, and to cover his fee for collection does not create the relation of debtor and creditor, so as to defeat a charge of embezzlement. *Patterson v. United States* (39 App. D.C. 84, certiorari denied 33 S. Ct. 114, 226 U.S. 609, 57 L. Ed. 380).

3. Broker

Broker who converts stock certificates delivered to him for sale is guilty of embezzlement. *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

4. Classes of acts

This section "describes two classes of acts, either one of which constitutes embezzlement: The first being the wrongful conversion to his own use, by the accused, of property which has come into his possession by virtue of his employment, and the second being the fraudulent taking, making way with, or secreting with intent to convert, such property to his own use." *Gassenheimer v. United States* (26 App. D. C. 432).

Offense of embezzlement is single, which the statute says may be committed by either of two methods or ways, count which charges that the embezzlement was committed by means of both methods is not bad for duplicity and proof of either means in the commission of the offense will sustain a conviction. *O'Brien v. United States* (27 App. D.C. 263).

5. Definition

"Generally speaking, it (embezzlement) may be defined as the fraudulent conversion of another's property by one to whom it has been intrusted, with the intent of depriving the owner thereof." *Ambrose v. United States* (45 App. D.C. 112).

6. Demand as necessary

In embezzlement prosecution, the test as to necessity for demand is not whether the funds were acquired voluntarily, but rather, whether there is either a fixed time for accounting, at which time accused defaulted, or some other convincing proof to uphold the charge of wrongful conversion. *Dobbins v. U.S.* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where funds are voluntarily turned over to accused, a demand and refusal to pay over may be strong evidence going to make out crime of embezzlement, but such a showing is not fundamentally necessary where there is other convincing proof to support conviction for embezzlement. *Id.*

7. Directed verdict

Where indictment sufficiently charged embezzlement and opening statement on behalf of Government set out

in considerable detail nature of evidence on which prosecution would rely, prosecutor's failure to state that Government would prove a "wrongful conversion" or "fraudulent taking" did not entitle defendant to a directed verdict at close of Government's opening statement. *Dobbins v. U.S.* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

8. Election of offenses

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins v. U.S.* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Id.*

9. Evidence—Admissibility

Defendant's reputation for honesty and integrity is admissible. *Masters v. United States* (42 App. D.C. 350, Ann. Cas. 1916A, 1243).

It is competent for the government to prove the financial condition of the guardian at or immediately prior to an alleged offense, but evidence of other similar offenses is inadmissible unless there is some connection between the acts shown and one which accused is charged. *Ambrose v. United States* (45 App. D. C. 112).

The fact that defendant hypothecated stock and received \$4,000 therefor is not proof that the stock was worth more than \$35. *Henry v. United States* (1920, 263 F. 459, 49 App. D.C. 207).

Actual value of stock may be proved by the testimony of persons familiar with the affairs of the company, its assets, and the dividend-earning capacity of the stock, and by individual sales of stock at or near the date when the conversion occurred and actual value thus established furnishes a proper basis upon which the jury may make a finding. *Id.*

"Evidence of an intent at the time of the conversion to restore the embezzled money is not admissible. *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

In prosecution for embezzlement, evidence that unpaid bills were found in defendant's possession 38 days after alleged commission of offense was admissible, and its weight regarding defendant's financial condition at time of the offense was for jury. *Lee v. U. S.* (D. C. Mun. App. 1945, 40 A. 2d 250).

10. — Parol evidence

In embezzlement prosecution against building contractor who received a \$3,500 down payment from prosecuting witness who desired to have a house built on a vacant lot which the prosecuting witness did not own, parol evidence was admissible to show that, despite terms of written contract reciting that contractor was to construct the house for prosecuting witness and that prosecuting witness had made an advance payment of \$3,500, the contractor had orally agreed to purchase the lot for prosecuting witness and that pursuant to such agreement the prosecuting witness had made a \$3,500 down payment on lot and that prosecuting witness mistakenly believed that the written contract embodied the purchase of the lot as well as the construction of the house and that the \$3,500 was delivered to contractor as agent to purchase lot for prosecuting witness and that contractor knew that prosecuting witness entertained such mistaken belief. *Gibson v. United States* (1959, 268 F. 2d 586, 106 U.S. App. D.C. 10).

11. — Sufficiency

Evidence was sufficient to sustain conviction for embezzlement. *Dobbins v. United States* (1946, 157 F. 2d 257, 81 U. S. App. D. C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Evidence was sufficient to sustain conviction of secretary-treasurer of firemen's relief association for embezzlement of death benefits due fireman's widow. *United*

States v. Daigle (1957, 149 F. Supp. 409, affirmed 248 F. 2d 608, 101 U. S. App. D. C. 286, certiorari denied 78 S. Ct. 344, 355 U. S. 913, 2 L. Ed. 2d 274).

12. False pretenses

Indictment charging that accused had procured a check from woman to invest money with him upon false representation that he had contract with third party, and when such relationship was that of borrower and lender and not principal and agent it sufficiently charged the crime of obtaining value by false pretenses and not embezzlement. *Davis v. United States* (37 App. D. C. 126).

13. Financial condition

In embezzlement prosecution, the prosecution may show defendant's straitened financial condition only at or immediately prior to the commission of the offense. *Lee v. U.S.* (D.C. Mun. App. 1945, 40 A. 2d 250).

Admission of testimony regarding defendant's financial condition reasonably related to dates charged in embezzlement indictment was not error. *Dobbins v. U. S.* (1946, 157 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Evidence by defendant of his financial standing is incompetent. *Masters v. United States* (42 App. D.C. 350, Ann. Cas. 1916A, 1243).

14. Forgery

An employee, who, without authority, indorses his employer's name on a check payable to the latter's order, and cashes it, is guilty of forgery and not embezzlement. *Dowling v. United States* (41 App. D. C. 11).

When defendant acted as bookkeeper, salesman, and collector and was authorized to indorse the name of the company on the checks, he was guilty of forgery and not embezzlement when he indorsed his own name and appropriated the money. *Yeager v. United States* (1929, 32 F. 2d 402, 59 App. D.C. 11).

15. Indictment

It is not necessary to allege the "particular way or means by which the conversion was effected." *Gassenheimer v. United States* (26 App. D. C. 432).

A general verdict of guilty on an indictment charging embezzlement and false pretenses will be set aside as inconsistent. *Davis v. United States* (37 App. D. C. 126).

In an indictment for wrongful conversion, it is not necessary to allege an intent to defraud. *Patterson v. United States* (39 App. D.C. 84, certiorari denied 33 S. Ct. 114, 226 U.S. 609, 57 L. Ed. 380).

"The stealing or conversion of property belonging to different persons at the same time and place constitutes but a single offense and should be prosecuted as such." *Henry v. United States* (1920, 263 F. 459, 49 App. D.C. 207).

Under this section which describes two classes of acts, either one of which constitutes embezzlement, an indictment charging the commission of both of such acts is not bad for duplicity, and a conviction is warranted upon proof of the commission of either of the acts. *Turner v. United States* (1927, 16 F. 2d 535, 57 App. D.C. 39).

16. Instruction

Where, in prosecution for embezzlement, grand larceny, forgery, and uttering in connection with payment of death benefits to firemen's widows by defendant as officer of firemen's relief association, there was no question as to what specific sum of money was involved, defendant had sufficient information to make his defense, and there was not chance of double jeopardy, and, therefore, any variance in proof of ownership under instruction that, although money was alleged to be association's, it would not be fatal to conviction if money was found to be payee's, was not prejudicial. *United States v. Daigle* (1957, 149 F. Supp. 409, affirmed 248 F. 2d 608, 101 U.S. App. D.C. 286, certiorari denied 78 S. Ct. 344, 355 U.S. 913, 2 L. Ed. 2d 274).

17. Intent

To wrongfully convert money is an act in its nature evil, and the statement of the act itself imports the evil intent. *O'Brien v. United States* (27 App. D.C. 263).

An agent converting funds of his principal delivered to him in the District of Columbia cannot be convicted of embezzlement if he formed the intent to convert outside of the District. *Woodward v. United States* (38 App. D.C. 323).

"The principle is that where a statute prohibits an act under certain circumstances, and a person commits the act not under a mistake of fact, a criminal intention is conclusively presumed." *Patterson v. United States* (39 App. D.C. 84, certiorari denied 33 S. Ct. 114, 226 U.S. 609, 57 L. Ed. 380).

"Before there can be a conversion of the property of another there must be an intent on the part of the doer of the act to convert the property to his own use without the consent of the owner. But a wrongful conversion implies a conversion by the doer of the act without color of right, and with the evil intent of converting the property to his own use. The intent to wrongfully convert the property of another implies more than the intent to merely convert. It implies a mind at fault, an evil mind, capable of intentionally committing the offense here defined by the statute." *Fulton v. United States* (45 App. D.C. 27). See, also, *Masters v. United States* (42 App. D.C. 350, Ann. Cas. 1916A, 1243).

18. Larceny

Principal difference between larceny and embezzlement lies in the manner in which possession of the property is acquired; in larceny there is a trespass, accompanied by an intent to steal, while in embezzlement there is a fraudulent conversion of property the possession of which was lawfully acquired; in either case, except under special statutes, evil intent must be shown. *Ambrose v. United States* (45 App. D. C. 112).

To sustain a conviction of grand larceny "it must be alleged and proved that the value of the property embezzled is over \$35.00." *Henry v. United States* (1920, 263 F. 459, 49 App. D.C. 207).

Bookkeeper of hotel is mere employee and when he absconded with envelopes it constituted larceny, and not embezzlement. *Chanock v. United States* (1920, 267 F. 612, 50 App. D.C. 54, 11 A.L.R. 799).

19. Production of statements and reports

Reports, which were made by agent of Federal Bureau of Investigation on basis of notes of interviews with another witness, who had also testified for prosecution, and which were prepared from 10 days to a month and a half after interviews and were summaries and not verbatim notes of interviews, were not statements required to be produced under statute concerning production of statements and reports of witnesses, and refusal of court to order their production for use of defense in a prosecution for alleged mishandling of funds of Federal Credit Union at Naval Air Station was not error. *Borges v. United States* (1959, 270 F. 2d 332, 106 U.S. App. D.C. 139).

20. Promissory note

A promissory note may be the subject of embezzlement. *Reeves v. United States* (1927, 15 F. 2d 734, 56 App. D.C. 376).

21. Railroad conductor

A railroad conductor who collects and subsequently sells tickets is guilty of embezzlement. *Gassenheimer v. United States* (26 App. D. C. 432).

22. Repayment

Where there has been wrongful conversion, repayment will not serve to clear defendant of charge of embezzlement. *Dobbins v. U.S.* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

23. Review

Where defendant was convicted under two counts of two consolidated indictments charging embezzlement and two counts charging obtaining money by false pretenses and sentences on false pretenses counts were each less than sentences imposed on embezzlement counts and were concurrent therewith and the convictions on the embezzlement counts were sustained, defendant's contentions regarding the convictions on the false pretenses counts would not be examined by Court of Appeals. *Gibson v. United States* (1959, 268 F. 2d 586, 106 U.S. App. D.C. 10).

24. "Under his care"

Phrase "under his care" will cover property merely in his custody, and therefore, under such a statute, it is immaterial whether he receives possession of the property

from a third person or from his master; for in either case the property is under his care and if he converts it he is guilty of embezzlement. *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

25. Verdict

Where court instructed jury that if it should find defendant guilty of embezzlement as to either transaction, it would have to return a verdict of not guilty as to the companion larceny count, but jury found defendant guilty of both embezzlement and larceny as to the same transaction, District Court had right to direct verdict of acquittal on larceny count, and defendant was not prejudiced by any alleged "choice of verdicts" since penalty for embezzlement was less than that for larceny. *United States v. Daigle* (1957, 149 F. Supp. 409, affirmed 248 F. 2d 608, 101 U.S. App. D.C. 286, certiorari denied 78 S. Ct. 344, 355 U.S. 913, 2 L. Ed. 2d 274).

26. Wrongful conversion

Prosecution must demonstrate beyond reasonable doubt that there was a wrongful conversion by defendant to establish crime of embezzlement, and a mere conversion will not suffice. *Dobbins v. U.S.* (1946, 157 F. 2d. 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

§ 22-1203. Embezzlement of note not delivered.

Every embezzlement of any evidence of debt negotiable by delivery only, actually executed by the master or employer of any such clerk, attorney, agent, officer, or servant, but not delivered or issued as a valid instrument, shall be deemed an offense within the meaning of section 22-1202. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 835.)

CROSS REFERENCE

Penalty for violating section when value is less than \$100, see § 22-1207.

NOTES TO DECISIONS

1. In general

There was no error in overruling the motion in arrest of judgment which contended that the indictment did not allege that the railroad tickets therein described or any one of them was embezzled in any manner described in this section. *Gassenheimer v. United States* (26 App. D.C. 432).

§ 22-1204. Receiving embezzled property.

Every person who shall buy or in any way receive anything of value, knowing the same to have been embezzled, taken, or secreted contrary to the provisions of sections 22-1201 to 22-1203, shall be punished in the same manner and to the same extent as prescribed in said sections, respectively. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 836.)

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203. Joinder of offenses, see § 23-201.

Penalty for violating section when value is less than \$100, see § 22-1207.

Receiving stolen goods, see §§ 22-2205, 22-2207.

NOTES TO DECISIONS

Property embezzled 1
Sufficiency of proof 2

1. Property embezzled

Quaere. Whether this section embraces "the receipt of property that may have been embezzled in another jurisdiction, as embezzlement is defined in our Code, or is limited to that which may have been embezzled in the District of Columbia." *Gassenheimer v. United States* (26 App. D. C. 432).

2. Sufficiency of proof

"To convict the defendant, it was necessary to prove first, that the property had been embezzled by Barnes in the District of Columbia * * * and second, that the

defendant had bought, or in any way received, it from Barnes, 'knowing the same to have been embezzled, etc.,' as provided in section 836" (this section). *Gassenheimer v. United States* (26 App. D. C. 432).

§ 22-1205. Embezzlement by carriers and innkeepers.

Any person intrusted with anything of value, to be carried for hire, or being an innkeeper and intrusted by his guest with anything of value for safe-keeping, who fraudulently converts the same to his own use, shall be deemed guilty of embezzlement and punished as provided in section 22-1202. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 837.)

CROSS REFERENCE

Penalty for violating section when value is less than \$100, see § 22-1207.

NOTES TO DECISIONS

Innkeeper 1
Innkeeper and guest 2

1. Innkeeper

Bookkeeper and clerk in hotel is not an "innkeeper" as defined in this section. *Chanock v. United States* (1920, 267 F. 612, 50 App. D.C. 54, 11 A.L.R. 799).

2. Innkeeper and guest

One who is merely a customer at a bar, restaurant, barbershop, or newsstand operated by hotel does not thereby establish relationship of "innkeeper and guest". *Wallace v. Shoreham Hotel Corp.* (D. C. Mun. App. 1946, 49 A. 2d 81).

§ 22-1206. Embezzlement by warehouseman, factor, storage, forwarding, or commission merchant.

Any warehouseman, factor, storage, forwarding, or commission merchant, or his clerk, agent, or employee, who, with intent to defraud the owner thereof, sells, disposes of, or applies or converts to his own use any property intrusted or consigned to him, or the proceeds or profits of any sale of such property, shall be deemed guilty of embezzlement, and shall suffer imprisonment for not more than ten years. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 838.)

CROSS REFERENCES

Auctioneer, embezzlement by, see § 22-1208.

Penalty for violating section when value is less than \$100, see § 22-1207.

NOTE TO DECISION

1. Factor or commission merchant

One who receives and takes possession of produce as the agent of the owner to sell for them is a factor or commission merchant within the meaning of this section, and this is so, although defendant had no store and was engaged in the brokerage business. *Green v. United States* (25 App. D.C. 549).

§ 22-1207. Punishment for violations of sections 22-1202 to 22-1206.

Whoever shall be guilty of any offense defined in sections 22-1202 to 22-1206, shall, where the thing, evidence of debt, property, proceeds, or profits be of the value of less than \$100, be punished by imprisonment for not more than one year or a fine of not more than \$200 or both. (Mar. 3, 1901, ch. 854, § 851a, as added Mar. 3, 1913, 37 Stat. 727, ch. 107, and amended Aug. 12, 1937, 50 Stat. 629, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215(f).)

AMENDMENTS

1953—Act June 29, 1953, increased the valuation of the subject matter of embezzlement from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the valuation of the subject matter of embezzlement by substituting "value of less than \$50" for "value of not more than thirty-five

dollars," and decreased the fine by substituting "\$200" for "five hundred dollars,".

§ 22-1208. Conversion by commission merchant, consignee, person selling goods on commission, and auctioneers.

If any factor, commission merchant, consignee, or any person selling goods on commission, or the agent, clerk, or servant of such person, shall convert to his own use in the District of Columbia any provisions, fruits, flour, meat, butter, cheese, or any other goods, merchandise, or property, or the proceeds of the same, and shall fail to pay over the avails or proceeds, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods or produce, and after demand made therefor by the person entitled to receive the same, or his or her duly-authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the municipal court for the District of Columbia shall be fined not more than one thousand dollars or be imprisoned not exceeding six months, or both, in the discretion of the court. The provisions of this section shall be applicable to all licensed auctioneers, their agents and employees. (Mar. 21, 1892, 27 Stat. 10, ch. 19; July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

AMENDMENT

1902—Act July 1, 1902, provided that section should be applicable to licensed auctioneers, their agents and employees.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203. Joinder of offenses, see § 23-201.

§ 22-1209. Embezzlement by mortgagor of personal property in possession.

Any mortgagor of personal property in possession of the same, who, with intent to defraud the owner of the claim secured by the mortgage, removes any of the mortgaged property out of the District, or secretes or sells the same, or converts the same to his own use, shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than five years, or both. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 839.)

CROSS REFERENCE

Conditional sales contract, sale or concealment by conditional vendee with intent to defraud, see § 22-1406.

§ 22-1210. Embezzlement by executors and other fiduciaries.

Any executor, administrator, guardian, trustee, receiver, collector, or other officer into whose possession money, securities, or other property of the property or estate of any other person may come by virtue of his office or employment, who shall fraudulently convert or appropriate the same to his own use, shall forfeit all right or claim to any commissions, costs, and charges thereon, and shall be deemed guilty of embezzlement of the entire amount

or value of the money or other property so coming into his possession and converted or appropriated to his own use, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding ten years, or both. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 841.)

NOTES TO DECISIONS

Commingleing 1
Evidence 2
Indictment 3
Intent to defraud 4
Receiver 5
Sentence 6

1. Commingleing

Mere commingleing of trust funds with personal funds "affords no sufficient basis for a presumption of evil intent." *Ambrose v United States* (45 App. D. C. 112)

2. Evidence

In proving intent "it is competent for the government to prove the financial condition of the accused at or immediately prior to the alleged offense." *Ambrose v. United States* (45 App. D.C. 112).

Evidence of similar offenses is admissible to show a course of conduct or a general scheme, but there must be some possible connection between the acts shown and the one on account of which the defendant is being tried *Id.*

3. Indictment

Indictment is sufficient which charges with precision and certainty that the defendant was appointed a receiver by order of court; that by virtue of said appointment he came into possession of a certain sum of money, alleged to be the property of the association and that on a certain date, he unlawfully and fraudulently converted and appropriated the same to his own use, and did then and there embezzle the same. *Fields v. United States* (27 App. D. C. 433, certiorari denied 27 S. Ct. 543, 205 U.S. 292, 51 L. Ed. 807).

4. Intent to defraud

"Intent to defraud is an essential element of the crime denounced by section 841 (this section)." *Ambrose v. United States* (45 App. D. C. 112).

5. Receivers

This section "comprehends property that may have passed into the defendant's possession as receiver before the time that it went into effect, when embezzled thereafter." *Fields v. United States* (27 App. D.C. 433, certiorari denied 27 S. Ct. 543, 205 U.S. 292, 51 L. Ed. 807).

6. Sentence

A sentence under this section containing the words "at labor" will be modified by striking out such words as surplusage. *Fields v. United States* (27 App. D. C. 433, certiorari denied 27 S. Ct. 543, 205 U.S. 292, 51 L. Ed. 807).

§ 22-1211. Taking property without right.

The taking and carrying away of the property of another in the District of Columbia without right to do so shall be a misdemeanor, punishable by a fine not to exceed one hundred dollars, or imprisonment for a term not to exceed six months, or both. (July 8, 1893, 30 Stat. 724, ch. 638; Apr. 21, 1906, 34 Stat. 127, ch. 1647.)

AMENDMENT

1906—Act Apr. 21, 1906, increased the limit for imposition of fines from forty to one hundred dollars and provided for punishment by imprisonment or both fine and imprisonment.

NOTES TO DECISIONS

Amendments 1
Counsel, conduct of 2
Evidence 3
Thief 4

1. Amendments

In prosecution for taking property without right, amendment of petition, at prosecution's request, to con-

form to proof that taking occurred at 11:30 p. m., instead of 11:30 a. m., as originally charged, was not error. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

2. Counsel, conduct of

In prosecution from taking property without right, denial of defendant's motion for mistrial on ground of prejudice to him by government counsel's request in jury's presence for short recess because articles taken were in complaining witness' automobile outside court-house and defendant's counsel had refused to waive their physical presence in court room, was not error. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

3. Evidence

While juvenile courts are not bound by technical rules of evidence, police officer's testimony, on trial of minor for taking property without right, that defendant told witness that articles taken were on porch of defendant's home, and that witness then dispatched thereto another officer, who returned with articles, was insufficient, aside from defendant's confession, to establish his guilt. *In re Davis* (D. C. Mun. App. 1951, 83 A. 2d 590).

4. Thief

"Thief" is used generically in vagrancy statute and may be defined as one who takes property of another without knowledge or consent of latter; and a conviction under this section making it a misdemeanor to take and carry away property of another without right to do so rendered convict a "known thief" for purposes of vagrancy statute. *Harris v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 152).

Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

Sec.

- 22-1301. False pretenses.
- 22-1302. Recordation of deed, contract, or conveyance with intent to extort money.
- 22-1303. False personation before court, officers, notaries.
- 22-1304. Falsely impersonating public officer or minister.
- 22-1305. False personation of inspector of departments of District of Columbia.
- 22-1306. False personation of police officer.
- 22-1307. Wearing or using insignia of certain organizations.
- 22-1308. False certificate of acknowledgment.

§ 22-1301. False pretenses.

Whoever, by any false pretense, with intent to defraud, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, indorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever fraudulently sells, barter, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense, shall, if the value of the property or the sum or value of the money or property so obtained, procured, sold, bartered, or disposed of is \$100 or upward, be imprisoned not less than one year nor more than three years; or, if less than that sum, shall be fined not more than \$200 or imprisoned for not more than one year, or both. Any person who obtains any lodging, food, or accommodation at an inn, boarding-house, or lodging-house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at such an inn, boarding-house, or lodging-house by the use of any false pretense, or who, after obtaining credit or accommo-

dation at such an inn, boarding-house, or lodging-house, absconds or surreptitiously removes his baggage therefrom without paying for his food, accommodation, or lodging, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the municipal court for the District of Columbia be fined not more than \$100 or imprisoned not more than six months, or both, in the discretion of said court. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 842; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 29, 1953, 67 Stat. 99, ch. 159, § 215(e).)

AMENDMENTS

1953—Act June 29, 1953, increased the valuation from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the valuation from \$35 to \$50.

1902—Act June 30, 1902, increased the penalty from six months to one year when the value of the subject matter obtained by false pretenses was less than thirty-five dollars.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203.
 Forgery and frauds, see § 22-1401 et seq.
 Hotel- and lodging-house keepers, general provisions concerning rights and liabilities, see §§ 34-101 to 34-103.
 Joinder of offenses, see § 23-201.
 Larceny, see § 22-2201.

NOTES TO DECISIONS

In general 1
 Amendment 2
 Anything of value 3
 Chattel mortgage 4
 Continuance 5
 Crime against United States 6
 Election of offenses 7
 Embezzlement 8
 Evidence 9
 Expectation of belief 10
 Fact represented falsely 11
 Indictment 12
 Instructions 13
 To counsel 14
 Intent 15
 Jurisdiction 16
 Larceny 17
 Limitations 18
 Mere opinion or expectation 19
 Present or past facts 20
 Previous convictions 21
 Questions for jury 22
 Reimbursement 23
 Reliance on pretense 24
 Representation 25
 Review 26
 Schemes to defraud 27
 Speedy trial 28
 Transfer of cause 29
 Worthless check 30

1. In general

"The elements of the offense are a false pretense or false representation by the defendant or some one acting for and instigated by him, knowledge by the defendant as to the falsity, reliance on the pretense or representation by the person defrauded, intent to defraud, and an actual defrauding." *Robinson v. United States* (42 App. D. C. 186).

2. Amendment

This section was intended to repeal those provisions of existing acts requiring the imposition of a definite, as distinguished from an indeterminate, sentence, and possibly also to effect pro tanto repeal of the minimum penalty provisions of such existing acts as themselves stipulate a minimum penalty in excess of one-fifth of a stipulated maximum penalty. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

3. Anything of value

A promissory note is a thing of value within the meaning of the statute; it is not necessary that false pretense should be the sole inducement for parting with the property; it is sufficient "if it had a preponderating influence sufficient to turn the scale, although other considerations operated upon the mind of the party." *Partridge v. United States* (39 App. D. C. 571, Ann. Cas. 1917D, 622).

This section made the obtaining of anything of value by means of false pretenses a crime. *Biddle v. United States* (1908, 156 F. 759, 84 C.C.A. 415).

4. Chattel mortgage

In determining whether, under District of Columbia law, defendants had committed an offense by violating code provision that whoever by any false pretense, with intent to defraud, obtains from any person anything of value is guilty, fact, if true, that chattel mortgage to two television sets, which were purchased after defendant made misrepresentation as to indebtedness on automobile given as security for the purchase, would have to be construed as conditional sales contract, which would preclude defendant from having received title to them, was irrelevant. *Nelson v. United States* (1956, 227 F. 2d 21, 97 U.S. App. D.C. 6, 53 A.L.R. 2d 1206, certiorari denied 76 S. Ct. 700, 351 U.S. 910, 100 L. Ed. 1445).

5. Continuance

In prosecution for obtaining money by false pretenses through cashing of checks which issuer had no reason to suppose would be honored, where at time of entry of plea of not guilty New York attorney filed affidavit that he would represent defendant, but on date of trial local counsel for defendant requested a continuance for reasonable time on ground New York attorney was engaged in another trial, it could not be said that under circumstances trial judge had abused his discretion in refusing continuance and requiring local attorney to go to trial on short notice. *Gilmore v. United States* (1959, 273 F. 2d 79, 106 U.S. App. D.C. 344).

6. Crime against United States

False pretense is a crime against the United States, and persons conspiring to commit it may be punished under U.S.R.S. § 5440 (section 371 of title 18, U.S. Code). *Geist v. United States* (26 App. D.C. 594).

7. Election of offenses

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins v. U.S.* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Id.*

8. Embezzlement

"Verdict under embezzlement counts negatives one essential fact in the crime of procuring money by false pretenses, namely, the divesting of the title originally." *Davis v. United States* (37 App. D. C. 126).

9. Evidence

In prosecution of one who presented a bad check as good and got hotel to cash it, for obtaining money by false pretenses, court properly admitted in evidence some 13 other bad checks which defendant had represented as good, and for which he got cash at about the same time, for purpose of showing fraudulent intent, *Green v. United States* (1951, 188 F. 2d 48, 88 U.S. App. D.C. 249, certiorari denied 71 S. Ct. 1008, 341 U.S. 955, 95 L. Ed. 1376, rehearing denied 72 S. Ct. 24, 342 U.S. 842, 96 L. Ed. 636).

In prosecution for attempting by false pretenses to obtain money from an insurance company on a fraudulent claim for stolen furs evidence of defendant's guilt was sufficient for the jury. *Cooper and Williams v. United States* (D. C. Mun. App. 1956, 123 A. 2d 918).

Where the question is one of guilty knowledge, or fraudulent intent "it has always been deemed allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party, of a kindred character, in order to illustrate or establish his intent or motive in the particular act directly in judgment." *Partridge v. United States* (39 App. D. C. 571, Ann. Cas. 1917D, 622).

In prosecution for false pretenses involving sales to two complaining witnesses by means of fraudulent representation of warehouse receipts and for embezzlement involving conversion by defendant of money which one complaining witness turned over to defendant in connection with such sales, error in permitting introduction of testimony of another witness that about two years before acts charged defendant had sold witness similar warehouse receipts and had made to her similar representations was not cured by instruction directing jury to disregard such testimony. *Boyer v. U.S.* (1943, 132 F. 2d 12, 76 U.S. App. D. C. 397).

10. Expectation of belief

No one can be permitted to say, in regard to his own statements upon a material fact, that he did not expect to be believed, and, if such statements are knowingly false and wilfully made, fact that they are material is proof of an attempted fraud, since materiality, in eye of law, consists in their tendency to influence conduct of party who has interest in them and to whom they are addressed. *Nelson v. United States* (1956, 227 F. 2d 21, 97 U.S. App. D.C. 6, 53 A.L.R. 2d 1206, certiorari denied 76 S. Ct. 700, 351 U.S. 910, 100 L. Ed. 1445).

11. Fact represented falsely

In order to constitute the crime of obtaining money under false pretenses, the alleged false representation must be of some past or existing fact. *Biddle v. United States* (1908, 156 F. 759, 84 C.C.A. 415).

12. Indictment

Abusive words conveying the meaning that plaintiff had, by trick or artifice, obtained entrance into a theater, do not charge the indictable offense of false pretenses. *Friedlander v. Rapley* (38 App. D.C. 208).

An indictment charging defendant in one count with forgery and in second count with uttering same forged letter was not demurrable on ground that it was "repugnant". *U.S. v. Briggs* (1944, 54 F. Supp. 731).

13. Instructions

In prosecution for obtaining goods by false pretenses, instruction, which enumerated elements of the crime which were to be proven beyond a reasonable doubt, was, under District of Columbia law, correct and adequate for jury's guidance and in prosecution for obtaining goods by false pretenses, court was not bound to adopt defendant's theory of the case. *Nelson v. United States* (1956, 227 F. 2d 21, 97 U.S. App. D.C. 6, 53 A.L.R. 2d 1206, certiorari denied 76 S. Ct. 700, 351 U.S. 910, 100 L. Ed. 1445).

In prosecution for obtaining money from complaining witness by falsely representing to him that certain repairs had been made and certain parts replaced in his automobile, instruction that jury could find that defendants had guilty knowledge if they found that they made false representations as to repairs recklessly and not caring whether the representations were true or false, was improper, in view of fact subjective knowledge is necessary for criminal responsibility for a false representation, rather than a mere reckless disregard of the facts. *Avant and Hughlett v. United States* (D.C. Mun. App. 1959, 154 A. 2d 354).

14. Instructions to counsel

In prosecution for false pretenses, trial court did not err when, prior to opening statement of Assistant United States Attorney, and at his request, trial court instructed counsel of defendant to refrain from mentioning that facts of transaction involved in false pretenses trial had previously been presented to grand jury as a charge of forgery and that the grand jury had ignored the charge. *Brommer v. United States* (D.C. Mun. App. 1960, 157 A. 2d 292).

15. Intent

Wrongful acts, which are knowingly or intentionally committed, cannot be justified or excused on ground of innocent intent, since color of act determines complexion

of intent. *Nelson v. United States* (1956, 227 F. 2d 21, 97 U.S. App. D.C. 6, 53 A.L.R. 2d 1206, certiorari denied 76 S. Ct. 700, 351 U.S. 910, 100 L. Ed. 1445).

Jury may impute an intent to defraud, where the evidence shows that one has obtained something of value from another by means of false representations, knowingly made with intent to induce the action taken by the other, by introducing evidence tending to show that he believed the other was receiving something of substantial value. *Robinson v. United States* (42 App. D. C. 186).

When indictment plainly describes numerous false representations of present and past facts, and it charges that their falsity was known to defendant, that they were made with the intention of defrauding and that one believed them and acted upon them by paying money, is adequately charged a public offense. *Randle v. United States* (1940, 113 F. 2d 945, 72 App. D.C. 368, certiorari denied 61 S. Ct. 64, 311 U.S. 683, 85 L. Ed. 440).

16. Jurisdiction

On appeal from conviction for obtaining money by false pretenses, Court of Appeals was not required to consider defendant's criticism of warrant on which he was arrested, since jurisdiction in a criminal case is not impaired by fact that defendant was brought before court in an unlawful manner. *Green v. United States* (1951, 188 F. 2d 48, 88 U. S. App. D. C. 249, certiorari denied, 71 S. Ct. 1008, 341 U. S. 955, 95 L. Ed. 1376, rehearing denied 72 S. Ct. 24, 342 U. S. 842, 96 L. Ed. 636).

17. Larceny

Where one gives up possession of chattel to another who converts it to his own use, wrongdoer commits a trespass, and taking is by "larceny", but where one, though induced by fraud or trick, actually intends that title shall pass to wrongdoer, crime is that of "false pretenses". *Great American Indemnity Co. v. Yoder* (D. C. Mun. App. 1957, 131 A. 2d 401).

Where insured entered into agreement to sell insured automobile to third person for certain sum, and insured accepted a check, and third person departed with possession and title to automobile, and thereafter insured discovered that check was fraudulent, taking of automobile by third person was by "false pretenses" and not by "theft" within meaning of policy insuring against "theft" of automobile. *Id.*

18. Limitations

Statute of limitations did not run during absence from the District of Columbia of defendant charged with obtaining money by false pretenses in the District of Columbia even if he did not leave the District of Columbia to avoid prosecution. *Green v. United States* (1951, 188 F. 2d 48, 88 U.S. App. D.C. 249, certiorari denied 71 S. Ct. 1008, 341 U.S. 955, 95 L. Ed. 1376, rehearing denied 72 S. Ct. 24, 342 U.S. 842, 96 L. Ed. 636).

19. Mere opinion or expectation

"False pretense or representation * * * must relate to some subsisting fact, past or present. A statement as to the future by way of opinion or expectation as to what can be accomplished does not constitute false pretense." *Engle v. United States* (48 App. D. C. 466).

20. Present or past facts

That false representations of present or past facts become effective only by being coupled with a false promise does not take a case out of the operation of the statute. *Randle v. United States* (1940, 113 F. 2d 945, 72 App. D.C. 368, certiorari denied 61 S. Ct. 64, 311 U.S. 683, 85 L. Ed. 440).

In indictment for obtaining money by false pretenses, the misrepresentations must relate to present or past facts, as distinguished from something to take place in the future. *Id.*

A false pretense, under this section, must relate to a past event or existing fact, and any representation with regard to a future transaction is excluded. *Chaplin v. U.S.* (1946, 157 F. 2d 697, 81 U.S. App. D.C. 80, 168 A.L.R. 828).

A liquor dealer who borrowed money on representations that he would use it to purchase liquor tax stamps, and that he would repay the money, but who used only a small portion to purchase stamps and failed to return the money so advanced, was not guilty under this section of obtaining money by "false pretenses", since the representations did not relate to a present or past existing fact. *Id.*

21. Previous convictions

In prosecution for obtaining money by false pretenses, where government brought out on cross-examination that defendant had been previously convicted of bad check charges and of embezzlement, and defendant was permitted to explain all bad check convictions, refusal to permit defendant to explain the conviction of embezzlement, although technically wrong, did not justify a reversal. *U.S. v. Boyer* (1945, 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A.L.R. 209).

22. Questions for jury

"It is for the jury to determine whether each of those elements has been established by the evidence, and the court is not authorized to invade the province of the jury by telling them that if certain facts are proved the intent to defraud is made out." *Robinson v. United States* (42 App. D. C. 186).

23. Reimbursement

Although hotels cashing checks for defendant who had insufficient funds did not suffer eventual loss because they were reimbursed by issuer of credit card presented by defendant, defendant was still guilty of crime of obtaining money by false pretenses in cashing checks which issuer had no reason to suppose would be honored, since offense was not purged by subsequent restoration or repayment. *Gilmore v. United States* (1959, 273 F. 2d 79, 106 U.S. App. D.C. 344).

24. Reliance on pretense

In prosecution for obtaining money by false pretenses in cashing checks which issuer had no reason to suppose would be honored, where defendant claimed that hotels cashing checks for defendant were induced to part with their money not on belief that checks were good but in reliance on fact that issuer of credit card would make good whatever loss hotel might suffer, evidence sustained jury's finding that hotels cashed checks in belief that checks were good. *Gilmore v. United States* (1959, 273 F. 2d 79, 106 U.S. App. D.C. 344).

In order to sustain a conviction for obtaining money by false pretenses in cashing checks which issuer had no reason to suppose would be honored, law merely demands that the belief that checks were good be a contributing influence sufficient to turn the scale, or that the alleged fraud would not have been accomplished except for misrepresentations made. *Id.*

Statement by defendant that prosecuting witness should not rely on representations but should satisfy himself by observation and inquiry, is not sufficient to relieve of criminal liability for false representation theretofore made unless it appears that prosecuting witness accepted withdrawal of representations and assumed to act entirely on his own judgment. *Partridge v. United States* (39 App. D. C. 571, Ann. Cas. 1917D. 622).

25. Representation

False representation must be made to the person defrauded. *Foster v. Goldsoll* (48 App. D.C. 505, certiorari denied 39 S. Ct. 495, 250 U.S. 647, 63 L. Ed. 1188).

26. Review

Conviction of obtaining money by false pretenses affirmed. *Moffatt v. United States* (1931, 46 F. 2d 616, 60 App. D.C. 35). See, also, *Howe v. United States* (1932, 56 F. 2d 305, 61 App. D. C. 8).

27. Schemes to defraud

In prosecution for obtaining money under false pretenses, when evidence plainly shows a planned fraud, there was no error in the use of the phrase "schemes to defraud." *Randle v. United States* (1940, 113 F. 2d 945, 72 App. D.C. 368, certiorari denied 61 S. Ct. 64, 311 U.S. 683, 85 L. Ed. 440).

While the word scheme does not itself occur in the statute, the language of the statute is broad enough to cover a scheme to defraud. *Id.*

28. Speedy trial

Where defendant was tried and convicted about 16 months subsequent to indictment and in the interim he was detained in Maryland House of Correction in Maryland until released a month prior to trial, delay in trial did not violate defendant's rights to a speedy trial, notwithstanding the United States Attorney had not sought

a writ of habeas corpus ad prosequendum nor applied to Governor of Maryland for such a writ where extent of delay under all the circumstances was not so great as to amount to a denial of constitutional right. *Stevenson v. United States* (1960, 278 F. 2d 278, 107 U.S. App. D.C. 398).

29. Transfer of cause

The rule of criminal procedure authorizing case to be transferred to district in which defendant was arrested to receive plea of guilty to the charge could be applied to a violation of District of Columbia Code. *United States v. Batton* (1958, 160 F. Supp. 172).

30. Worthless check

It is no defense in fraudulent check cases that defendant subsequently reimbursed the prosecuting witness, nor that defendant at time of transaction intended to repay the money. *Clagett v. United States* (1923, 289 F. 532, 53 App. D.C. 134).

It is a violation of the statute and no defense for the defendant to obtain money from the prosecuting witness upon the faith of the worthless check, whether the check was to serve as security for a concurrent loan or was to be presented to the bank for payment in ordinary course. *Id.*

§ 22-1302. Recordation of deed, contract, or conveyance with intent to extort money.

Whoever having no title or color of title to the land affected shall maliciously cause to be recorded in the office of the recorder of deeds of the District of Columbia any deed, contract, or other instrument purporting to convey or to relate to any land in said District with intent to extort money or anything of value from any person owning such land, or having any interest therein, shall be fined not less than five hundred dollars or imprisoned not more than two years, or both. (June 30, 1902, 32 Stat. 535, ch. 1329, § 845a.)

§ 22-1303. False personation before court, officers, notaries.

Whoever falsely personates another person before any court of record or judge thereof, or clerk of court, or any officer in the District authorized to administer oaths or take the acknowledgment of deeds or other instruments or to grant marriage licenses, with intent to defraud, shall be imprisoned for not less than one year nor more than five years. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 859; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

CODIFICATION

Reference to municipal court of the District of Columbia following clerk of court was omitted from the Code as the phrase "court of record" now includes such court in view of act Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 2, formerly set out as section 11-702, and act Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1, set out as section 11-752.

CHANGE OF NAME

Under act Feb. 17, 1909, the court known as "justice of the peace" was changed to "the municipal court of the District of Columbia."

§ 22-1304. Falsely impersonating public officer or minister.

Whoever falsely represents himself to be a judge of the municipal court, notary public, police officer, or other public officer, or a minister qualified to celebrate marriage, and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any such officers after his appointment or commission has expired or he has been dismissed from such office, shall suffer imprisonment in the penitentiary for not

less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 860; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

CHANGE OF NAME

Act Feb. 17, 1909, changed "justice of the peace" to "judge of the municipal court."

NOTES TO DECISIONS

Burden of proof 1
Evidence 2
Instructions 3
Intent 4
Protection of citizenry 5
Reliance on representation 6
Review 7
Variance 8

1. Burden of proof

In prosecution for falsely impersonating a police officer of the United States, burden is upon government to prove crime charged beyond a reasonable doubt though where defendant is charged with falsely pretending to be an officer and fails to produce evidence showing he was such officer, presumption arises that evidence if produced would have been unfavorable to defendant. *Taylor v. U.S.* (1948, 167 F. 2d 752, 83 U.S. App. D.C. 215).

2. Evidence

In prosecution for falsely impersonating a police officer of the United States, while it must in some manner appear that accused is not a federal officer, proposition is fairly inferable from character of proof much less direct and formal than might be required to affirmatively establish official capacity, and any facts which to average mind would fairly tend to indicate that accused was not a federal officer would be sufficient to warrant the jury in reaching such conclusion. *Taylor v. U.S.* (1948, 167 F. 2d 752, 83 U.S. App. D.C. 215).

Evidence that accused was not a federal officer was sufficient to sustain conviction for false impersonation of a police officer of the United States notwithstanding government failed to offer direct proof that defendant was not such officer by reference to official police rolls. *Id.*

3. Instructions

In prosecution for falsely representing self to be a police officer, refusal of requested instruction on the factual defense theory, raised by defendant's testimony, that he merely stated truthfully that he was an attorney and "officer of the court," was reversible error. *Levine v. United States* (1958, 261 F. 2d 747, 104 U.S. App. D.C. 281).

4. Intent

False personation is in the nature of positive aggressions or invasions, such as constitute common-law offenses, and hence proof of criminal intent is required and refusal of requested instruction requiring criminal or felonious intent was reversible error. *Levine v. United States* (1958, 261 F. 2d 747, 104 U.S. App. D.C. 281).

5. Protection of citizenry

This section penalizing false representation of a person as police officer of District of Columbia is a protection of the citizenry against exercise of excess jurisdiction by an impostor as well as impersonation in the genuine jurisdiction which might have been exercised by a legitimate officer. *Taylor v. U.S.* (1948, 167 F. 2d 752, 83 U.S. App. D.C. 215).

6. Reliance on representation

Reliance is not an element of statutory offense of false personation, and prosecution need not establish that parties to whom the alleged false representation was made relied upon it. *Levine v. United States* (1958, 261 F. 2d 747, 104 U.S. App. D.C. 281).

7. Review

Record on appeal from conviction for defendant's falsely representing himself as a notary public and attempting to exercise authority of a notary public disclosed no error affecting substantial rights. *Fentress v. United States* (1956, 228 F. 2d 646, 97 U.S. App. D.C. 132).

8. Variance

In prosecution for falsely pretending to be a member of District of Columbia Metropolitan Police, fact that scene

of impersonation was in park subject to jurisdiction of United States Park Police did not establish a fatal variance under sections 4-120, 4-201, granting Metropolitan Police and Park Police concurrent jurisdiction over United States Parks within District of Columbia. *Taylor v. U.S.* (1948, 167 F. 2d 752, 83 U.S. App. D.C. 215).

§ 22-1305. False personation of inspector of departments of District of Columbia.

It shall be unlawful for any person in the District of Columbia to falsely represent himself or herself as being an inspector of the health department of said District, or an inspector of any department of the District government; and any person so offending shall be deemed guilty of a misdemeanor, and on conviction in the municipal court of said District shall be punished by a fine of not less than ten dollars nor more than fifty dollars for the first offense, and for each subsequent offense by a fine of not less than fifty dollars nor more than one hundred dollars, or imprisonment in the jail of the District not exceeding six months, or both, in the discretion of the court. (Mar. 2, 1897, 29 Stat. 619, ch. 364; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

§ 22-1306. False personation of police officer.

It shall be a misdemeanor, punishable by imprisonment in the District jail or penitentiary not exceeding two years, or by a fine not exceeding five hundred dollars, for any person, not a member of the police force, to falsely represent himself as being such member, with a fraudulent design. (R. S., D. C., § 433.)

NOTES TO DECISIONS

1. Instructions

In prosecution for impersonating police officer, trial court's reading of this section defining crime as part of instructions to jury sufficiently charged elements of the crime. *Wheeler v. United States* (1951, 190 F. 2d 663, 89 U.S. App. D. C. 143).

In prosecution on count charging impersonation of officer and count charging grand larceny, error, if any, in charge instructing that jury could convict on second count even if they acquitted on first was harmless in view of fact that jury found defendant guilty of both offenses. *Id.*

§ 22-1307. Wearing or using insignia of certain organizations.

Whoever, in the District of Columbia, not being a member of the Military Order of the Loyal Legion of the United States, or the Grand Army of the Republic, of the Sons of Veterans, of the Woman's Relief Corps, of the Union Veteran's Union, of the Union Veteran Legion, of the United Spanish War Veterans, of the National Society of the Daughters of the American Revolution, and not entitled under the rules of the order to wear the same, wilfully wears or uses the insignia, distinctive ribbon, or badge of membership, rosette, or button thereof, or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than twenty dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment. (Mar. 15, 1906, 34 Stat. 62, ch. 949.)

CROSS REFERENCES

Grand Army of the Republic, see U. S. Code, title 36, §§ 71-77.

National Society of the Daughters of the American Revolution, see U.S. Code, title 36, §§ 18-18b.

United Spanish War Veterans, see U. S. Code, title 36, §§ 56-56h.

§ 22-1308. False certificate of acknowledgment.

Any officer authorized to take the proof or acknowledgment of an instrument which, by law, may be recorded, who wilfully certifies falsely that the instrument was acknowledged by any party thereto, or who wilfully certifies falsely as to any other material matter in such acknowledgment, shall be imprisoned for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 845.)

Chapter 14.—FORGERY—FRAUDS

Sec.

- 22-1401. Forgery.
- 22-1402. Forging or imitating brands or packaging of goods.
- 22-1403. Stealing, destroying, mutilating, secreting, or withholding will.
- 22-1404. Secreting or converting property, documents, or assets of decedent's estate.
- 22-1405. Taking away or concealing writings.
- 22-1406. Sale or concealment by conditional vendee, with intent to defraud.
- 22-1407. Fraud by operation of coin-controlled mechanism by use of slugs.
- 22-1408. Manufacture, sale, offer for sale, possession of slugs or device to operate coin-controlled mechanism.
- 22-1409. "Person" defined.
- 22-1410. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.
- 22-1411. Fraudulent advertising.
- 22-1412. Prosecution under section 22-1411.
- 22-1413. Penalty under section 22-1411.
- 22-1414. Fraudulently tampering with jury box or contents—Collusion in drawing jurors.

§ 22-1401. Forgery.

Whoever, with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate to the prejudice of another, or passes, utters, or publishes, or attempts to pass, utter, or publish as true and genuine, any paper so falsely made or altered, knowing the same to be false or forged, with the intent to defraud or prejudice the right of another, shall be imprisoned for not less than one year nor more than ten years. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 843.)

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203.
False pretenses and false personations, see § 22-1301 et seq.

Larceny, see § 22-2201 et seq.

NOTES TO DECISIONS

Agent 1
Alteration 2
Burden of proof 12
Common law 3
Defenses 4
Elements of offense 5
Embezzlement 6
Habeas corpus 7
Indictment 8
Instrument 10
Intent 9
Search and seizure 11

1. Agent

The use by an agent of the signature of his principal for an unauthorized purpose constitutes forgery. *Yeager v. United States* (1929, 32 F. 2d 402, 59 App. D.C. 11).

2. Alteration

Question for the jury is not merely whether defendant honestly believed he had authority to alter notes, but

whether he had reasonable grounds for so believing. *Towles v. United States* (19 App. D. C. 471).

3. Common law

Forgery, at common law, is the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. *Milton v. United States* (1940, 110 F. 2d 556, 71 App. D.C. 394). See, also, *U.S. v. Briggs* (1944, 54 F. Supp. 731).

At common law, forgery and uttering were different substantive crimes. *Reid v. Aderhold* (C.C.A. Ga. 1933, 65 F. 2d 110, certiorari denied 54 S. Ct. 104, 290 U.S. 676, 78 L. Ed. 584).

4. Defenses

Post-conviction change in standards with regard to defense of insanity did not entitle defendant, tried and convicted under previous standard, to reversal, because court did not charge jury on issue of insanity in accordance with post-conviction change. *Stogner v. United States* (1956, 229 F. 2d 513, 97 U. S. App. D. C. 172).

5. Elements of offense

Forgery by false making has been committed where the accused, with intent to defraud, proffers a blank note to a customer and then induces the customer, who is reasonably justified in believing the representation, to sign it on the false representation that the paper is something other than a note, and the accused then fills in blanks and negotiates note. *Lieberman v. United States* (1958, 253 F. 2d 46, 102 U. S. App. D. C. 310).

Where contractor deceived customers into signing blank promissory notes and deeds of trust and later filled in instruments and passed them, he was guilty of forgery. *Id.*

To constitute "forgery" under this section, there must be a false making or other alteration of some instrument in writing, there must be fraudulent intent, and instrument must be apparently capable of effecting a fraud. *U.S. v. Briggs* (1944, 54 F. Supp. 731).

6. Embezzlement

Where one employed as bookkeeper, salesman, and collector of an electric company, with authority to indorse checks in the name of the company and deposit them in the bank, cashed the checks instead and appropriated the money to his own use, the offense of which he was guilty was forgery, and conviction for embezzlement must be reversed. *Yeager v. United States* (1929, 32 F. 2d 402, 59 App. D.C. 11).

7. Habeas corpus

Habeas corpus for release of one convicted of forgery denied. *Reid v. Aderhold* (C.C.A. Ga., 1933, 65 F. 2d 110, certiorari denied 54 S. Ct. 104, 290 U.S. 676, 78 L. Ed. 584).

8. Indictment

"It matters not that at common law the charge of falsely making an instrument was held to include the offense of falsely altering it, since they are disjunctively named in the statute as distinct ways in which the crime of forging may be committed. Forgery is a statutory, not a common-law crime in this District, and the offense must be charged as defined in the statute, irrespective of common-law rules of pleading." *Frisby v. United States* (38 App. D.C. 22, 37 L.R.A., N.S., 96).

"The offense thus denounced is complete even though the instrument never is uttered. When it is uttered, another and distinct offense is committed, and a second uttering, of course, constitutes still another offense. In *Frisby v. United States* (38 App. D.C. 22, 37 L.R.A., N.S., 96) the question was not directly involved and the Burton case (202 U.S. 344, 50 L. Ed. 1057, 26 Sup. Ct. 688) was not brought to our attention." *Read v. United States* (1924, 299 F. 918, 55 App. D.C. 43, certiorari denied 45 S. Ct. 352, 267 U.S. 596, 69 L. Ed. 805).

"The statute defines two distinct criminal acts, either of which constitutes the crime of forgery. The making of a false instrument with intent to defraud is forgery. The uttering of a forged instrument with intent to defraud is forgery. But where the instrument is both forged and uttered by the same person, * * * there is only the single crime of forgery committed." *Frisby v. United States* (38 App. D.C. 22, 37 L.R.A., N.S., 96). See, also, *Frisby v. United States* (35 App. D.C. 513). Both acts may be charged in the indictment, or the

pleader may elect to charge but one. *Simon v. United States* (37 App. D.C. 280).

Indictment for uttering need not set forth the particular acts claimed to constitute such uttering. *Fuller v. United States* (1923, 288 F. 442, 53 App. D.C. 88).

Indictment charging defendant with possession and knowingly uttering and publishing a forged security, states a single offense. *Price v. United States* (1923, 289 F. 562, 53 App. D.C. 164).

Indictment need not allege the persons or corporations intended to be defrauded, but requires nothing more than a general intent to defraud. *Read v. United States* (1924, 299 F. 918, 55 App. D.C. 43, certiorari denied 45 S. Ct. 352, 267 U.S. 596, 69 L. Ed. 805).

An indictment charging defendant with having forged name of another individual to a letter and procuring of money for such letter from still another party with intent to defraud was sufficient to charge crimes of forgery and uttering, as against contention that instrument was not capable of effecting a fraud. *U.S. v. Briggs* (1944, 54 F. Supp. 731).

An indictment charging defendant in one count with forgery and in second count with uttering same forged letter was not demurrable on ground that it was "repugnant". *Id.*

Counts in indictment charging defendant with uttering forged documents in interference proceeding in United States Patent Office "with intent to defraud and injure" were not required to name persons whom defendant intended to defraud and injure. *Mas v. U.S.* (1945, 151 F. 2d 32, 80 U.S. App. D.C. 223, certiorari denied 66 S. Ct. 267, 326 U.S. 776, 90 L. Ed. 469).

9. Intent

"There must be a false making or other alteration of some instrument in writing; there must be a fraudulent intent; and the instrument must be apparently capable of effecting a fraud * * *. Intent in forgery will not be presumed from the mere making of a false instrument. It must be gathered from some affirmative act, or from the existence of circumstances from which criminal intent may be inferred." *Dowling v. United States* (41 App. D.C. 11). See, also, *Frisby v. United States* (38 App. D.C. 22, 37 L.R.A., N.S., 96).

It is not essential that "anyone shall be actually defrauded, or that the accused shall have the intent to defraud any particular person. All that is required in that respect is that there be an intent to defraud someone." *Easterday v. United States* (1923, 292 F. 664, 53 App. D.C. 387, certiorari denied 44 S. Ct. 181, 263 U.S. 719, 68 L. Ed. 523). See, also, *Read v. United States* (1924, 299 F. 918, 55 App. D.C. 43, certiorari denied 45 S. Ct. 352, 267 U.S. 596, 69 L. Ed. 805); *Milton v. United States* (1940 110 F. 2d 556, 71 App. D.C. 394).

10. Instrument

It is enough if the forged instrument be apparently sufficient to support a legal claim and thus to effect a fraud. *Milton v. United States* (1940, 110 F. 2d 556, 71 App. D.C. 394).

11. Search and seizure

Where police officer, who saw defendant walking along street about 2:00 in the morning, and who thought defendant had narcotics, without a warrant stopped defendant, who admitted that he had not worked for over a year, and had maintained himself by gambling, and officer then informed defendant that he was arresting him for vagrancy and required him to disrobe, search, which led to discovery of stolen money orders, was an unreasonable and unlawful violation of defendant's rights as a citizen, rendering stolen money orders inadmissible in prosecution for forgery, housebreaking, grand larceny, and interstate transportation of falsely made securities. *White etc. v. United States* (1960, 271 F. 2d 829, 106 U.S. App. D.C. 246).

12. Burden of proof

In forgery prosecution, testimony of two psychiatrists and a lay witness to effect that defendant was, in their opinion, suffering from mental illness when he committed the crimes charged satisfied requirement that defendant produce some evidence, and shifted burden of proving sanity to government. *United States v. Amburgey* (1960, 189 F. Supp. 687).

§ 22-1402. Forging or imitating brands or packaging of goods.

Whoever wilfully forges or counterfeits or makes use of any imitation calculated to deceive the public, though with colorable difference or deviation therefrom, of the private brand, wrapper, label, trademark, bottle, or package usually affixed or used by any person to or with the goods, wares, merchandise, preparation, or mixture of such person, with intent to pass off any work, goods, manufacture, compound, preparation, or mixture as the manufacture or production of such person which is not really such, shall be fined not more than five hundred dollars or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 879.)

§ 22-1403. Stealing, destroying, mutilating, secreting, or withholding will.

Whoever, during the life of a testator or after his death, shall, for a fraudulent purpose, take and carry away a will, codicil, or other testamentary instrument, or destroy, mutilate, or secrete the same, whether it relates to personal or real property, shall suffer imprisonment for not more than five years.

If any person in whose possession or custody a will or codicil shall be after the death of a testator or testatrix shall wilfully neglect to deliver the same to the United States District Court for the District of Columbia, holding a special term as a probate court, or to the register of wills, or to some executor named in the will, for the space of three calendar months after the death of testator or testatrix shall be known to him, the person thus offending shall be punished by a fine not exceeding five hundred dollars. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 830; June 30, 1902, 32 Stat. 535, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1902—Act June 30, 1902, added the second paragraph.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203. Joinder of offenses, see § 23-201.

Opening before delivery to probate court, see § 19-111.

NOTES TO DECISIONS**1. Time in which to probate**

"While the statutes regulating the probate of wills provides no time within which probate shall be applied for, yet they contemplate that this shall be speedily done." *McGowan v. Elroy* (28 App. D. C. 188).

§ 22-1404. Secreting or converting property, documents, or assets of decedent's estate.

Whosoever wilfully and fraudulently makes away with, secretes, or converts to his own use any property, documents, or assets of any kind or nature belonging to the estate of a deceased person shall be punished by a fine not exceeding \$2,000 or imprisonment for not more than two years, or both. (Mar. 3, 1901, ch. 854, § 830a, as added Apr. 19, 1920, 41 Stat. 567, ch. 153, § 1.)

§ 22-1405. Taking away or concealing writings.

Whoever, with intent to defraud or injure another person, shall take away or conceal any writing whereby the estate or right of such other person shall or may be defeated, injured, or altered shall suffer imprisonment for not more than seven years. (Mar. 3, 1901, 31 Stat. 1326, ch. 854, § 840.)

NOTES TO DECISIONS**Indictment 1
Writing 2****1. Indictment**

Averments of indictment were sufficient when they clearly set forth the defendant's relation to the building association; that certain books of record were required to be kept, and that six carefully described books of record were kept; and that the defendant, on a day named, "unlawfully, wilfully, and with an intent to defraud and injure the said association, and the said stockholders and members thereof, did take away and conceal said books hereinbefore in this indictment particularly described, said books then and there being the writing, records, and property of said association, stockholders, and members." *Miller v. United States* (41 App. D.C. 52, certiorari denied 34 S. Ct. 323, 231 U.S. 755, 58 L. Ed. 468).

2. Writing

The words "whereby the estate, etc.," do not modify the word "writing," but the section is to be read as though there were a comma after the latter word. *Miller v. United States* (41 App. D.C. 52, certiorari denied 34 S. Ct. 323, 231 U.S. 755, 58 L. Ed. 468).

§ 22-1406. Sale or concealment by conditional vendee, with intent to defraud.

Whoever, being in possession of personal property received upon a written and conditional contract of sale, with intent to defraud, sells, conveys, conceals, or aids in concealing the same, or removes the same from the District of Columbia without the consent of the vendor, before performance of the conditions precedent to acquiring the title thereto, shall be punished by a fine of not more than \$100, or by imprisonment for not more than ninety days. (Apr. 28, 1904, 33 Stat. 554, ch. 1808, § 833a; May 27, 1921, 42 Stat. 9, ch. 13.)

AMENDMENT

1921—Act May 27, 1921, inserted the word "not" in the last phrase.

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203. Selling or concealing mortgaged property, see § 22-1209.

§ 22-1407. Fraud by operation of coin-controlled mechanism by use of slugs.

Any person who shall operate or cause to be operated, or who shall attempt to operate or attempt to cause to be operated, in the District of Columbia any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, designed to receive or be operated by lawful coin of the United States of America or a token provided by the person entitled to the coin contents of such receptacle, in furtherance of or in connection with the sale, use, or enjoyment of property or service, by means of a slug or any false token, counterfeited, mutilated, sweated, or foreign coin, or by any means, method, trick, or device whatsoever not authorized by the person entitled to the coin contents of such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle; or any person who shall take, obtain, or receive from or in connection with any such merchandise vending machine, turnstile,

coin-box telephone, or other legal receptacle described in this section any goods, wares, merchandise, gas, electric current, or other article of value, or the use or enjoyment of any transportation or any telephone or telegraph facilities or service, or of any musical instrument, phonograph, or other property, in the District of Columbia, without depositing in and surrendering to such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle described in this section lawful coin of the United States of America to the amount required therefor by the person entitled to the coin contents of any such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, or tokens provided and to the amount required by the person entitled to the coin contents of such legal receptacle, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding \$500 or by imprisonment not to exceed six months, or by both fine and imprisonment in the discretion of the court. (Aug. 16, 1937, 50 Stat. 662, ch. 660, § 1.)

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203.
Regulation of slot machines, see § 10-109.

§ 22-1408. Manufacture, sale, offer for sale, possession of slugs or device to operate coin-controlled mechanism.

Any person who, with intent to cheat or defraud the owner, lessee, licensee, or other person entitled to the coin contents of any automatic merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle, designed to receive or be operated by lawful coin of the United States of America or a token provided by the person entitled to the coin contents of such legal receptacle, in furtherance of or in connection with the sale, use, or enjoyment of property or service, or any person who, knowing or having cause to believe that the same is intended for fraudulent or unlawful use on the part of the purchaser, donee, or user thereof, shall manufacture, sell, offer to sell, advertise for sale, give away, or possess, in the District of Columbia, any token, slug, false or counterfeit coin, or any device or substance whatsoever intended or calculated to be placed, deposited, or used in the operation of any such merchandise vending machine, turnstile, coin-box telephone, or other legal receptacle shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$500 or by imprisonment not to exceed six months, or by both fine and imprisonment in the discretion of the court. (Aug. 16, 1937, 50 Stat. 663, ch. 660, § 2.)

§ 22-1409. "Person" defined.

The word "person," where used in sections 22-1407 to 22-1409, shall be construed to include any individual, individuals, copartnerships, associations, groups, and corporations. (Aug. 16, 1937, 50 Stat. 663, ch. 660, § 3.)

§ 22-1410. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

Any person within the District of Columbia who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository, knowing

at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation, shall be guilty of a misdemeanor and punishable by imprisonment for not more than one year, or be fined not more than \$1,000, or both. As against the maker or drawer thereof the making, drawing, uttering, or delivering by such maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within five days after receiving notice in person, or writing, that such draft or order has not been paid. The word "credit," as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, or order. (July 1, 1922, 42 Stat. 820, ch. 273.)

CROSS REFERENCE

Allegation and proof of intent to defraud, see § 23-203.

NOTES TO DECISIONS

Evidence 1
Issuance for antecedent debt 2
Limitations 3
Questions for jury 4

1. Evidence

In prosecutions for passing bad checks payable to United States Treasurer and delivered to agent for Federal War Assets Administration, proof of fact, not alleged in informations, that checks covered purchases of war surplus articles under veterans' preference, was unnecessary for conviction. *McGuinness v. United States* (D. C. Mun. App. 1951, 77 A. 2d 22).

2. Issuance for antecedent debt

Under "worthless" check statute, fact that checks were given in payment of antecedent debt did not destroy presumption of fraudulent intent, and evidence as to issuance of two checks which were dishonored for lack of sufficient funds established prima facie case authorizing submission of case to jury in absence of any evidence by defendant on the point. *Clarke v. United States* (D. C. Mun. App. 1958, 140 A. 2d 181).

Fact that a check is issued for a past-due obligation does not preclude a conviction under the "worthless" statute. *Id.*

3. Limitations

The Wartime Suspension of Limitations Act was inapplicable to charges of violating District of Columbia statute by passing bad checks payable to United States Treasurer and delivered to agent for Federal War Assets Administration, though giving of such checks may have resulted in offenses within all categories of extension statute, as none of such offenses was essential ingredient of violation of local statute, so that prosecutions begun over three years after commission of offenses were barred by general statute of limitations for non-capital offenses. *McGuinness v. United States* (D.C. Mun. App. 1951, 77 A. 2d 22).

4. Questions for jury

In prosecution for violation of this section making it a crime for any person, with intent to deceive, to deliver any check while knowing that there are insufficient funds to his credit with bank for payment of such check, question of whether or not defendant had an intent to defraud in issuance of check for past consideration, presented a question of fact for the jury. *Clarke v. United States* (1959, 263 F. 2d 269, 105 U.S. App. D.C. 19).

§ 22-1411. Fraudulent advertising.

It shall be unlawful in the District of Columbia for any person, firm, association, corporation, or advertising agency, either directly or indirectly, to display or exhibit to the public in any manner whatever, whether by handbill, placard, poster, picture, film, or otherwise; or to insert or cause to be inserted in any newspaper, magazine, or other publication printed in the District of Columbia; or to issue, exhibit, or in any way distribute or disseminate to the public; or to deliver, exhibit, mail, or send to any person, firm, association, or corporation any false, untrue, or misleading statement, representation, or advertisement with intent to sell, barter, or exchange any goods, wares, or merchandise or anything of value or to deceive, mislead, or induce any person, firm, association, or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock, note, warehouse receipt, or any security; or with the purpose to deceive, mislead, or induce any person, firm, association, or corporation to purchase, make any loan upon or invest in any property of any kind; or use any of the aforesaid methods with the intent or purpose to deceive, mislead, or induce any other person, firm, or corporation for a valuable consideration to employ the services of any person, firm, association, or corporation so advertising such services. (May 29, 1916, 39 Stat. 165, ch. 130, § 1.)

CROSS REFERENCES

Allegation and proof of intent to defraud, see § 23-203.
Gift enterprises forbidden, see §§ 22-3401 to 22-3403.

NOTES TO DECISIONS**1. Amendments**

In prosecution upon two informations charging in effect that accused inserted advertising calculated to induce readers for a valuable consideration to employ the advertiser's service, "knowing the same to be false and containing certain false, untrue and misleading statements," action of trial court in permitting amendments whereby words "for a valuable consideration" were deleted and words "with intent to barter, sell, or exchange any goods, wares, or merchandise, or anything of value" were added, was not, so far as appeared from record, prejudicial, and was not abuse of discretion. *Robles v. United States* (D. C. Mun. App. 1955, 115 A. 2d 303).

§ 22-1412. Prosecution under section 22-1411.

Prosecution under section 22-1411 shall be in the municipal court for the District of Columbia upon information filed by the United States Attorney for the District of Columbia, or one of his assistants. (May 29, 1916, 39 Stat. 165, ch. 130, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U. S. Code, title 28, § 501.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

§ 22-1413. Penalty under section 22-1411.

Any person, firm, or association violating any of the provisions of section 22-1411 shall upon conviction thereof, be punished by a fine of not more than

\$500 or by imprisonment of not more than sixty days, or by both fine and imprisonment, in the discretion of the court. A corporation convicted of an offense under the provisions of section 22-1411 shall be fined not more than \$500, and its president or such other officials as may be responsible for the conduct and management thereof shall be imprisoned not more than sixty days, in the discretion of the court. (May 29, 1916, 39 Stat. 165, ch. 130, § 3.)

§ 22-1414. Fraudulently tampering with jury box or contents—Collusion in drawing jurors.

If any person shall fraudulently tamper with any box used or intended by the jury commission for the names of prospective jurors, or of prospective condemnation jurors or commissioners, or shall fraudulently tamper with the contents of any such box, or with any jury list, or be guilty of any fraud or collusion with respect to the drawing of jurors or condemnation jurors or commissioners, or if any jury commissioner shall put in or leave out of any such box the name of any person at the request of such person, or at the request of any other person, or if any jury commissioner shall wilfully draw from any such box a greater number of names than is required by the court, any such person or jury commissioner so offending shall for each offense be punished by a fine of not more than \$500 or imprisonment in the District jail or workhouse for not more than one year, or both. (Apr. 19, 1920, 41 Stat. 560, ch. 153, § 213.)

CROSS REFERENCE

Allegation and proof of fraudulent intent, see § 23-203.

Chapter 15.—GAMBLING**Sec.**

- 22-1501. Lotteries—Promotion—Sale or possession of tickets.
- 22-1502. Possession of lottery or policy tickets.
- 22-1503. Permitting sale of lottery tickets on premises.
- 22-1504. Gaming—Setting up gaming table—Inducing play.
- 22-1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent offenses.
- 22-1506. Three-card monte and confidence games.
- 22-1507. "Gaming table" defined.
- 22-1508. Gambling pools and bookmaking—Athletic contest defined.
- 22-1509. Bucketing, and bucket-shopping and bucket-shops—Definitions.
- 22-1510. Penalty for bucketing or keeping bucket-shop.
- 22-1511. Penalty for communicating, receiving, exhibiting, or displaying quotations of prices.
- 22-1512. Bucketing—Written statement to be furnished—Contents.
- 22-1513. Corrupt influence in connection with athletic contests.
- 22-1514. Immunity of witnesses—Record.
- 22-1515. Presence in illegal establishments.

§ 22-1501. Lotteries—Promotion—Sale or possession of tickets.

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy lottery, or any lottery or shall sell or transfer any ticket, certificate, bill,

token, or other device, purporting or intended to guarantee or assure to any person or entitle him to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall, for himself or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery or any such bill, certificate, token, or other device, he shall be fined upon conviction of each said offense not more than \$1,000 or be imprisoned not more than three years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token, or other device shall be prima-facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 863; June 30, 1902, 32 Stat. 535, ch. 1329; Apr. 5, 1938, 52 Stat. 198, ch. 72, § 1.)

AMENDMENTS

1938—Act Apr. 5, 1938, increased penalty from \$500 to \$1,000 and added the sentence respecting possession of tickets as prima facie evidence of certain conduct.

1902—Act June 30, 1902, increased the limitation on imprisonment from one to three years.

CROSS REFERENCES

Other criminal penalties for gambling, see § 16-704.
Search warrants, see § 23-301 et seq.
Transfer or suspension of liquor license pending prosecution, see §§ 25-117, 25-118.

NOTES TO DECISIONS

Admissibility of evidence	1—3
In general	1
Arrest, search and seizure	2
Conspiracy	3
Arrest, search and seizure	
In general	4
Admissibility of evidence	2
Sufficiency of evidence	27
Conspiracy	
In general	5
Admissibility of evidence	3
Constitutionality	6
Counsel, conduct of	7
Discovery and inspection	8
Distribution of prizes	9
Double conviction for same offense	10
Gaming table	11
Harmless or prejudicial error	12
Indictment	13
Instructions	14
License upon payment of tax	15
Motion to	
Dismiss	16
Suppress	17
Multiple violations	18
New trial	19
Numbers game	20
Possession of tickets	21
Prima facie evidence, sufficiency of evidence	28
Questions for	
Court	22
Jury	23
Review	24
Severance	25
Sufficiency of evidence	26—28
Arrest, search and seizure	27
Prima facie evidence	28

1. Admissibility of evidence—In general

In joint prosecutions for violations of lottery laws, admission of one defendant's accusatory statement against the other three defendants was not error in view of later instructions that jury should disregard such statement. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

In prosecution for operation of lottery and for possession of numbers slips, slips used as evidence to prove possession charge could also be used to prove charge of

operation of lottery. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

2. — Arrest, search and seizure

Where defendant had been indicted for carrying on a lottery known as the numbers game, in violation of this section, evidence obtained by police officers through an illegal search and arrest is inadmissible and the conviction must be reversed. *McDonald v. United States* (1948, 69 S. Ct. 191, 335 U.S. 451, 93 L. Ed. 153).

Where, over period of two and a half months, officers had placed numbers bets on fifteen separate occasions at one location, and, on ten separate occasions, had observed a suspect depart from that location with bulging pockets and enter other premises, from which he subsequently departed "without the bulge," officers had reasonable grounds to believe that latter premises were being used in lottery operations, and that defendant, who at time such premises were searched, pursuant to a search warrant was the only male present and was leaving "hastily," was participating therein, justifying arrest of defendant without an arrest warrant and seizure and use of incriminating evidence found in course of search of defendant made in connection with such arrest. *Stephens v. United States* (1959, 271 F. 2d 832, 106 U.S. App. D.C. 249).

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, prejudicial. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).

Whether lottery slips seized under search warrant were dead or alive they could be introduced in support of charge of operating a lottery. *Shaw v. United States* (1953, 209 F. 2d 298, 93 U. S. App. D. C., 90, certiorari denied 74 S. Ct. 430, 347 U. S. 905, 98 L. Ed. 1063).

Where suspected gambler appeared, without counsel, before Senate Crime Investigating Committee, under compulsion of subpoena, and committee, without advising him of his rights to counsel and against self-incrimination, threatened prosecution for contempt if he refused to answer, for perjury if he lied, and for gambling activities if he told truth, and, with warning that he was still under subpoena, directed him to lead policeman to his home and there turn over a book, and where policeman, upon entering the home and learning that the book was not available examined and took without process other papers and documents, such papers and documents were obtained by unreasonable search and seizure, and such evidence was inadmissible. *Nelson v. United States* (1954, 208 F. 2d 505, 93 U. S. App. D. C. 14).

Where Court of Appeals could not determine from record of more than 2,000 pages that jury would have convicted defendant had not evidence obtained through unreasonable search and seizure been adduced, conviction would be reversed and case remanded for new trial. *Id.*

In prosecution for operation of lottery known as numbers game, admission of numbers slips, numbers books, and other physical evidence seized at time of defendant's arrest, was proper, notwithstanding that it was not shown that numbers slips related to an existing lottery rather than to one already completed. *Harvey v. United States* (1952, 197 F. 2d 594, 91 U. S. App. D. C. 36).

In prosecution for operating numbers game and knowingly possessing numbers slips, found in defendant's automobile at time of his arrest without warrant, evidence of circumstances leading to arrest was sufficient to show probable cause therefor, so as to render search of automobile and seizure of slips reasonable and valid and authorize admission of slips in evidence against defendant. *Mills v. United States* (1952, 196 F. 2d 600, 90 U. S. App. D. C. 365, certiorari denied 73 S. Ct. 27, 344 U. S. 826, 97 L. Ed. 643).

Where police officers legally obtained search warrant for certain premises which they believed was being used in numbers lottery and entered and found extensive evi-

dence of numbers activities and arrested all persons present, they could legally search the persons arrested, and evidence thereby obtained was admissible in prosecution for carrying on and promoting a numbers game and for possession of numbers slips. *Wyche v. United States* (1952, 193 F. 2d 703, 90 U. S. App. D. C. 67, certiorari denied 72 S. Ct. 556, 342 U. S. 943, 96 L. Ed. 702, rehearing denied 72 S. Ct. 675, 343 U. S. 921, 96 L. Ed. 1334).

Where there is no claim in the case that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, presence of arresting officers was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed, and a new trial on the indictment must be ordered. *Accarino v. United States* (1950, 179 F. 2d 456, 85 U.S. App. D.C. 395).

3. — Conspiracy

That alleged coconspirator had been seen talking to defendant on day before that on which such alleged coconspirator allegedly informed government agent that he had turned his numbers work over to defendant did not establish that conspiracy was in existence on that date; and in absence of evidence that conspiracy was then in existence, agent's testimony with regard to alleged conversation was inadmissible against defendant, in prosecution for conspiracy to commit lottery offenses. *Taylor v. United States* (1958, 260 F. 2d 737, 104 U.S. App. D.C. 219).

Erroneous admission of evidence that alleged coconspirator had told government agent that he had turned his numbers work over to defendant would require reversal of conviction under indictment count charging conspiracy to commit lottery offenses; and since it was probable that such evidence had also been considered by jury in connection with related count charging defendant with operation of a lottery, conviction on that count would also be reversed. *Id.*

In prosecution under this section a page from a notebook found on the person of the accused was properly admitted in evidence, over the objection of the accused that it was a memorandum of a bet on a horse race, although it may tend, incidentally, to prove another distinct offense. *Shettel v. United States* (1940, 113 F. 2d 34, 72 App. D.C. 250).

Intercepted interstate and local messages pertaining to gambling are not admissible when received by person not authorized by the sender. *United States v. Plisco* (1938, 22 F. Supp. 242).

4. Arrest, search and seizure

Where defendants although present at time when premises were searched pursuant to warrant, made no claim to property when inquiry was made in that respect by searching officers, and defendants disavowed any interest in premises, they were without right to have been served with a copy of search warrant, and could not claim that copy left on premises was defective. *Shaw v. United States* (1954, 209 F. 2d 298, 93 U. S. App. D. C. 90, certiorari denied 74 S. Ct. 430, 347 U. S. 905, 98 L. Ed. 1063).

Where officers, while standing in place open to public, saw through open door into back room and observed activities and paraphernalia which were familiar indicia of numbers lottery operation, they had "probable cause" and duty to make arrest, and arrest and seizure of paraphernalia were "legal arrest and seizure", though made without search or arrest warrant. *Fisher v. United States* (1953, 205 F. 2d 702, 92 U. S. App. D. C. 247, certiorari denied 74 S. Ct. 122, 346 U. S. 872, 98 L. Ed. 381).

Circumstances revealed in police officer's affidavit provided sufficient probable cause to sustain issuance to officer of warrant for search of premises where it was believed defendants were operating a numbers game by telephone. *Washington v. United States* (1953, 202 F. 2d 214, 92 U. S. App. D. C. 31, certiorari denied 73 S. Ct. 938, 245 U. S. 956, 97 L. Ed. 1377, rehearing denied 73 S. Ct. 1130, 345 U. S. 1003, 97 L. Ed. 1408).

The arrest without warrant of defendant accused of carrying on a lottery and possessing tickets and certificates designed for purpose of conducting a lottery was

legal where the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant man of reasonable caution in belief that defendant was taking numbers bets in corridor of building. *De Bruhl v. United States* (1952, 199 F. 2d 175, 91 U. S. App. D. C. 125, certiorari denied 73 S. Ct. 111, 344 U. S. 868, 97 L. Ed. 673).

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and for violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting wagers, evidence relating to police investigation extending over a ten week period disclosed probable cause for issuance of search warrant. *United States v. Long* (1959, 169 F. Supp. 730).

Where police investigation extending over a 10-week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that eleven day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence seized from the premises searched on any theory of lack of probable cause. *Id.*

Where District of Columbia Metropolitan Police received information linking telephone number to numbers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and policeman made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Haje* (1958, 159 F. Supp. 870).

Where police had rejected convenient present opportunity to make lawful arrest in public street, search of apartment, which defendant had entered before arrest was attempted, could not be supported as incidental to arrest. *United States v. Johnson* (1953, 113 F. Supp. 359).

5. Conspiracy

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

6. Constitutionality

The Gamblers' Occupational Tax Act, as applied to persons in District of Columbia, constitutes a valid exercise of the taxing power and is not a penalty under the guise of a tax, even though wagering is by federal law a crime in the District of Columbia. *Lewis v. United States* (1955, 75 S. Ct. 415, 348 U. S. 419, 99 L. Ed. 475, rehearing denied 75 S. Ct. 602, 349 U. S. 917, 99 L. Ed. 1250).

Gamblers' Occupational Tax Act is not unconstitutional as applied to person in District of Columbia on ground that it violates privilege against self-incrimination notwithstanding fact that wagering is by federal law a crime in the District of Columbia. *Id.*

7. Counsel, conduct of

In prosecution for carrying on and promoting a numbers game and for possession of numbers slips, wherein defendants' former counsel of their own choice disclaimed any desire to enter a motion to suppress evidence and also gave specific reasons for disclaimer, contention of defendants' present counsel on appeal that trial court erred in refusing to suppress evidence would be rejected as asking Court of Appeals to substitute its judgment of proper trial tactics for that of the lawyer of the forum. *Wyche v. United States* (1952, 193 F. 2d 703, 90 U. S.

App. D. C. 67, certiorari denied 72 S. Ct. 556, 342 U. S. 943, 96 L. Ed. 702, rehearing denied 72 S. Ct. 675, 343 U. S. 921, 96 L. Ed. 1334).

8. Discovery and inspection

Defendants are entitled to inspection before trial of documents and statements which are or may become evidence. *United States v. Bell* (1955, 126 F. Supp. 612, motion denied 17 F.R.D. 13).

9. Distribution of prizes

One of the essential elements of a lottery is the awarding of a prize by chance, but the exact method adopted for the application of chance to the distribution of prizes is immaterial. *Forte v. United States* (1936, 83 F. 2d 612, 65 App. D.C. 355, 105 A.L.R. 300).

10. Double conviction for same offense

Even if defendant was twice convicted for same offense, any error was cured by concurrent sentences imposed. *Lewis v. United States* (1959, 263 F. 2d 265, 105 U.S. App. D.C. 15).

11. Gaming table

The statute penalizing anyone setting up in the District of Columbia any "gaming table", etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a bet on a race. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U.S. App. D. C. 244).

12. Harmless or prejudicial error

Where papers and documents obtained from one of several defendants in joint prosecution for violation of lottery laws, were obtained as result of unreasonable search and seizure, the use of evidence so obtained infected the cases of other defendants, and denial of motion to suppress such evidence, made by defendant from whom the papers and documents were illegally seized, was error prejudicial to other defendants as well. *Nelson v. United States* (1954, 208 F. 2d 505, 93 U. S. App. D. C. 14).

13. Indictment

Under this section making it unlawful to keep, set up, or promote a lottery, the charge may contemplate an act already complete when officer arrives, and possession of numbers slips, whether expired or not, may be relevant and material evidence that possessor has been conducting a lottery, and possessor need not be caught in the act, but may be caught with damaging evidence of a completed offense. *Harvy v. United States* (1952, 197 F. 2d 594, 91 U.S. App. D.C. 36).

Where an indictment under this section contains two counts, one for misdemeanor and one for felony, defendant's objection that the conviction on the misdemeanor count was invalid is immaterial in view of the fact that the sentences for each were to be served concurrently and the longer sentence was based on a valid count. *Coupe v. United States* (1940, 113 F. 2d 145, 72 App. D.C. 86, certiorari denied 60 S. Ct. 1105, 310 U.S. 651, 84 L. Ed. 1417).

14. Instructions

Provision of this section that possession of numbers slips shall be prima facie evidence that possessor was concerned in carrying on lottery, when quoted in instruction to jury, did not constitute instruction that it had become duty of lottery prosecution defendant, who had had possession of numbers slips, to establish his innocence to obtain acquittal. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

In prosecution for operating lottery and for possession of numbers slips, wherein jury had been fully instructed as to the government's burden of proof, trial judge's answer to jury's question, whether possession of slips constituted prima facie evidence of operation of lottery, given in words of this section providing that such possession did constitute prima facie evidence, without explaining meaning of prima facie evidence, was appropriate and understandable within framework of entire charge. *Id.*

In prosecution under six count indictment charging violation of laws against lotteries, instruction to effect that every circumstance relied upon by prosecution as part of circumstantial evidence tending to convict, must be established beyond reasonable doubt was properly refused in view of other instructions. *Shaw v.*

United States (1954, 209 F. 2d 93 U. S. App. D. C. 90, certiorari denied 74 S. Ct. 430, 347 U. S. 905, 98 L. Ed. 1063).

The trial court instructions to the jury, "Do I believe from the evidence I have heard in this trial that the defendants have committed this crime? If you answer the question yes, you must find the defendants guilty. If your answer is no, then you must find them not guilty," is erroneous, as this statement is not the law, for the law is that if the jury believes beyond a reasonable doubt that the defendant has committed the alleged offense, it should find a verdict of guilty, but if there be a reasonable doubt in the minds of the jurors, they must acquit. *Billeci v. United States* (1950, 184 F. 2d 394, 87 U.S. App. D.C. 274, 24 A.L.R. 2d 881).

If the intonations and gestures of a trial judge, when instructing the jury, are erroneously detrimental to a defendant in a criminal case, it is the duty of counsel to report fully and accurately, at the time and on the record, although not in the hearing of the jury, what has transpired. *Id.*

When a federal judge comments upon evidence by expressing his opinion upon phases of it, he is treading close to the line which divides proper judicial action from the field which is exclusively the jury's; therefore, he must make it unequivocally clear to the jury that conclusions upon such matters are theirs, not his, to make, and he must do so in such manner and in such time that the jury will not be left in doubt. *Id.*

15. License upon payment of tax

Provision of Gamblers' Occupational Tax Act requiring person engaged in business of wagering to pay a special tax of \$50 before engaging in such business does not give a person, upon payment of the fee, a license to engage in wagering in District of Columbia, where wagering is, by federal law, a crime as the federal government may tax what it also forbids. *Lewis v. United States* (1955, 75 S. Ct. 415, 348 U. S. 419, 99 L. Ed. 475, rehearing denied 75 S. Ct. 602, 349 U. S. 917, 99 L. Ed. 1250).

Fact that provision of Gamblers' Occupational Tax Act requiring person engaged in business of wagering to pay special tax of \$50 and exhibit stamp in his place of business might furnish probable cause for issuance of search warrant could not be urged as defense by person who was arrested for engaging in business of wagering without paying special tax. *Id.*

16. Motion to dismiss

Where count one charged in effect that the defendant, among others, violated this section relating to sale of lottery tickets, and counts two through seven charged that such defendant sold named persons a chance in a lottery on six different dates, defendant's motion for dismissal of counts two through seven would not be granted even though the defendant could not be found guilty of count one if the government proved that defendant violated this section by proving only the six sales that gave rise to counts two through seven; the determination of that matter must await the trial on the facts. *United States v. Long* (1959, 169 F. Supp. 730).

17. Motion to suppress

In proceedings on defendant's motion to suppress and for return of property seized from his custody, possession and person under a warrant for the search of an apartment, evidence required finding that there had been a lack of probable cause to believe that grounds existed to support issuance of search warrant. *United States v. Johnson* (1953, 113 F. Supp. 359).

18. Multiple violations

Six sales of lottery tickets on different dates to the same person are six violations of this section relating to gambling. *United States v. Long* (1959, 169 F. Supp. 730).

19. New trial

In prosecution for violating lottery laws, District Court did not abuse discretion in denying motion for new trial on ground that defendant's trial counsel refused to permit her to testify and failed to introduce certain other testimony. *Ingram v. United States* (1954, 209 F. 2d 818, 93 U. S. App. D. C. 307).

20. Numbers game

"Numbers game" is lottery when the player merely guesses that the result of mathematical calculations,

based upon the prices paid at a certain track, will be a certain number. *Forte v. United States* (1936, 83 F. 2d 612, 65 App. D.C. 355, 105 A.L.R. 300).

Conviction of violating and of conspiracy to violate the lottery law was sustained where evidence showed that defendants had been engaged in operation of the "numbers" game. *Smith v. United States* (1940, 112 F. 2d 217 72 App. D.C. 187, certiorari denied 61 S. Ct. 20, 311 U.S. 663, 85 L. Ed. 425).

21. Possession of tickets

The statutory presumption of promoting a lottery which arises from evidence of possession of lottery tickets may be properly invoked upon circumstantial evidence of possession of such tickets provided such circumstantial evidence is strong. *Davis v. United States* (1960, 274 F. 2d 585, 107 U. S. App. D. C. 76).

Proof of possession of numbers slips is not essential to conviction for operating lottery. *United States v. Lewis* (1959, 171 F. Supp. 71, affirmed in part, reversed in part on other grounds 274 F. 2d 585, 107 U. S. App. D. C. 76, certiorari denied 80 S. Ct. 1241, 363 U. S. 806, 4 L. Ed. 2d 1149).

22. Questions for court

In prosecution under this section, the credibility of the testimony of officers as to evidence of guilt found in defendant's automobile, is for the judge and the trial court's finding in disputed evidence will be upheld. *Coupe v. United States* (1940, 113 F. 2d 145, 72 App. D.C. 86, certiorari denied 60 S. Ct. 1105, 310 U.S. 651, 84 L. Ed. 1417).

23. Questions for jury

Where defendant in prosecution for promotion of numbers game renewed, during trial, motion to suppress evidence obtained incident to arrest of defendant without a warrant, on ground that there was no probable cause for defendant's arrest, and court, instead of determining issue of probable cause, improperly submitted issue of probable cause to jury, admission of testimony of police officers that they were experienced in the investigation of the numbers game and that because of such experience, officers knew from conduct of defendant that he was participating in operation of a lottery, was reversible error, because testimony trenched on jury's duty to determine ultimate question whether defendant was guilty. *Simmons v. United States* (1953, 206 F. 2d 427, 92 U. S. App. D. C. 122).

24. Review

An order granting suppression of evidence seized from defendant's person at time of his arrest, entered before trial in criminal case, is not appealable as a "final decision", regardless of whether, in the particular case, effect of suppressing the evidence would be to force dismissal of indictment for lack of evidence. *Carroll v. United States* (1957, 77 S. Ct. 1332, 354 U. S. 394, 1 L. Ed. 2d 1442).

In prosecution for violation of District of Columbia gambling laws, it was unfortunate that, during course of trial, it was brought to attention of jury that a codefendant had pleaded guilty to felony count of indictment, which jointly charged all of defendants; but in view of overwhelming evidence of guilt, any prejudice which might have remained despite judge's admonition to jury could be said to be harmless, and district court would not be put in error for refusing to grant motion for mistrial. *Carter v. United States* (C.A.D.C. 1960, 281 F. 2d 640).

Conviction for operating lottery in violation of District of Columbia statutes was affirmed on appeal, notwithstanding defendant's contentions (1) that numbers slips and other gambling paraphernalia were seized under warrants which were not supported by showing of adequate probable cause and (2) that evidence was insufficient to sustain conviction. *Ellis v. United States* (1959, 270 F. 2d 448, 106 U.S. App. D.C. 145).

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicitous, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal and Court of Appeals would not consider merits of conten-

tion. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

25. Severance

In prosecution for operation of lottery and for possession of numbers slips, trial court's denial of defendants' motions for severance did not constitute abuse of discretion. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

26. Sufficiency of evidence

Evidence, including possession of lottery tickets, was sufficient to sustain conviction of one defendant for promoting a lottery but was insufficient to sustain conviction as to another defendant. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U.S. App. D.C. 244).

Evidence justified submitting to jury prosecution for operating a lottery and possessing materials therefor. *Kenney v. U.S.* (1946, 157 F. 2d 442, 81 U.S. App. D.C. 259).

27. — Arrest, search and seizure

In joint prosecutions for violations of lottery laws, evidence sustained trial judge's finding that police gave sufficient notice of their purpose and authority before breaking in door of one defendant's premises in executing search warrant. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

Evidence sustained conclusion of existence of sufficient cause to believe that the offense of conducting a "number game" had been committed and that defendant had participated therein to justify arrest and search without warrant. *Newyahr v. U.S.* (1950, 177 F. 2d 658, 85 U.S. App. D.C. 384, certiorari denied 70 S. Ct. 350, 338 U.S. 936, 94 L. Ed. 577).

In numbers game prosecution, wherein defendants moved to suppress evidence and for return of property, evidence established that police officers, who had submitted affidavits upon which warrants had issued, had had probable cause to believe, through personal contact, knowledge, observation and information, that the premises searched were being used for operation of a numbers lottery and that evidence of crime was there concealed. *United States v. Bell* (1955, 126 F. Supp. 612, motion denied 17 F.R.D. 13).

28. —Prima facie evidence

Defendant's possession of used numbers slips, known in the game as "dead" slips, constituted prima facie evidence of carrying on of a lottery. *Clement v. United States* (1954, 208 F. 2d 46, 93 U. S. App. D. C. 154).

Even possession of "dead" or "hit" lottery tickets falls within language of this section raising presumption of violation of this section proscribing operation of lottery. *United States v. Lewis* (1959, 171 F. Supp. 71, affirmed in part, reversed in part on other grounds 274 F. 2d 585, 107 U.S. App. D.C. 76, certiorari denied 80 S. Ct. 1241, 363 U.S. 806, 4 L. Ed. 2d 1149).

§ 22-1502. Possession of lottery or policy tickets.

If any person shall, within the District of Columbia, knowingly have in his possession or under his control, any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing, current or not current used or to be used in violating the provisions of section 22-1501, 22-1504, or 22-1508, he shall, upon conviction of each such offense, be fined not more than \$1,000 or be imprisoned for not

more than one year, or both. For the purpose of this section, possession of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing shall be presumed to be knowing possession thereof. (Mar. 3, 1901, ch. 854, § 863a as added Apr. 5, 1938, 52 Stat. 198, ch 72, § 2, and amended June 29, 1953, 67 Stat. 95, ch. 159 § 206(a).)

AMENDMENT

1953—Act June 29, 1953, amended section generally and among other changes so referred to violations under section 22-1501, 22-1504, or 22-1508, created a presumption that possession of prohibited records is knowing possession, and increased the maximum penalty for violation of the section from a \$500 fine or six months imprisonment or both to a \$1,000 fine or one year imprisonment, or both.

CROSS REFERENCE

Search warrants, see § 23-301 et seq.

NOTES TO DECISIONS

Admissibility of evidence	1—3
In general	1
Arrest, search and seizure	2
Conspiracy	3
Arrest, search and seizure	
In general	4
Admissibility of evidence	2
Conscious possession	5
Conspiracy	
In general	6
Admissibility of evidence	3
Constitutionality	7
Construction	8
Counsel, conduct of	9
Elements of lottery	10
Harmless or prejudicial error	11
Instructions	12
Motion to suppress	13
New trial	14
Review	15
Severance	16
Sufficiency of evidence	17

1. Admissibility of evidence—In general

In joint prosecutions for violations of lottery laws, admission of one defendant's accusatory statement against the other three defendants was not error in view of later instructions that jury should disregard such statement. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

In prosecution for operation of lottery and for possession of numbers slips, slips used as evidence to prove possession charge could also be used to prove charge of operation of lottery. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

2. —Arrest, search and seizure

Where defendant had been indicted for carrying on a lottery known as the numbers game, in violation of the District Code, evidence obtained by police officers through an illegal search and arrest is inadmissible and the conviction must be reversed. *McDonald v. United States* (1948, 69 S. Ct. 191, 335 U.S. 451, 93 L. Ed. 153).

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, prejudicial. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).

In prosecution for operating numbers game and knowingly possessing numbers slips, found in defendant's automobile at time of his arrest without warrant, evidence of circumstances leading to arrest was sufficient to show probable cause therefor, so as to render search of automobile and seizure of slips reasonable and valid and authorize admission of slips in evidence against defendant. *Mills v. United States* (1952, 196 F. 2d 600, 90 U. S. App. D. C. 365, certiorari denied 73 S. Ct. 27, 344 U. S. 826, 97 L. Ed. 643).

Where police officers legally obtained search warrant for certain premises which they believed was being used

in numbers lottery and entered and found extensive evidence of numbers activities and arrested all persons present, they could legally search the persons arrested, and evidence thereby obtained was admissible in prosecution for carrying on and promoting a numbers game and for possession of numbers slips. *Wyche v. United States* (1952, 193 F. 2d 703, 90 U. S. App. D. C. 67, certiorari denied 72 S. Ct. 556, 342 U. S. 943, 96 L. Ed. 702, rehearing denied 72 S. Ct. 675, 343 U. S. 921, 96 L. Ed. 1334).

Where there is no claim in the case involved that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed and a new trial on the indictment must be ordered. *Accarino v. United States* (1950, 179 F. 2d 456, 85 U. S. App. D. C. 395).

3. — Conspiracy

That alleged coconspirator had been seen talking to defendant on day before that on which such alleged coconspirator allegedly informed government agent that he had turned his numbers work over to defendant did not establish that conspiracy was in existence on that date; and in absence of evidence that conspiracy was then in existence, agent's testimony with regard to alleged conversation was inadmissible against defendant, in prosecution for conspiracy to commit lottery offenses. *Taylor v. United States* (1958, 260 F. 2d 737, 104 U.S. App. D.C. 219).

Erroneous admission of evidence that alleged coconspirator had told government agent that he had turned his numbers work over to defendant would require reversal of conviction under indictment count charging conspiracy to commit lottery offenses; and since it was probable that such evidence had also been considered by jury in connection with related count charging defendant with operation of a lottery, conviction on that count would also be reversed. *Id.*

4. Arrest, search and seizure

Action of officers who, with permission of owners, entered vacant row house adjoining that in which they suspected defendants were maintaining unlawful betting office, in inserting antenna spike under baseboard and into party wall and connecting ear phones so that they were then able to overhear defendants conduct their betting business by telephone, did not constitute such an unlawful "search and seizure" as is proscribed by the Fourth Amendment to the federal Constitution and such actions did not constitute an interference with any communications system in violation of the Communications Act of 1934. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U. S. App. D. C. 144, certiorari granted 80 S. Ct. 1237, 363 U. S. 801, 4 L. Ed. 2d 1145).

Affidavits before Commissioner were sufficient to satisfy requisite of probable cause for issuance both of arrest warrants of persons who were subsequently convicted of illegal gambling on evidence showing that they maintained betting office and issuance of search warrants for search of premises which contained such office. *Id.*

Where, over period of two and a half months, officers had placed numbers bets on fifteen separate occasions at one location, and, on ten separate occasions, had observed a suspect depart from that location with bulging pockets and enter other premises, from which he subsequently departed "without the bulge," officers had reasonable grounds to believe that latter premises were being used in lottery operations, and that defendant, who at time such premises were searched pursuant to a search warrant was the only male present and was leaving "hastily," was participating therein, justifying arrest of defendant without an arrest warrant and seizure and use of incriminating evidence found in course of search of defendant made in connection with such arrest. *Stephens v. United States* (1959, 271 F. 2d 832, 106 U.S. App. D.C. 249).

Where officers, while standing in place open to public, saw through open door into back room and observed activities and paraphernalia which were familiar indicia of numbers lottery operation, they had "probable cause" and duty to make arrest, and arrest and seizure of paraphernalia were "legal arrest and seizure," though made without search or arrest warrant. *Fisher v. United States*

(1953, 205 F. 2d 702, 92 U. S. App. D. C. 247, certiorari denied 74 S. Ct. 122, 346 U. S. 872, 98 L. Ed. 381).

Circumstances revealed in police officer's affidavit provided sufficient probable cause to sustain issuance to officer of warrant for search of premises where it was believed defendants were operating a numbers game by telephone. *Washington v. United States* (1953, 202 F. 2d 214, 92 U. S. App. D. C. 31, certiorari denied 73 S. Ct. 938, 245 U. S. 956, 97 L. Ed. 1377, rehearing denied 73 S. Ct. 1130, 345 U. S. 1003, 97 L. Ed. 1408).

The arrest without warrant of defendant accused of carrying on a lottery and possessing tickets and certificates designed for purpose of conducting a lottery was legal where the facts and circumstances within the arresting officers knowledge and of which they had reasonably trustworthy information were sufficient to warrant man of reasonable caution in belief that defendant was taking numbers bets in corridor of building. *De Bruhl v. United States* (1952, 199 F. 2d 175, 91 U. S. App. D. C. 125, certiorari denied 73 S. Ct. 111, 344 U. S. 868, 97 L. Ed. 673).

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting wagers, evidence relating to police investigation extending over a 10-week period disclosed probable cause for issuance of search warrant. *United States v. Long* (1959, 169 F. Supp. 730).

Where police investigation extended over a 10-week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that 11-day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence seized from the premises searched on any theory of lack of probable cause. *Id.*

Where District of Columbia Metropolitan Police received information linking telephone number to numbers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and policeman made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Haje* (1958, 159 F. Supp. 870).

Where police had rejected convenient present opportunity to make lawful arrest in public street, search of apartment, which defendant had entered before arrest was attempted, could not be supported as incidental to arrest. *United States v. Johnson* (1953, 113 F. Supp. 359).

Arrest of defendant, a cafeteria employee, after manager voiced suspicions to officer that defendant was stealing food, was without probable cause, and incidental search that turned up lottery tickets and other paraphernalia for use in lottery was illegal. *Mathis v. United States* (D.C. Mun. App. 1957, 129 A. 2d 178).

5. Conscious possession

Where conscious possession of papers to be used in violating statute making it unlawful to "purchase, possess, own or acquire any chance, right, or interest * * * in any policy lottery or any lottery * * *" was clearly proved, accused was properly convicted under statute prohibiting any person from knowingly having in his possession any paper used or to be used in violating the statute. *Ferguson v. United States* (1956, 239 F. 2d 952, 99 U. S. App. D. C. 331, certiorari denied 77 S. Ct. 1287, 353 U. S. 986, 1 L. Ed. 2d 1144).

6. Conspiracy

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as

to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

7. Constitutionality

This section making possession of numbers slips a crime is constitutional. *Ferguson v. United States* (D. C. Mun. App. 1956, 123 A. 2d 615).

8. Construction

Conviction of having possession of numbers slips in violation of lottery laws was warranted as against contention that there was not any evidence to indicate that such slips were "live" slips, that is, were tickets in an existing lottery. *Ledbetter v. United States* (1954, 211 F. 2d 628, 93 U. S. App. D.C. 155, certiorari denied 74 S. Ct. 789, 347 U. S. 977, 98 L. Ed. 1116).

Defendant's possession of used numbers slips, known in the game as "dead" slips, constituted an offense under this section penalizing possession of slips "used, or to be used" for carrying on a lottery even though amendment adding the words "current or not current" had not yet been enacted. *Clement v. United States* (1954, 208 F. 2d 46, 93 U. S. App. D. C. 154).

9. Counsel, conduct of

In prosecution for carrying on and promoting a numbers game and for possession of numbers slips, wherein defendants' former counsel of their own choice disclaimed any desire to enter a motion to suppress evidence and also gave specific reasons for disclaimer, contention of defendants' present counsel on appeal that trial court erred in refusing to suppress evidence would be rejected as asking Court of Appeals to substitute its judgment of proper trial tactics for that of the lawyer of the forum. *Wyche v. United States* (1952, 193 F. 2d 703, 90 U. S. App. D. C. 67, certiorari denied 72 S. Ct. 556, 342 U. S. 943, 96 L. Ed. 702, rehearing denied 72 S. Ct. 675, 343 U. S. 921, 96 L. Ed. 1334).

10. Elements of lottery

Though consideration together with chance and prize is one of three elements necessary to constitute a lottery, it is unnecessary, in prosecution for possession of numbers slips, to prove that consideration has passed for them or that they have entered the play of the numbers game. *Ferguson v. United States* (D. C. Mun. App. 1956, 123 A. 2d 615).

11. Harmless or prejudicial error

In prosecution of defendant for possessing lottery slips which were seized by police after illegally entering premises at which they arrested defendant, admission of slips constituted prejudicial error. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U. S. App. D. C. 351, certiorari denied 77 S. Ct. 815, 353 U. S. 941, 1 L. Ed. 2d 760).

12. Instructions

Provision of lottery statute that possession of numbers slips shall be prima facie evidence that possessor was concerned in carrying on lottery, when quoted in instruction to jury, did not constitute instruction that it had become duty of lottery prosecution defendant, who had had possession of numbers slips, to establish his innocence to obtain acquittal. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U. S. App. D. C. 347).

In prosecution for operating lottery and for possession of numbers slips, wherein jury had been fully instructed as to the government's burden of proof, trial judge's answer to jury's question, whether possession of slips constituted prima facie evidence of operation of lottery, given in words of statute providing that such possession did constitute prima facie evidence, without explaining meaning of prima facie evidence, was appropriate and understandable within framework of entire charge. *Id.*

13. Motion to suppress

Where numbers slips taken from defendant were admitted without objection on trial which commenced three days after his arrest, motion to suppress made for first time when trial resumed following a continuance was not timely, and denial of the motion was not error. *Harris v. U.S.* (1943, 32 A. 2d 101, certiorari denied 69 S. Ct. 161, 335 U. S. 873, 93 L. Ed. 417).

14. New trial

In prosecution for violating lottery laws, District Court did not abuse discretion in denying motion for new trial on ground that defendant's trial counsel refused to permit her to testify and failed to introduce certain other testimony. *Ingram v. United States* (1954, 209 F. 2d 818, 93 U.S. App. D. C. 307).

15. Review

An order granting suppression of evidence seized from defendant's person at time of his arrest, entered before trial in criminal case, is not appealable as "final decision", regardless of whether, in the particular case, effect of suppressing the evidence would be to force dismissal of indictment for lack of evidence. *Carroll v. United States* (1957, 77 S. Ct. 1332, 354 U. S. 394, 1 L. Ed. 2d 1442).

Convictions of defendants who were jointly indicted on four counts charging violations of District of Columbia Code sections proscribing gambling and on a fifth count charging that they had engaged in business of accepting wagers without having paid special tax required by Internal Revenue Code and who were acquitted on charges in fourth and fifth counts, were not subject to reversal because of claimed inconsistencies of verdict. *Silverman et al v. United States* (1960, 275 F. 2d 173, 107 U. S. App. D. C. 144, certiorari granted 80 S. Ct. 1237, 363 U. S. 801, 4 L. Ed. 2d 1145).

Rational consistency in a jury's verdict on each of several counts is not necessary. *Id.*

Conviction for operating lottery in violation of District of Columbia statutes was affirmed on appeal, notwithstanding defendant's contentions (1) that number slips and other gambling paraphernalia were seized under warrants which were not supported by showing of adequate probable cause and (2) that evidence was insufficient to sustain conviction. *Ellis v. United States*, (1959, 270 F. 2d 448, 106 U.S. App. D.C. 145).

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicitous, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal, and Court of Appeals would not consider merits of contention. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

Where there was conflicting evidence as to means by which defendant's notebook, upon which conviction for illegal possession of numbers slips was based, was acquired, Municipal Court of Appeals was not authorized to resolve questions under such circumstances and could not disturb finding of trial court adverse to defendant. *Moody v. United States* (D. C. Mun. App. 1960, 163 A. 2d 337).

Evidence sustained conviction for illegal possession of numbers slips. *Id.*

16. Severance

In prosecution for operation of lottery and for possession of numbers slips, trial court's denial of defendants' motions for severance did not constitute abuse of discretion. *Maynard v. United States* (1954, 215 F. 2d 336, 94 U.S. App. D.C. 347).

17. Sufficiency of evidence

In joint prosecutions for violations of lottery laws, evidence sustained trial judge's finding that police gave sufficient notice of their purpose and authority before breaking in door of one defendant's premises in executing search warrant. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U. S. App. D. C. 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

Evidence justified submitting to jury prosecution for operating a lottery and possessing materials therefor. *Kenney v. U.S.* (1946, 157 F. 2d 442, 81 U.S. App. D.C. 259).

Evidence that defendant admitted ownership of billfold containing quantity of undated numbers slips was prima facie indicative that possession of such tickets was violative of statute forbidding possession of lottery slips and shifted burden of going forward with the evidence to defendant to prove that numbers slips were not lottery slips within meaning of statute. *Roseborough v. United States* (D. C. Mun. App. 1952, 86 A. 2d 920).

Evidence was insufficient to sustain conviction of defendant for knowingly having in his possession "numbers slips" in violation of this section. *Fletcher v. U. S.* (D. C. Mun. App. 1946, 49 A. 2d 88).

§ 22-1503. Permitting sale of lottery tickets on premises.

If any person shall knowingly permit, on any premises under his control in the District, the sale of any chance or ticket in or share of a ticket in any lottery or policy lottery, or shall knowingly permit any lottery or policy lottery, or policy shop on such premises, he shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 864.)

CROSS REFERENCE

Search warrant, destruction of property, see §§ 23-301, 23-304.

§ 22-1504. Gaming—Setting up gaming table—Inducing play.

Whoever shall in the District set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming, or gambling device commonly called A B C, faro bank, E O, roulette, equality, keno, thimbles, or little joker, or any kind of gaming table or gambling device adapted, devised, and designed for the purpose of playing any game of chance for money or property, or shall induce, entice, and permit any person to bet or play at or upon any such gaming table or gambling device, or on the side of or against the keeper thereof, shall be punished by imprisonment for a term of not more than five years. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 865.)

CROSS REFERENCE

Search warrant, destruction of property, see §§ 23-301, 23-304.

NOTES TO DECISIONS

In general 1
Claw machine 2
Elements of offense 3
Evidence 4
Gambling device 5
Gaming table 6
Indictment 7
Offense a felony 8
Place for gaming 9
Property 10
Purpose 11
Review 12
Searches and seizure 13
Separate trial 14
Verdict 15

1. In general

This section penalizing anyone setting up in the District of Columbia any "gaming table", etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a bet on a race. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U. S. App. D. C. 244).

"Any games, devices, or contrivances set up or kept for the purpose of gaming, or any gambling device, so set up and kept, adapted, devised, and designed for the purpose of playing any game of chance for money or property, and to which the public may resort to bid or wager money, is a gaming table within the meaning of the statute.

The definition of a gaming table under the statute does not involve the ordinary mechanical definition of a table, but depends for its statutory meaning upon the means or contrivances adopted for playing the game." *Miller v. United States* (6 App. D.C. 6). See, also, *Nelson v. United States* (28 App. D.C. 32); *Swan v. United States* (1924, 295 F. 921, 54 App. D.C. 100).

"Two offenses are created by section 865 (this section). One is the setting up or keeping of a gaming table or device; the other is the keeping of a house, vessel, or place for the purpose of gaming." *Wade v. United States* (33 App. D.C. 29, 20 L.R.A., N.S., 347, 17 Ann. Cas. 707).

2. Claw machine

"Claw machine" used for the purpose of obtaining prizes, by mere chance, was a "gambling device." *Boosalis v. Crawford* (1938, 99 F. 2d 374, 69 App. D.C. 141).

3. Elements of offense

This section defining as a felony setting up of gaming table and keeping of any house or place for purpose of gaming reaches any operator who would permit any person to bet on side of or against the keeper of house, and persons who operated betting office where they received wagers and maintained records of wins and losses, were guilty of violating this section, notwithstanding fact that they conducted their operations by telephone and that they did not invite public to their offices. *Silverman v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C., 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

The gravamen of offense of setting up and keeping a gaming place is furnishing the facilities for gaming activities and it is immaterial that betting actually took place or that money actually passed. *Sesso v. U.S.* (1943, 133 F. 2d 381, 77 U.S. App. D.C. 35).

4. Evidence

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U.S. App. D.C. 244).

In prosecution for setting up and keeping a gaming place, evidence necessary to show a gaming place need not be direct, and the intent with which the act was done may be gathered from all the circumstances shown in evidence. *Cesso v. U.S.* (1943, 133 F. 2d 381, 77 U.S. App. D.C. 35).

In prosecution for setting up and keeping a gaming place for purpose of betting on result of horse races, where prima facie evidence of corpus delicti was made out, damaging admissions made by defendant were admissible in evidence. *Id.*

In prosecution for setting up and keeping a gaming place for purpose of betting on result of horse races, evidence authorized inference that defendant was in control and possession of the premises when the offense occurred. *Id.*

Evidence sustained conviction of setting up and keeping a gaming place for purpose of betting upon result of horse races. *Id.*

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, evidence sustained finding that a gaming place was illegally set up and maintained. *Id.*

In prosecution for keeping gambling tables, testimony of a defendant at a previous trial, together with a bank statement to which it related, were properly admitted, where the testimony had some tendency to establish such defendant's guilt. *Warde v. U.S.* (1947, 158 F. 2d 651, 81 U.S. App. D.C. 355).

Evidence of gambling on one occasion is sufficient to sustain conviction for keeping gambling tables. *Id.*

Intercepted interstate and local messages pertaining to gambling are not admissible when received by person not authorized by the sender. *United States v. Plisco* (1938, 22 F. Supp. 242).

5. Gambling device

Where player of pinball amusement machine achieving certain minimum score would receive a "free play" or another "try" without an additional coin but nothing more, the machine was not a "gambling device" designed for purpose of playing game of chance for "property"

within this section. *Washington Coin Mach. Ass'n v. Callahan* (1944, 142 F. 2d 97, 79 U.S. App. D.C. 41).

To "gamble" is to risk one's money or other property on an event, chance, or contingency in the hope of the realization of gain, and the test as to whether a particular machine combination constitutes a "gambling device" is whether it is adapted, devised, and designed for purpose of playing any game of chance for money or property. *Id.*

6. Gaming table

Section 865 of the code (this section) made it a crime to set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming or gambling, under the penalty of imprisonment for a term of not more than five years. *Kelleher v. United States* (1930, 35 F. 2d 877, 59 App. D.C. 107).

7. Indictment

Indictments charging that appellants set up and kept a gambling table for the purpose of betting and wagering on the results of horse races, contrary to this section. Charge an offense against the laws of the United States. *Nuckols v. United States* (1938, 99 F. 2d 353, 69 App. D.C. 120, certiorari denied 59 S. Ct. 89, 305 U.S. 626; 83 L. Ed. 401).

Indictment in either case of maintaining table or place in which gaming was done need not allege proof of passing money; but if it is drawn in almost the language of the statute, and charges both the place and table defendants were conducting, that is sufficient. *Beard v. United States* (1936, 82 F. 2d 837, 65 App. D.C. 231, certiorari denied 56 S. Ct. 675, 298 U.S. 566, 80 L. Ed. 1382).

8. Offense a felony

This section, by prescribing a maximum penalty of five years' imprisonment, made the offense a felony and no warrant for arrest was necessary where defendant was apprehended in the act of violating the statute. *Zerega v. United States* (1929, 32 F. 2d 963, 59 App. D.C. 67).

9. Place for gaming

It is not necessary that one charged with the crime of maintaining a gambling place should have been in permanent possession of the place or a lessee or keeper, but that it is sufficient if he is in charge of the place at the time the offense occurs. *Donald v. United States* (1939, 102 F. 2d 618; 70 App. D.C. 14).

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, it is not necessary that defendant should have been in permanent possession of the premises or that he should have been a lessee or even a keeper. *Sesso v. U.S.* (1943, 133 F. 2d 381, 77 U.S. App. D.C. 35).

In prosecution for setting up and keeping a gaming place for purpose of betting upon result of horse races, it was only incumbent upon the Government to show that defendant was in charge, possession or control of the place when the offense occurred. *Id.*

10. Property

The term "property" as used in this section includes goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, or money or right or title to property, real or personal, is created or transferred but none of such terms should be expanded to include a free amusement feature such as privilege of playing an additional free game if certain score is made. *Washington Coin Mach. Ass'n v. Callahan* (1944, 142 F. 2d 97, 79 U.S. App. D.C. 41).

11. Purpose

The purpose of Congress in enacting this section was to make criminal the use of all contrivances by which money or property is bet or wagered or risked on the chance of some material reward. *Washington Coin Mach. Ass'n v. Callahan* (1944, 142 F. 2d 97, 79 U.S. App. D.C. 41).

12. Review

Conviction on five counts of keeping gaming table and a place for gambling on horse races was affirmed. *Brown v. United States* (1929, 32 F. 2d 953, 59 App. D.C. 57).

When one was convicted for operating gaming table he could not afterwards dispute the verdict, for a question of fact or of law distinctly put in issue and directly determined by a court of competent jurisdiction cannot

afterwards be disputed between the same parties. *Beard v. Sanford* (C.C.A. Ga. 1938, 99 F. 2d 750, certiorari denied 59 S. Ct. 644, 306 U.S. 655, 83 L. Ed. 1053).

When appellant was convicted on two counts, first, by setting up gaming table, and, second, keeping a place for gaming, but as he did not raise the question of double jeopardy on the trial or on the appeal from conviction, effect of his failure to do so was to waive the question for all time. *Id.*

13. Searches and seizure

Where defendant had been indicted for carrying on a lottery known as the numbers game in violation of the District Code, evidence obtained by police officers through an illegal search and arrest is inadmissible and the conviction must be reversed. *McDonald v. United States* (1948, 69 S. Ct. 191, 335 U.S. 451, 93 L. Ed. 153).

Where there is no claim in the case involved that the officers advised the suspect of the cause of their demand before they broke down the door, upon that ground alone, the breaking of the door was unlawful, presence of arresting officers was unlawful, the arrest was unlawful, the search unlawful and the evidence thus procured should have been suppressed. A new trial on the indictment must be ordered. *Accarino v. United States* (1950, 179 F. 2d 456, 85 U.S. App. D.C. 395).

14. Separate trial

Where four defendants were indicted for keeping a gaming table, and one was also charged with assault, a motion of the three to be tried separately from the fourth, who had been charged with assault, will not be granted since their guilt of the only crime of which they were accused was so clear that no defense was attempted and none would have been attempted if they had been tried separately and the court's refusal to try them separately was not prejudicial. *Scheve v. United States* (1950, 184 F. 2d 695, 87 U.S. App. D.C. 289).

15. Verdict

Convictions of defendants who were jointly indicted on four counts charging violations of District of Columbia Code sections proscribing gambling and on a fifth count charging that they had engaged in business of accepting wagers without having paid special tax required by Internal Revenue Code and who were acquitted on charges in fourth and fifth counts, were not subject to reversal because of claimed inconsistencies of verdict. *Silverman v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

Rational consistency in a jury's verdict on each of several counts is not necessary. *Id.*

§ 22-1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent offenses.

(a) Any house, building, vessel, shed, booth, shelter, vehicle, enclosure, room, lot, or other premises in the District of Columbia, used or to be used in violating the provisions of section 22-1501 or 22-1504, shall be deemed "gambling premises" for the purpose of this section.

(b) It shall be unlawful for any person in the District of Columbia knowingly, as owner, lessee, agent, employee, operator, occupant, or otherwise, to maintain or aid or permit the maintaining of any gambling premises.

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used—

(1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of section 22-1501;

(2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of section 22-1504; or

(3) in maintaining any gambling premises, shall be subject to seizure by any member of the Metropolitan Police force or the United States Park Police, or the United States marshal, or any deputy marshal, for the District of Columbia, and shall, unless good cause is shown to the contrary by the owner, be forfeited to the District of Columbia by order of any court having jurisdiction unless good cause is shown to the contrary by the owner, for disposition by public auction or as otherwise provided by law. Bona fide liens against property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property. Forfeit moneys and other proceeds realized from the enforcement of this section shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(d) Whoever violates this section shall be imprisoned not more than one year or fined not more than \$1,000, or both, unless the violation occurs after he has been convicted of a violation of this section, in which case he may be imprisoned for not more than five years, or fined not more than \$2,000, or both. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 866; June 29, 1953, 67 Stat. 95, ch. 159, § 206(b)).

AMENDMENT

1953—Act June 29, 1953, amended section generally. Prior to the amendment the section provided: "Whoever in the District knowingly permits any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot, or other premises to him belonging or by him occupied, or of which at the time he has possession or control, shall be punished by imprisonment in the jail for not more than one year or by a fine not exceeding five hundred dollars or both."

CROSS REFERENCE

Search warrant, destruction of property, see §§ 23-301, 23-304.

NOTES TO DECISIONS

In general 1
Admissibility of evidence 4
Alternative remedies, forfeiture 7
Arrest, search and seizure 2
Conspiracy 3
Evidence
Admissibility 4
Sufficiency 5
Forfeiture 6-8
Alternative remedies 7
Time for proceedings 8
Habeas corpus 9
Jurisdiction 10
Motion for return of property 11
Proof 12
Review 13
Sufficiency of evidence 5
Time for proceedings, forfeiture 8

1. In general

This section formerly provided that whoever knowingly permitted any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot, or other premises belonging to or occupied by him, or under his possession or control, should be punished by imprisonment in the jail for not more than one year or by a fine not exceeding \$500, or both. *Kelleher v. United States* (1930, 35 F. 2d 877, 59 App. D.C. 107).

2. Arrest, search and seizure

In joint prosecutions for violations of lottery laws, evidence sustained trial judge's finding that police gave sufficient notice of their purpose and authority before breaking in door of one defendant's premises in executing search warrant. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

In prosecution for violation of District of Columbia gambling statutes by engaging in the numbers business and for violation of federal statute requiring payment of tax as prerequisite to engaging in business of accepting wagers, evidence relating to police investigation extending over a 10-week period disclosed probable cause for issuance of search warrant. *United States v. Long* (1959, 169 F. Supp. 730).

Where police investigation extended over a ten week period established probable cause for issuance of search warrant for gambling activities in violation of District of Columbia statutes, the fact that 11-day period elapsed between last police observation of premises and issuance of such warrant did not require suppression of evidence seized from the premises searched on any theory of lack of probable cause. *Id.*

3. Conspiracy

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U.S. App. D.C. 351, certiorari denied 77 S. Ct. 815, 353 U.S. 941, 1 L. Ed. 2d 760).

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. *Id.*

4. Evidence—Admissibility

In joint prosecutions for violations of lottery laws, admission of one defendant's accusatory statement against the other three defendants was not error in view of later instructions that jury should disregard such statement. *Davis v. United States* (1960, 274 F. 2d 585, 107 U.S. App. D.C. 76).

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, prejudicial. *Woods et al. v. United States* (1956, 240 F. 2d 37, 99 U.S. App. D.C. 351, certiorari denied 77 S. Ct. 815, 353 U.S. 941, 1 L. Ed. 2d 760).

5. — Sufficiency

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U.S. App. D.C. 66).

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction for possession of lottery tickets, operation of lottery, or for maintaining gambling premises. *Id.*

6. Forfeiture

A claw machine was a gambling device subject to forfeiture. *Boosalis v. Crawford* (1938, 99 F. 2d 374, 69 App. D.C. 141).

7. — Alternative remedies

Owners of property, held by District of Columbia as preliminary to libel proceedings for its forfeiture pursuant to this section authorizing forfeiture of property used in lottery or gaming activities, could apply for administrative relief, could sue officers who seize the property in trespass, or could assert their right as claimants in the libel when filed. *United States v. Bell* (1954, 120 F. Supp. 670).

8. — Time for proceedings

Property held as preliminary to forfeiture proceeding, under this section authorizing forfeiture of property used in lottery or gaming activities, would be ordered returned unless libel for forfeiture were filed within five days, in view of fact that District of Columbia Municipal-

ity had notice of two motions for more than sixty days and of three motions for more than fifty days wherein property owner sought return of property. *United States v. Bell* (1954, 120 F. Supp. 670).

9. Habeas corpus

Contentions determined adversely to petitioner on appeals to the United States Court of Appeals for the District of Columbia from conviction of an offense under this section in the Supreme Court of the District of Columbia, and to the United States Supreme Court, could not be successfully advanced on petition for habeas corpus. *Beard v. Sanford* (C.C.A. Ga. 1938, 99 F. 2d 750, certiorari denied 59 S. Ct. 644, 306 U.S. 655, 83 L. Ed. 1053).

10. Jurisdiction

Court, in criminal proceeding against owners of property, held by District of Columbia as preliminary to proceeding for its forfeiture, pursuant to this section authorizing forfeiture of property used in lottery or gaming activities, had jurisdiction to order return of the property. *United States v. Bell* (1954, 120 F. Supp. 670).

11. Motion for return of property

Averment by United States Attorney, made in reply to motion in criminal proceeding for return of property seized, that property will not be used as evidence, is not sufficient to defeat the motion. *United States v. Bell* (1954, 120 F. Supp. 670).

12. Proof

An indictment charging an offense under this section cannot be sustained by proof of a violation of section 865 (§ 22-1504). "In order to warrant a conviction under section 866 (this section) it is necessary that a defendant shall knowingly permit a gambling device to be set up or used for the purpose of gaming upon premises owned or occupied by him, or of which at the time of the commission of the offense he had possession or control." *Nelson v. United States* (28 App. D. C. 32).

13. Review

Convictions of defendants who were jointly indicted on four counts charging violations of District of Columbia Code sections proscribing gambling and on a fifth count charging that they had engaged in business of accepting wagers without having paid special tax required by Internal Revenue Code and who were acquitted on charges in fourth and fifth counts, were not subject to reversal because of claimed inconsistencies of verdict. *Silverman et al., v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

Rational consistency in a jury's verdict on each of several counts is not necessary. *Id.*

Conviction for operating lottery in violation of District of Columbia statutes was affirmed on appeal, notwithstanding defendant's contentions (1) that number slips and other gambling paraphernalia were seized under warrants which were not supported by showing of adequate probable cause and (2) that evidence was insufficient to sustain conviction. *Ellis v. United States* (1959, 270 F. 2d 448, 106 U.S. App. D.C. 145).

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicative, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal, and Court of Appeals would not consider merits of contention. *Aikens et al. v. United States* (1956, 232 F. 2d 66, 98 U.S. App. D. C. 66).

§ 22-1506. Three-card monte and confidence games.

Whoever shall in the District deal, play, or practice, or be in any manner accessory to the dealing or practicing, of the confidence game or swindle known as three-card monte, or of any such game, play, or practice, or any other confidence game, play, or practice, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars and by imprisonment for not more than

five years. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 867.)

CROSS REFERENCE

Search warrant, see § 23-301.

NOTE TO DECISION

1. Arrest, search and seizure

In prosecution for practicing confidence game and swindle known as three-card monte, evidence as to what arresting officers saw transpiring indicated that they were justified in making arrest without warrant, and articles seized as incident to such arrest were admissible in evidence regardless whether crime charged was misdemeanor, as indicated by statute, or felony, because punishable by imprisonment for more than one year. *Coleman v. United States* (1954, 215 F. 2d 681, 94 U. S. App. D. C. 311).

§ 22-1507. "Gaming table" defined.

All games, devices, or contrivances at which money or any other thing shall be bet or wagered shall be deemed a gaming table within the meaning of sections 22-1504 to 22-1506; and the courts shall construe said sections liberally, so as to prevent the mischief intended to be guarded against. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 868.)

CROSS REFERENCE

Search warrant, destruction of property, see §§ 23-301, 23-304.

NOTES TO DECISIONS

In general 1
Evidence 2
Indictment 3

1. In general

The statute penalizing anyone setting up in the District of Columbia any "gaming table" etc., or who permits any person to bet or play at or upon any such gaming table or device, etc., indicates a physical device of some sort and does not mean the mere taking of a bet on a race. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U. S. App. D. C. 244).

2. Evidence

Evidence was insufficient to establish beyond a reasonable doubt that defendant set up or kept a gaming table for the purpose of gaming. *Plummer v. United States* (1951, 189 F. 2d 19, 88 U. S. App. D. C. 244).

3. Indictment

Indictment is sufficient which alleges a setting up of gaming table and keeping a gaming table for the purpose of betting on the results of horse races. *Swan v. United States* (1924, 295 F. 921, 54 App. D.C. 100).

§ 22-1508. Gambling pools and book making.—Athletic contest defined.

It shall be unlawful for any person, or association of persons, within the District of Columbia to purchase, possess, own, or acquire any chance, right, or interest, tangible or intangible, in any policy lottery or any lottery, or to make or place a bet or wager, accept a bet or wager, gamble or make books or pools on the result of any athletic contest. For the purpose of this section, the term "athletic contest" means any of the following, wherever held or to be held: a football, baseball, softball, basketball, hockey, or polo game, or a tennis, golf, or wrestling match, or a tennis or golf tournament, or a prize fight or boxing match, or a trotting or running race of horses, or a running race of dogs, or any other athletic or sporting event or contest. Any person or association of persons violating this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 869; May 16, 1908, 35 Stat. 164, ch. 172, § 3; June 29, 1953, 67 Stat. 96, ch. 159, § 206c.)

AMENDMENTS

1953—Act June 29, 1953, amended section generally. Prior to the amendment the section read: "It shall be unlawful for any person or association of persons to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, or on any election, or any contest of any kind, or game of baseball. Any person or association of persons violating the provisions of this section shall be fined not exceeding five hundred dollars or be imprisoned not more than ninety days, or both."

1908—Act May 16, 1908, struck out after the word "persons" in the first sentence the following words "in city of Washington and Georgetown in District of Columbia within one mile of boundaries of said District."

CROSS REFERENCE

Search warrant, destruction of property, see §§ 23-301, 23-304.

NOTES TO DECISIONS

In general 1
Accomplices 2
Defamatory words 3
Evidence 4
Geographical prohibition 5
Search and seizure 6
Verdict 7

1. In general

This section made it unlawful for any person to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, and prescribed a punishment for violation of the provisions of the section of a fine not exceeding \$500 or imprisonment not exceeding 90 days, or both. *Kelleher v. United States* (1930, 35 F. 2d 877, 59 App. D.C. 107).

2. Accomplices

Persons engaging in wagering contests are not accomplices. *Paylor v. United States* (42 App. D. C. 428, L. R. A. 1915D, 682, certiorari denied 35 S. Ct. 209, 235 U.S. 704, 59 L. Ed. 434).

3. Defamatory words

When words are not libelous per se, as laying bets on horse races, it is for the jury to determine the defamatory meaning. *Baker v. Warner* (1914, 34 S. Ct. 175, 231 U.S. 588, 58 L. Ed. 384).

4. Evidence

Where evidence justified conviction on counts under 1901 Code § 865 (§ 22-1504), counts under this section need not be considered. *Zerega v. United States* (1929, 32 F. 2d 963, 59 App. D.C. 67).

5. Geographical prohibition

This section only prohibited betting on horse races and bookmaking within one mile of the boundaries of the cities of Washington and Georgetown. *Baker v. Warner* (1914, 34 S. Ct. 175, 231 U.S. 588, 58 L. Ed. 384).

6. Search and seizure

Where District of Columbia Metropolitan Police received information linking telephone number to numbers game and the source stated that bets were placed by named person using designated code number and Metropolitan Police received additional information from Arlington County police that very heavy number bets were called into the telephone number and policeman made series of telephone calls to that number and identified himself as such person and gave such code number and received numbers information, there was probable cause for issuance of search warrant which led to seizure of numbers slips and other numbers paraphernalia. *United States v. Haje* (1958, 159 F. Supp. 870).

7. Verdict

Convictions of defendants who were jointly indicted on four counts charging violations of District of Columbia Code sections proscribing gambling and on a fifth count charging that they had engaged in business of accepting wagers without having paid special tax required by Internal Revenue Code and who were acquitted on charges in fourth and fifth counts, were not subject to reversal because of claimed inconsistencies of verdict. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

Rational consistency in a jury's verdict on each of several counts is not necessary. *Id.*

§ 22-1509. Bucketing, and bucket-shopping and bucket-shops—Definitions.

The following words and phrases used in sections 22-1509 to 22-1512 shall, unless a different meaning is plainly required by the context, have the following meanings:

"Person" shall mean an individual, partnership, corporation, or association, whether acting in his or their own right or as the officer, agent, servant, correspondent, or representative of another.

"Contract" shall mean any agreement, trade, or transaction.

"Securities" shall mean all evidences of debt or property and options for the purchase and sale thereof, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action, and other evidences of debt or property and options for the purchase or sale thereof.

"Commodities" shall mean anything movable that is bought and sold.

"Bucket-shop" shall mean any room, office, store, building, or other place where any contract prohibited by sections 22-1509 to 22-1512 is made or offered to be made.

"Keeper" shall mean any person owning, keeping, managing, operating, or promoting a bucket-shop, or assisting to keep, manage, operate, or promote a bucket-shop.

"Bucketing" or "bucket-shopping" shall mean: (a) The making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities wherein both parties thereto intend, or such keeper intends, that such contract shall be, or may be, terminated, closed, or settled according to or upon the basis of the public market quotations of prices made on any board of trade or exchange upon which said securities or commodities are dealt in and without a bona fide purchase or sale of the same; or (b) the making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties intend, or such keeper intends, that such contract shall be, or may be, deemed terminated, closed, or settled when such public market quotations of prices for the securities or commodities named in such contract shall reach a certain figure without a bona fide purchase or sale of the same; or (c) the making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of such securities or commodities, but do intend, or such keeper does intend, a settlement of such contract based upon the differences in such public market quotations of prices at which said securities or commodities are or are asserted to be bought and sold. (Mar. 3, 1901, ch. 854, § 869a, as added Mar. 1, 1909, 35 Stat. 670, ch. 233).

NOTES TO DECISIONS

Any contract 1
Conspiracy 2
Constitutionality 3
Prosecutions 4

1. Any contract

The words "any contract defined in the preceding section," as used in section 869b (§ 22-1510) "were intended to refer, and did in fact refer, to bucketing and bucket-shopping contracts, or to 'agreements, trades, or transactions' relating thereto." *United States v. Cella* (37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633).

2. Conspiracy

Conspiracy to violate the "bucket-shop" law of the District of Columbia (act of March 1, 1909, 35 Stat. 670, ch. 233 (§§ 22-1509 to 22-1512)) is an offense against the United States within the meaning of R.S. §§ 1014, 5440 (sections 371, 3041 of title 18, U.S. Code). *United States v. Cella* (37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633). See, also, *United States v. Campbell* (D.C. Pa., 1910, 179 F. 762).

Where indictment was for conspiracy to violate this section, the proceeding was removable under R.S. § 1014 (section 371 of title 18, U.S. Code). *United States ex rel. Vause v. McCarthy* (D.C. N.Y. 1918, 250 F. 800, affirmed 256 F. 651, 168 C.C.A. 45).

3. Constitutionality

The provision in this section that unless a different meaning is plainly required by the context, the word "contract" when used in sections 22-1509 to 22-1512, shall mean "any agreement, trade, or transaction," does not invalidate such sections as prohibiting all agreements, trades, and transactions, but refers only to the particular kinds of contracts elsewhere described in such sections, namely bucketing and bucket-shop contracts, or all agreements, trades, and transactions relating thereto. *United States v. Cella* (37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633).

In the prosecution of keepers of a bucket shop for violating sections 22-1509 to 22-1512, relating to bucket shopping, such sections will not be declared invalid because of the possibility that under these sections innocent customers might be penalized, as the provisions defining a bucket shop, and prohibiting the keeper of it from making bucketing contracts, are entirely separable from, and not dependent upon, the provisions relating to the other party to such contract. *Id.*

4. Prosecutions

Prosecutions under this section should be in the name of the United States. *United States v. Cella* (37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633).

§ 22-1510. Penalty for bucketing or keeping bucket-shop.

Any person who makes or offers to make any contract defined in section 22-1509, or who is the keeper of any bucket-shop, shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year. Any person who shall be convicted of a second offense shall be punished by imprisonment for not more than five years. The continuing of the keeping of a bucket-shop by any person after the first conviction therefor shall be deemed a second offense under sections 22-1509 to 22-1512. If a domestic corporation shall be convicted of a second offense, the United States District Court for the District of Columbia shall have jurisdiction, upon an information in equity in the name of the United States attorney for the District of Columbia, on the relation of the commissioners of the District of Columbia, to dissolve the corporation; and if a foreign corporation shall be convicted of a second offense, the United States District Court for the District of Columbia shall have jurisdiction, in the same manner, to restrain the corporation from doing business in the District of Columbia. (Mar. 3, 1901, ch. 854, § 869b, as added Mar. 1, 1909, 35 Stat.

671, ch. 233, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, § 32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1, eff. Sept. 1, 1948, substituted "United States attorney" for "United States district attorney." See U.S. Code, title 28, § 501.

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 22-1511. Penalty for communicating, receiving, exhibiting, or displaying quotations of prices.

Any person who shall communicate, receive, exhibit, or display in any manner any statement of quotations of prices of any securities or commodities with an intent to make, or offer to make, or to aid in making, or offering to make any contract prohibited by sections 22-1509 to 22-1512, upon conviction thereof shall be subject to the penalties provided in section 22-1510. (Mar. 3, 1901, ch. 854, § 869c, as added Mar. 1, 1909, 35 Stat. 671, ch. 233.)

§ 22-1512. Bucketing—Written statement to be furnished—Contents.

Every person shall furnish, upon demand, to any customer or principal for whom such person has executed any order for the actual purchase or sale of any securities or commodities, either for immediate or future delivery, a written statement, containing the names of the persons from whom such property was bought or to whom it has been sold, as the fact may be, the time when, place where, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within twenty-four hours after such demand such refusal or neglect shall be prima facie evidence that such purchase or sale was bucketing or bucket-shopping within the terms of sections 22-1509 to 22-1512. (Mar. 3, 1901, ch. 854, § 869d, as added Mar. 1, 1909, 35 Stat. 671, ch. 233.)

§ 22-1513. Corrupt influence in connection with athletic contests.

(a) It shall be unlawful to pay or give, or to agree to pay or give, or to promise or offer, any valuable thing to any individual—

(1) with intent to influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit his or his team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) with intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause (A) the loss of such athletic contest by such contestant, participant, or team;

or (B) the margin of victory or score of such contestant, participant, or team to be limited; or

(3) with intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause (A) the loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or (B) the margin of victory or score of any such contest, participant, or team to be limited.

(b) It shall be unlawful for any individual to solicit or accept, or to agree to accept, any valuable thing or a promise or offer of any valuable thing—

(1) to influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit his or his team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause (A) the loss of such athletic contest by such contestant, participant, or team; or (B) the margin of victory or score of such contestant, participant, or team to be limited; or

(3) to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause (A) the loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or (B) the margin of victory or score of any such contestant, participant, or team to be limited.

(c) Whoever violates any provision of subsection (a) of this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years and by a fine of not more than \$10,000.

(d) Whoever violates any provision of subsection (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year and by a fine of not more than \$5,000.

(e) As used in this section, the term "athletic contest" means any of the following, wherever held or to be held: A football, baseball, softball, basketball, hockey, or polo game, or a tennis or wrestling match, or a prize fight or boxing match, or a horse race or any other athletic or sporting event or contest. (Mar. 3, 1901, ch. 854, § 869e, as added July 11, 1947, 61 Stat. 313, ch. 230.)

§ 22-1514. Immunity of witnesses—Record.

(a) Whenever, in the judgment of the United States attorney for the District of Columbia, the testimony of any witness, or the production of books,

papers, or other records or documents, by any witness, in any case or proceeding involving a violation of this chapter before any grand jury or a court in the District of Columbia, is necessary in the public interest, such witness shall not be excused from testifying or from producing books, papers, and other records and documents on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, or subject him to penalty or forfeiture; but such witness shall not be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that such witness so testifying shall not be exempt from prosecution and punishment for perjury or contempt committed in so testifying.

(b) The judgment of the United States attorney for the District of Columbia that any testimony, or the production of any books, papers, or other records or documents, is necessary in the public interest shall be confirmed in a written communication over the signature of the United States attorney for the District of Columbia, addressed to the grand jury or the court in the District of Columbia concerned, and shall be made a part of the record of the case or proceeding in which such testimony or evidence is given. (Mar. 3, 1901, ch. 854, § 869f, as added June 29, 1953, 67 Stat. 96, ch. 159, § 206(d).)

§ 22-1515. Presence in illegal establishments.

(a) Whoever is found in the District in a gambling establishment or an establishment where intoxicating liquor is sold without a license or any narcotic drug is sold, administered, or dispensed without a license shall, if he knew that it was such an establishment and if he is unable to give a good account of his presence in the establishment, be imprisoned for not more than one year or fined not more than \$500, or both.

(b) Whoever is employed in a gambling establishment in the District or an establishment in the District where intoxicating liquor is sold without a license or where any narcotic drug is sold, administered, or dispensed without a license, knowing that it is such an establishment, shall be imprisoned for not more than one year or fined not more than \$500, or both. (June 29, 1953, 67 Stat. 97, ch. 159, § 208.)

CROSS REFERENCES

Alcoholic beverages, sale without a license, see § 25-109.

Definition of District, see note under § 1-319.

Uniform Narcotic Drug Act, unlawful acts under, see § 33-402.

Chapter 16.—GAME AND FISH LAWS

Sec.

22-1601 to 22-1606. Repealed.

22-1607. Penalties for violation of sections 22-1601, 22-1602, 22-1604 to 22-1606.

22-1608 to 22-1627. Repealed.

22-1628. Commissioners' authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

22-1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

Sec.

22-1630. Seizure of hunting and fishing equipment by police officer—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

22-1631. Penalties—Prosecutions to be in name of District by Corporation Counsel or assistants.

22-1632. Delegation of functions by Secretary of Interior and Commissioners—Commissioners authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioners" and "Secretary of Interior" for purposes of chapter.

22-1633. Existing authority of Secretary of Interior not impaired to control and manage fish and wildlife on land and waters in District under his jurisdiction.

§ 22-1601 to 22-1606. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a), (e).

Section 22-1601, act Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 896, dealt with the prohibition and control of net fishing in the Potomac River.

Section 22-1602, acts Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 897; June 30, 1902, 32 Stat. 536, ch. 1329, controlled the catching and killing of bass.

Section 22-1603, act Mar. 3, 1927, 44 Stat. 1379, ch. 343, §§ 1-4, defined person and prohibited the sale of bass.

Section 22-1604, acts Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 898; Feb. 26, 1944, 58 Stat. 105, ch. 67, regulated the sale and possession of shad or herring.

Section 22-1605, acts Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 899; Nov. 30, 1945, 59 Stat. 588, ch. 498, regulated the sale of small striped bass.

Section 22-1606, act Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 900, prohibited use of explosives and drugs in fishing.

Sections 22-1601 to 22-1606 are now covered by sections 22-1628, 22-1631(a).

EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the 180th day following Aug. 23, 1958, see section 9 of act Aug. 23, 1958, set out as a note under section 22-1628.

§ 22-1607. Penalties for violation of sections 22-1601, 22-1602, 22-1604 to 22-1606.

CODIFICATION

Section transferred to section 22-1703a.

§ 22-1608 to 22-1627. Repealed. Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 8 (a)—(d).

Section 22-1608, acts Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 903; June 30, 1902, 32 Stat. 536, ch. 1329, dealt with confiscation of fishing equipment used in violation of law.

Sections 22-1609 to 22-1612, acts Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 1; Mar. 3, 1901, 31 Stat. 1091, ch. 844, dealt with the sale and possession of woodcocks; squirrels and rabbits; wild chicks, wild geese and the like; and certain game birds, respectively.

Section 22-1613, act Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 2, dealt with sale or possession of deer meat.

Sections 22-1614, 22-1615, acts Mar. 3, 1899, 30 Stat. 1012, ch. 417, § 3; Mar. 3, 1901, 31 Stat. 1092, ch. 844, dealt with wild birds and robbing or destroying; and trapping, netting, etc., of wild birds, possession of devices for such purpose, respectively.

Sections 22-1616 to 22-1620, act Mar. 3, 1899, 30 Stat. 1913, ch. 417, §§ 5-9, related to inspection of premises to detect violation of game laws; trespassing for purposes of hunting shooting or having guns in possession on a Sunday; killing or capturing game beyond District jurisdiction; and compensation for persons securing convictions under game laws, respectively.

Sections 22-1621 to 22-1623, act June 30, 1906, 34 Stat. 808, ch. 3932, §§ 1-3, dealt with killing of game birds and permits therefor; hunting of squirrels, chipmunks and

rabbits without a permit; and killing of English sparrow or wild animal suffering from disease or injury, respectively.

Section 22-1624, acts June 30, 1906, 34 Stat. 809, ch. 3932, § 5; July 14, 1932, 47 Stat. 660, ch. 478, § 1, dealt with hunting or disbursing of ducks, geese and waterfowl.

Sections 22-1625 to 22-1627, act Dec. 18, 1919, 41 Stat. 368, ch. 10, §§ 1—3, prohibited sale, possession or purchase of certain types of birds; provided for issuance of license for certain scientific purposes; and provided for sale of birds raised in captivity or for propagation, respectively.

Sections 22-1608 to 22-1627 are now covered by sections 22-1628 to 22-1633.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the 180th day following Aug. 23, 1958, see section 9 of act Aug. 23, 1958, set out as a note under section 22-1628.

§ 22-1628. Commissioners' authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

The Commissioners are authorized to restrict, prohibit, regulate, and control hunting and fishing and the taking, possession and sale of wild animals in the District: *Provided*, That nothing herein contained shall authorize the Commissioners to impose any requirement for a fishing license or fee of any nature whatsoever: *Provided further*, That nothing herein contained shall authorize the Commissioners to prohibit, restrict, regulate, or control the killing, capture, purchase, sale, or possession of migratory birds as defined in regulations issued pursuant to the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U. S. C. 703—711) and taken for scientific, propagating, or other purposes under permits issued by the Secretary of the Interior: *And provided further*, That nothing herein contained shall authorize the Commissioners to prohibit, restrict, regulate or control the sale or possession of wild animals taken legally in any State, Territory or possession of the United States or in any foreign country, or produced on a game farm, except as may be necessary to protect the public health or safety. As used in this section the term "wild animals" includes, without limitation, mammals, birds, fish, and reptiles not ordinarily domesticated. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 1.)

EFFECTIVE DATE

Section 9 of act Aug. 23, 1958, provided that: "This Act [enacting sections 22-1628 to 22-1633, amending section 22-1703a and repealing sections 22-1601 to 22-1606 and 22-1608 to 22-1627] shall take effect on the 180th day following the approval thereof [Aug. 23, 1958]."

NOTES TO DECISIONS

1. Historical

Respective rights of Virginia and Maryland in waters of Potomac River. *Marine R. & Coal Co. v. United States* (1921, 42 S. Ct. 32, 257 U.S. 47, 66 L. Ed. 124). See, also, *Herald v. United States* (1923, 284 F. 927, 52 App. D.C. 147).

Compact of 1785 between Maryland and Virginia providing for the right of fishing in the Potomac River was never in force in the District of Columbia. *Evans v. United States* (31 App. D. C. 544).

§ 22-1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

Authorized officers and employees of the Government of the United States or of the government of the District of Columbia are, for the purpose of

enforcing the provisions of this chapter and the regulations promulgated by the Commissioners under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall or cold-storage plant. No person shall refuse to permit any such inspection. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 2.)

§ 22-1630. Seizure of hunting and fishing equipment by police officer—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

(a) All rifles, shotguns, ammunition, bows, arrows, traps, seines, nets, boats, and other devices of every nature or description used by any person within the District of Columbia when engaged in killing, ensnaring, trapping, or capturing any wild bird, wild mammal or fish contrary to this chapter or any regulation made pursuant to this chapter shall be seized by any police officer upon the arrest of such person on a charge of violating any provision of this chapter or any regulations made pursuant thereto, and be delivered to the Commissioners. If the person so arrested is acquitted, the property so seized shall be returned to the person in whose possession it was found. If the person so arrested is convicted, the property so seized shall, in the discretion of the court, be forfeited to the District of Columbia, and be sold at public auction, the proceeds from such sale to be deposited in the Treasury to the credit of the District of Columbia. If any item of such property is not purchased at such auction, it shall be disposed of in accordance with regulations prescribed by the Commissioners.

(b) If any property seized under the authority of this section is subject to a lien which is established by intervention or otherwise to the satisfaction of the court as having been created without the lienor's having any notice that such property was to be used in connection with a violation of any provision of this chapter or any regulation made pursuant thereto, the court, upon the conviction of the accused, may order a sale of such property at public auction. The officer conducting such sale, after deducting proper fees and costs incident to the seizure, keeping, and sale of such property, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Aug. 23, 1958, 72 Stat. 814, Pub. L. 85-730, § 3.)

§ 22-1631. Penalties—Prosecutions to be in name of District by Corporation Counsel or assistants.

(a) Any person convicted of violating any provision of this chapter, or any regulation made pursuant to this chapter, shall be fined not more than \$300 or imprisoned not more than 90 days, or both.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 4.)

§ 22-1632. Delegation of functions by Secretary of Interior and Commissioners—Commissioners authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioners" and "Secretary of Interior" for purposes of chapter.

(a) The Secretary of the Interior and the Commissioners, respectively, are authorized to delegate any of the functions to be performed by them under the authority of this chapter.

(b) The Commissioners are authorized to make such regulations as may be necessary to carry out the purpose of this chapter: *Provided*, That any regulations issued pursuant to this chapter shall be subject to the approval of the Secretary of the Interior insofar as they involve any areas or waters of the District of Columbia under his administrative jurisdiction.

(c) As used in this chapter the word "Commissioners" means the Commissioners of the District of Columbia or their designated agent or agents, and the words "Secretary of the Interior" means the Secretary of the Interior or his designated agent or agents. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 5.)

§ 22-1633. Existing authority of Secretary of Interior not impaired to control and manage fish and wildlife on land and waters in District under his jurisdiction.

Nothing in this chapter or in any regulation promulgated by the Commissioners under the authority of this chapter shall in any way impair the existing authority of the Secretary of the Interior to control and manage fish and wildlife on the land and waters in the District of Columbia under his administrative jurisdiction. (Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 6.)

Chapter 17.—HARBOR REGULATIONS

Sec.

22-1701. Harbor regulations—Authority vested in Commissioners to make—Federal approval if affecting navigable waters—Parks and waterfront—Penalty.

22-1702. Throwing or depositing matter in Potomac River.

22-1703. Deposits of deleterious matter in Rock Creek or Potomac River.

22-1703a. Penalties for violation of section 22-1703.

§ 22-1701. Harbor regulations—Authority vested in Commissioners to make—Federal approval if affecting navigable waters—Parks and waterfront—Penalty.

Every vessel coming to anchor in the Potomac River between the junction of the Washington and Georgetown Channels of said river and the extension of the south line of P Street southwest, in the city of Washington, shall anchor as near the flats in said river as possible, so that the channel of said river will not be obstructed; and if such vessel is to remain over twelve hours it shall be moored with both anchors, so as to give room for passing vessels and so as not to swing and obstruct said channel. Every vessel coming to anchor in any other portion of the navigable waters in the District of Columbia shall also be so moored under the direction of the harbor master, or the pilot of the police boat acting in the harbor master's absence, as not to obstruct the channel, and be secured with an anchor at bow and

stern as to keep the long axis of the vessel parallel with that of the channel and prevent it from swinging so as to obstruct the free passage of the channel by other vessels.

No vessel shall be permitted to anchor in the Washington Channel of the Potomac River between a point one thousand feet south of the south line of P Street and the north line of K Street south extended, each point to be designated by a white buoy; and all vessels coming to anchor above the north line of K Street south aforesaid shall come to anchor as near the flats as possible and so that the channel will not be obstructed; and all vessels coming to anchor shall be so moored by the use of both anchors as to prevent obstruction of the channel within four hundred feet of the nearest wharf, the said anchorage to continue only twenty-four hours unless otherwise ordered or directed by the harbor master.

The captain or owner of any sunken vessel or other structure in any dock or at the end of any wharf in the District of Columbia, shall raise and remove the same in five days. Any vessel at the end of wharves or in docks shall, when required by the harbor master, haul either way to accommodate vessels going in or coming out from such wharves or docks. They shall not occupy regular steamers' or sailing packets' berths without permission from the recognized occupants of such wharves and dock, and they are required to rig in all fore-and-aft spars, have boats hoisted up under the bow, and davits turned up, as the harbor master may direct. Vessels when not engaged in loading or discharging cargo shall give place to such vessels as are ready to receive or deliver freights; and if the captain or person in charge of any vessel refuse to move said vessel when notified by the occupant of the wharf at which she is lying, the harbor master shall order him to haul to some other berth or into the stream. The powers and authority herein conferred upon the harbor master may, in his absence or temporary disability, be exercised by the pilot of the harbor police boat. Any person refusing to obey the instructions of the harbor master, or, in case of his absence or temporary disability, the said pilot of the harbor police boat, or any person failing to comply with any of the provisions of this section, shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or both.

The commissioners of the District of Columbia are hereby vested with authority to make harbor regulations for the entire water-front of the city within the District of Columbia, to alter and amend the same from time to time as they may find necessary: *Provided*, That whenever these regulations affect navigable waters, channels, and anchorage areas or other interests of the United States, such regulations shall be subject to the approval of the Secretary of the Army: *And provided further*, That whenever said regulations affect the water-front within the District of Columbia under the jurisdiction of the Director of the National Park Service, or affect the interests and rights of the National Capital Planning Commission, such regulations shall be subject to prior approval of the respective agencies. (Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 895; June 30, 1902, 32 Stat.

535, ch. 1329; Feb. 8, 1904, 33 Stat. 11, ch. 152, §§ 1, 2; June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1; June 15, 1934, 48 Stat. 963, ch. 536.)

CODIFICATION

The first two sentences of the third paragraph reading "No vessel shall be permitted to lie in Seventeenth street canal, New Jersey avenue canal, James Creek canal, or at the entrance thereof, so as to obstruct the passage of any vessel going into or out of the same or moving from one place to another therein, unless such obstructing vessel is actually engaged in loading or unloading, and shall then, if deemed expedient by the harbor master, be removed to such place as shall be necessary to give room to passing vessels. Any captain or owner of or any one in charge of any barge, sand scow, or any vessel that may sink in said canals shall raise and remove the same in five days." were omitted from the Code as obsolete.

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U. S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

AMENDMENTS

1934—Act June 15, 1934, added the fourth paragraph.

1904—Act June 30, 1902, § 1, added the second sentence of the first paragraph.

1902—Act June 30, 1902, § 1, divided original paragraph into the first three paragraphs of the section, substituting "between a point one thousand feet south of the south line of P Street and the north line of K Street south extended, each point to be designated by a white buoy; and all vessels coming to anchor above the north line of K Street south" for "between the extended lines of P or K Street south." in the second paragraph and "steamers' or sailing packets'" for "steamers or sailing packets'" in the third paragraph.

Act June 30, 1902, § 2, required the captain or owner of any sunken vessel or other structure in any dock or at the end of any wharf in the District of Columbia to raise and remove the same in five days.

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, as added July 19, 1952, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1-1009.

CROSS REFERENCES

Fish wharf and market, see § 10-135.

Jurisdiction and control of wharves, see §§ 9-101, 9-102.

Metropolitan police, duty to enforce harbor regulations, see § 4-106.

Rules and regulations, publication and effect, see §§ 4-177, 4-178.

§ 22-1702. Throwing or depositing matter in Potomac River.

(a) It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below high-water mark, unless for the purpose of making a wharf, after permission has been obtained from the commissioners of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.

(b) It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.

(c) Nothing in this section contained shall be construed to interfere with the work of improvement in or along the said river and harbor under the supervision of the United States Government.

(d) Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court. (Feb. 3, 1913, 37 Stat. 656, ch. 25.)

§ 22-1703. Deposits of deleterious matter in Rock Creek or Potomac River.

No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 901.)

NOTES TO DECISIONS

Application 1 Negligence 2

1. Application

The prohibition of this section is "general and unqualified, and applies to all alike," and prevents the discharge of any such waste products. *Holden v. United States* (24 App. D.C. 318, certiorari denied 25 S. Ct. 796, 196 U.S. 639, 49 L. Ed. 631).

2. Negligence

When construction company places tanks on banks of navigable stream within limits of the city and if substance from the tanks escapes into the river and interferes with public use, it is liable irrespective of the question of negligence. *Brennan Constr. Co. v. Cumberland* (29 App. D.C. 554, 15 L.R.A., N.S., 535, 10 Ann. Cas. 865).

§ 22-1703a. Penalties for violation of section 22-1703.

Any person who shall violate any provision of section 22-1703 shall for each such offense be fined not more than \$300 or imprisoned not more than ninety days, or both. (Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 902; Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 7.)

AMENDMENT

1958—Act Aug. 23, 1958, amended section to provide a penalty of a fine not to exceed \$300 or imprisonment not to exceed ninety days or both in place of a fine not less than ten nor more than one hundred dollars and in default of payment of fine imprisonment not to exceed six months and to eliminate provision for receipt of one-half of fine by officer or other person securing the conviction.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 23, 1958, effective on the 180th day following Aug. 23, 1958, see section 9 of act Aug. 23, 1958, set out as a note under section 22-1628.

Chapter 18.—HOUSEBREAKING

Sec.

22-1801. Definition and penalty.

§ 22-1801. Definition and penalty.

Whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be imprisoned for not more than fifteen years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 823.)

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Admissibility of evidence 5
 Argument of counsel 1
 Arrest and search 2—4
 Arrest without warrant 3
 Search without warrant 4
 Arrest without warrant 3
 Evidence 5—7
 Admissibility 5
 Sufficiency 6
 Witnesses 7
 Indictment 8
 Instructions 9
 Intent 10
 Joinder 11
 Plea of guilty 12
 Remand 14
 Review 13, 14
 Remand 14
 Search without arrest 4
 Sentence 15
 Sufficiency of evidence 6
 Waiver of lunacy hearing 16
 Witnesses, evidence 7

1. Argument of counsel

In prosecution for housebreaking, fact that prosecutor remarked to jury, in his summation, about defendant's failure to call certain witnesses, did not mean that trial court was required to instruct jury that it was not the duty of defendant to make any defense, and trial court did not err in refusing such a requested instruction. *Lawson v. United States* (1957, 248 F. 2d 654, 101 U. S. App. D. C. 332, certiorari denied 78 S. Ct. 552, 355 U. S. 963, 2 L. Ed. 2d 537).

2. Arrest and search

Police officers, who suspected defendant of having broken into and robbed drugstore, were entitled to ring defendant's doorbell and inquire concerning his whereabouts, and their observation, while awaiting admittance to defendant's house, of bottles and cigarettes, which apparently had been stolen from drugstore and which were lying in vicinity of porch, did not constitute a "search". *Ellison v. United States* (1953, 206 F. 2d 476, 93 U. S. App. D. C. 1).

3. — Arrest without warrant

Officers, who were investigating drugstore robbery, who knew that defendant had committed similar robbery two years before, and who discovered, on defendant's premises, heap of bottles and cigarettes, which were of type stolen from drugstore, had probable cause to believe defendant was guilty of felony, and, therefore, were justified in arresting defendant without warrant. *Ellison v. United States* (1953, 206 F. 2d 476, 93 U. S. App. D. C. 1).

The entering of a building with intent to commit any offense is a felony, and where officer's information gave him probable cause to believe that defendant had entered building with intent to steal, and defendant's appearance fitted "lookout" description given officer, no warrant was needed and arrest of defendant was lawful; and fact that district attorney saw fit to reduce charge from housebreaking to petit larceny did not change circumstances of arrest or invalidate confession obtained while defend-

ant being held under such arrest. *Scott v. United States* (D.C. Mun. App. 1959, 147 A. 2d 767).

4. — Search without warrant

Where police officer, who saw defendant walking along street about 2:00 in the morning, and who thought defendant had narcotics, without a warrant stopped defendant, who admitted that he had not worked for over a year, and had maintained himself by gambling, and officer then informed defendant that he was arresting him for vagrancy and required him to disrobe, search, which led to discovery of stolen money orders, was an unreasonable and unlawful violation of defendant's rights as a citizen, rendering stolen money orders inadmissible in prosecution for forgery, housebreaking, grand larceny, and interstate transportation of falsely made securities. *White, etc. v. United States* (1959, 271 F. 2d 829, 106 U. S. App. D. C. 246).

Where defendant was arrested late at night without a warrant and booked on an open charge for investigation, statements of defendant while in jail that he had nothing to hide and that the officers could go and see for themselves did not establish an agreement that the officers could search the defendant's household without first procuring a warrant. *Judd v. United States* (1951, 190 F. 2d 649, 89 U. S. App. D. C. 64).

5. Evidence—Admissibility

In prosecution for housebreaking and larceny, United States District Court, under the circumstances, did not abuse its discretion in admitting evidence of defendant's participation in another alleged crime of similar character committed the same evening. *Adams v. United States* (1956, 239 F. 2d 451, 99 U. S. App. D. C. 288).

Housebreaking, robbery and burglary are merely aggravated forms of larceny and evidence competent in one case is competent, also, in the others. *Edwards v. U.S.* (1944, 139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 St. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

Where written confession of housebreaking and larceny was inadmissible because result of illegal detention and lengthy questioning of accused, subsequent oral admissions of accused, while still in custody immediately following first confession, and while demonstrating how premises were entered, were likewise inadmissible. *Akow-skey v. U.S.* (1947, 158 F. 2d 649, 81 U. S. App. D. C. 353).

6. — Sufficiency

In prosecution for housebreaking and larceny, evidence regarding identification of defendant made a case for the jury. *Williams v. United States* (C.A. D.C. 1960, 282 F. 2d 867).

Evidence was sufficient to sustain convictions for housebreaking, larceny and destroying movable property. *Braddy v. United States of America* (1955, 225 F. 2d 551, 96 U. S. App. D. C. 251).

In prosecution for housebreaking and larceny, evidence was sufficient to establish corporate character of occupant of property entered and owner of property stolen. *Bord v. U.S.* (1943, 133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U. S. 671, 87 L. Ed. 539).

In prosecution for housebreaking and larceny, evidence was sufficient to sustain determination that defendant was one of men who entered building and committed larceny. *Id.*

Where jury could find beyond a reasonable doubt that both defendant and his companion entered a room with intent to steal and that either defendant or his companion stole watch, defendant's conviction of larceny of a watch and of entering a room with intent to commit larceny was authorized, notwithstanding that defendant's part in the crimes may have been only to stand guard. *Fretz v. U.S.* (1944, 140 F. 2d 468, 78 U. S. App. D. C. 290).

Where evidence showed that crimes of housebreaking and larceny were committed in store building by two men, defendant was found in unexplained association with another who later confessed participation in crimes and each was in possession of some of the stolen property, evidence was sufficient to justify conviction. *Edwards v. U.S.* (1944, 139 F. 2d 365, 78 U. S. App. D. C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

Evidence sustained a conviction for housebreaking. *Henderson v. United States* (1949, 172 F. 2d 289, 84 U. S. App. D. C. 295).

7. — Witnesses

In prosecution for housebreaking and larceny, record supported Government's theory that, while witness had made conflicting statements regarding whether he would testify, prosecutor reasonably believed that he would testify, and therefore action of prosecutor in calling witness who identified certain tools, but then relied on his privilege and refused to connect himself or defendant with the crime, was not objectionable on ground that defendant was deprived of a fair trial, where court instructed the jury to disregard witness' testimony and the tools which he identified. *Bord v. U.S.* (1943, 133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

8. Indictment

There is no variance where the indictment alleges that building entered was occupied by A and the proof shows occupancy by B, with the consent of A. *Cady v. United States* (1924, 293 F. 829, 54 App. D.C. 10).

The attempt to identify particular room in indictment charging larceny of watch and entering a room with intent to commit larceny was harmless surplusage. *Fretz v. U.S.* (1944, 140 F. 2d 468, 78 U.S. App. D.C. 290).

The purpose of the law in requiring the name of the person who occupied and used building entered to be stated in indictment is to negative the defendant's right to break and enter and to protect him from a second prosecution for the same offense. *Bord v. U.S.* (1943, 133 F. 2d 213, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

9. Instructions

In prosecution for housebreaking and grand larceny, trial court committed no reversible error in charging that if defendant's possession of recently stolen property was not accounted for in that satisfactory, straightforward and truthful way that would stamp it as an honest accounting, then such possession would be a foundation for a presumption of guilt against the possessor, even though trial court could have chosen more exact language in its attempt to express limited character of presumption to which it was referring. *Wright v. United States* (1951, 189 F. 2d 699, 89 U. S. App. D. C. 70).

In prosecution for housebreaking and larceny, where after jury had been out several hours the court recalled jury and stated that a juror should ask himself whether his view is reasonable or unreasonable, that he should not be bullheaded, that he should not be stubborn, and that if he found himself in a small minority he should ask himself "would I be shocking my conscience or reason if I yielded", use of the words "bullheaded" and "stubborn" did not coerce the jury, in view of additional parts of the instruction. *Bord v. U.S.* (1943, 133 F. 2d 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

10. Intent

Unlawful entry with intent to commit an offense constitutes the crime, hence, the actual commission of the other offense is not necessary. *Lee v. United States* (37 App. D. C. 442).

Evidence, that lock on garage had been pulled, that defendants were in the garage that morning and when questioned by a witness at that time refused to make a response and drove away, was sufficient to sustain conviction of feloniously entering with intent to commit larceny. *Cady v. United States* (1924, 293 F. 829, 54 App. D.C. 10).

11. Joinder

Counts of housebreaking and of larceny committed after the entry may be joined, and the court does not err in refusing to require the government to elect between them. *Lee v. United States* (37 App. D. C. 442).

12. Plea of guilty

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction.

Gaynor v. United States (1957, 247 F. 2d 583, 101 U. S. App. D. C. 177).

Where evidence in prosecution for housebreaking and grand larceny disclosed close association between defendant and codefendant in events leading to their arrests, receiving codefendant's plea of guilty in presence of jury, and calling attention to such plea during taking of evidence and while instructing jury, was prejudicial to defendant's right to be tried solely on evidence against him. *Payton v. United States* (1955, 222 F. 2d 794, 96 U. S. App. D. C. 1).

Upon defendant's motion to withdraw his plea of guilty and to vacate and set aside sentence imposed upon him, court would treat defendant's papers as motion pursuant to statute pertaining to remedies on motion attacking sentence with reference to sentence being served and as application for relief in nature of common-law writ of error coram nobis with reference to sentences not then being served. *United States v. Sheffield* (1959, 179 F. Supp. 634, certiorari denied 80 S. Ct. 1633, 363 U.S. 853, 4 L. Ed. 2d 1735).

In proceeding treated as motion attacking sentence being served and as application for relief in nature of common-law writ of error coram nobis with regard to sentences not being served, evidence established that defendant was mentally competent at time of his plea of guilty and sentencing and that he had voluntarily and understandingly entered his plea. *Id.*

13. Review

Record in prosecution for housebreaking and larceny established that defendant received effective assistance of counsel, though defendant's counsel failed to seek to impeach complaining witness by use of police investigation report containing statements attributed to complaining witness. *Williams v. United States* (C.A. D.C. 1960, 282 F. 2d 867).

Where, in prosecution for housebreaking, no trial objection was made to certain evidence, Court of Appeals was not required to decide question of its admissibility, and in view of character of the evidence, would not do so in its discretion. *Lawson v. United States* (1957, 248 F. 2d 654, 101 U. S. App. D. C. 332, certiorari denied 78 S. Ct. 552, 355 U. S. 963, 2 L. Ed. 2d 537).

In prosecution for robbery and housebreaking where the Court of Appeals found no error affecting the substantial rights of the defendant, the judgment would be affirmed. *Baker Jr. v. United States* (1956, 234 F. 2d 685, 98 U. S. App. D. C. 250, certiorari denied 77 S. Ct. 136, 352 U. S. 901, 1 L. Ed. 2d 89, certiorari denied 78 S. Ct. 98, 355 U. S. 864, 2 L. Ed. 2d 70, rehearing denied 78 S. Ct. 152, 355 U. S. 886, 2 L. Ed. 2d 116, certiorari denied 79 S. Ct. 1145, 359 U. S. 1005, 3 L. Ed. 2d 1033, rehearing denied 80 S. Ct. 48, 361 U. S. 857, 4 L. Ed. 2d 97, certiorari denied 80 S. Ct. 1071, 362 U. S. 983, 4 L. Ed. 2d 1017, rehearing denied 80 S. Ct. 1603, 363 U. S. 832, 4 L. Ed. 2d 1526).

Where general sentence imposed upon accused, who was charged under two count indictment with housebreaking and larceny, was within the maximum sentence permitted for housebreaking, reviewing court could affirm the judgment without considering alleged errors concerning conviction for larceny. *Nelms v. United States* (1954, 215 F. 2d 678, 94 U. S. App. D. C. 267).

14. — Remand

Where defendant was convicted under first count of unlawful entry and his conviction under second count of possession of implements of crime consisting of crowbars was under statute which is unconstitutional in its application to crowbars, case was remanded with directions either to modify judgment by setting aside verdict on second count and dismissing that count or in the alternative to vacate judgment entirely, set aside verdict on second count, dismiss that count and resentence defendant for unlawful entry, notwithstanding that general sentence was for period less than maximum for unlawful entry. *Willis C. Washington v. United States* (1956, 232 F. 2d 357, 98 U.S. App. D.C. 100).

15. Sentence

Under the Indeterminate Sentence Act the trial court could impose a term of imprisonment of 15 years, or less, as a maximum, i.e., not more than one-fifth of the 15 years. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D. C. 228, 45 A.L.R. 2d 1430).

16. Waiver of lunacy hearing

In prosecution for housebreaking, trial court's acceptance of waiver of pretrial lunacy hearing from defendant who stated he needed hospitalization and whose testimony showed confusion was error notwithstanding certification from acting superintendent of mental hospital that defendant was mentally competent to stand trial. *Durham v. United States* (1954, 214 F. 2d 862, 94 U. S. App. D. C. 228, 45 A. L. R. 2d 1430).

Chapter 19.—INCEST

Sec.

22-1901. Definition and penalty.

§ 22-1901. Definition and penalty.

If any person in the District related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law, shall marry or cohabit with or have sexual intercourse with such other so-related person, knowing him or her to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment for not more than twelve years. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 875.)

CROSS REFERENCE

Assault with intent to commit crime, possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Habeas corpus 1
Instructions 2
View of premises 3

1. Habeas corpus

Where accused was found not guilty by reason of insanity and was committed to hospital and some two months thereafter accused petitioned for writ of habeas corpus without prepayment of costs and District Court denied such petition without a hearing and without stating reasons for denial, case would be remanded and District Court, if it rejected allegation of poverty, would be required to state basis for such rejection, and if leave to file without costs was permitted or if accused should pay necessary filing fees, hospital superintendent would be directed to report as to accused's condition, and upon the return the District Court should conduct hearing to determine whether accused had recovered sanity and would not be dangerous to himself or others in reasonable future. *Tate, Sr. v. United States* (1960, 275 F. 2d 894, 107 U.S. App. D.C. 230).

2. Instructions

In prosecution for incest, refusal to give a prayer requested by defendant concerning reputation was not error where the subject had been adequately covered in an instruction given. *Hodge v. U.S.* (1942, 126 F. 2d 849, 75 U.S. App. D.C. 332).

3. View of premises

In prosecution for incest, refusal to grant defendant's motion for view of premises was not an abuse of discretion. *Hodge v. U.S.* (1942, 126 F. 2d 849, 75 U.S. App. D. C. 332).

Chapter 20.—INDECENT PUBLICATIONS

Sec.

22-2001. Definition and penalty.

§ 22-2001. Definition and penalty.

Whoever sells, or offers to sell, or give away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill,

book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 872.)

NOTES TO DECISIONS

Arrest, search and seizure 1
Constitutionality 2
Guilty knowledge 3
Intent 4
Sentence 5
Sufficiency of evidence 6

1. Arrest, search and seizure

Affidavit, which revealed that informer, who had learned that pornographic material was being sold, saw third party pass through entrance which might have led to two stores and possibly to apartments above, and that third party returned with pornographic material purchased for informer, affidavit was not sufficient to show probable cause for issuance of search warrant, and resulting search of one of the stores was illegal, and the evidence procured should have been suppressed in subsequent prosecution of store operator for possessing, with intent to sell, lewd and obscene photographs, films, and literature. *Lerner and Lerner v. United States* (D.C. Mun. App. 1959, 151 A.2d 184).

2. Constitutionality

No merit exists in defendant's contention that the statute, as construed and interpreted by the trial court, countervenes the first and fifth amendments. *Benjamin v. United States* (D. C. Mun. App. 1950, 74 A. 2d 64).

3. Guilty knowledge

Guilty knowledge must be alleged and proved. *Moens v. United States* (1920, 267 F. 317, 50 App. D.C. 15).

4. Intent

"If the indictment had charged knowledge of the character of the pictures in the possession of the accused, the criminal intent in exhibiting them would be implied from the guilty knowledge of their nature." *Moens v. United States* (1920, 267 F. 317, 50 App. D.C. 15).

5. Sentence

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of \$300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was too severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Hankins v. United States* (D. C. Mun. App. 1956, 120 A. 2d 590).

Statutes providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*

6. Sufficiency of evidence

Evidence sustained conviction of female dancers for participating in obscene, indecent and lascivious performances. *Clarke et al. v. United States* (D.C. Mun. App. 1960, 160 A. 2d 97).

Without attempting to describe the pictures, court was of opinion that they were of such a nature as to sustain a finding of guilty by any recognized standard. *Benjamin v. United States* (D. C. Mun. App. 1950, 74 A. 2d 64).

Chapter 21.—KIDNAPING

Sec.

22-2101. Definition.

§ 22-2101. Definition.

Whoever shall be guilty of, or of aiding or abetting in, seizing, confining, inveigling, enticing, decoying, kidnaping, abducting, concealing, or carrying away any individual by any means whatsoever, and holding or detaining, or with the intent to hold or detain, such individual for ransom or reward, shall, upon conviction thereof, be punished by imprisonment for life or for such term as the court in its discretion may determine. This section shall be held to have been violated if either the seizing, confining, inveigling, enticing, decoying, kidnaping, abducting, concealing, carrying away, holding, or detaining occurs in the District of Columbia. If two or more individuals enter into any agreement or conspiracy to do any act or acts which would constitute a violation of the provisions of this section, and one or more of such individuals do any act to effect the object of such agreement or conspiracy, each such individual shall be deemed to have violated the provisions of this section. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 812; Feb. 18, 1933, 47 Stat. 858, ch. 103.)

AMENDMENT

1933—Act Feb. 18, 1933, amended the provisions to read as set forth in the text. Prior to the amendment the section read: "Whoever unlawfully and forcibly or fraudulently carries off or decoys out of the District any person, or arrests or imprisons any person with the intention of having such person carried out of the District, shall be imprisoned for not less than one nor more than seven years, or fined not exceeding one thousand dollars, or both: *Provided*, That whoever leads, carries, or entices away a child under the age of sixteen years, with the intent unlawfully to detain or conceal such child so lead, taken, or enticed away, shall be imprisoned for not more than twenty years or fined not exceeding one thousand dollars, or both."

CROSS REFERENCES

Lindbergh kidnaping law, see U.S. Code, title 18, §§ 1201, 1202.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTE TO DECISION

1. Parent

"In no case, in the absence of an express provision of statute, can a parent be guilty of kidnaping his or her own minor child, unless the forcible taking is from the custody established by the decree of a competent court." *Hard v. Splain* (45 App. D. C. 1).

Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

Sec.

22-2201. Grand larceny.

22-2202. Petit larceny—Order of restitution.

22-2203. Larceny after trust.

22-2204. Unauthorized use of vehicles.

22-2204a. Theft from vehicles.

22-2205. Receiving stolen goods.

22-2206. Stealing property of District of Columbia.

22-2207. Receiving property stolen from the District of Columbia.

22-2208. Destroying stolen property.

§ 22-2201. Grand larceny.

Whoever shall feloniously take and carry away anything of value of the amount or value of \$100 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854,

§ 826; Aug. 12, 1937, 50 Stat. 628, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215(a)).

AMENDMENTS

1953—Act June 29, 1953, increased the value from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the value from \$35 to \$50.

CROSS REFERENCES

Allegations and proof of fraudulent intent, see § 23-203. Concealing or converting assets of estates, see § 22-1404. Embezzlement, see § 22-1201 et seq.

False pretenses and false personations, see § 22-1301 et seq.

Joinder of offenses, see § 23-201.

Misappropriation of assets of building and homestead associations declared to be larceny, see § 26-404.

Misappropriation of funds of certain corporations, or of funds entrusted to such corporations, made larceny, see § 26-320.

Possession of firearms, additional penalty, see §§ 22-3201, 22-3202.

Robbery, see § 22-2901.

Stealing library books, see § 22-3106.

Stealing written instruments, see § 22-1405.

Taking or carrying away will, codicil, or other testamentary instrument, see § 22-1403.

Taking property without right, see § 22-1211.

United States public money, property or records, embezzlement and theft, see U.S. Code, title 18, § 641.

Use of slugs in automatic vending machines, see §§ 22-1407 to 22-1409.

NOTES TO DECISIONS

Accomplice 1

Admissibility of evidence 5

Defense 2, 3

Intoxication 3

Directed verdict 27

Embezzlement 4

Evidence

Admissibility 5

Sufficiency 6

Force and violence 7

Fraud, larceny by 8

Habeas corpus 9

Indictment 10

Inferences 11

Instructions 12

Intent 13

Intoxication, defense 3

Joinder 14

Liability of arresting officer 15

Locus of conversion 15

Plea of guilty 17

Prior acquittal 18

Questions for jury 19

Review 20

Search without warrant 21

Seizure defined 22

Sentence 23

Sufficiency of evidence 6

Unexplained possession of stolen property 24

Variance 25

Verdict 26, 27

Directed verdict 27

1. Accomplice

In prosecution for the unauthorized use of a vehicle and larceny of other property in District of Columbia, evidence on issue of whether defendant had aided and abetted those who took the property and whether the planning and the taking were within the District sustained conviction, even though it was not shown that defendant was present at the taking or had used the automobile in the District. *Williams v. United States* (1954, 215 F. 2d 35, 94 U. S. App. D. C. 219).

2. Defense

In prosecution for grand larceny and for unauthorized use of a vehicle, wherein defense was interposed that defendant was repossessing automobile on request of man engaged in automobile business, testimony and argument of Government to effect that repossession of automobiles must be accomplished by a United States marshal and that repossession by an individual was illegal, which testimony and argument led jury to believe that defendant was engaged in an illegal enterprise in repossessing automobile, was prejudicial error, where jury was not instructed to disregard testimony or argument on this point, notwithstanding that jury was instructed that Government had to prove every element of crime, includ-

ing intent, beyond reasonable doubt. *Evans v. United States* (1956, 232 F. 2d 379, 98 U. S. App. D. C. 122).

3. — Intoxication

One who steals while intoxicated may nevertheless be convicted if he converts the property after complete return to consciousness. *Ryan v. United States* (26 App. D. C. 74, 6 Ann. Cas. 633).

4. Embezzlement

To constitute larceny the property must be unlawfully taken from the possession of another, with the fraudulent intent to convert the same to his own use; he who takes without the consent of the owner commits a trespass; the offense of embezzlement consists in the wrongful conversion of the property which has been entrusted to the possession of another; he commits no trespass or wrong in acquiring the possession, but a breach of trust in converting the property to his own use. *Rohde v. United States* (34 App. D. C. 249).

Treasurer of unincorporated association who converts funds coming into his possession as such treasurer is guilty of embezzlement and not larceny. *Id.*

Embezzlement is where any agent, attorney, clerk, or servant wrongfully converts to his own use anything of value which shall come into his possession or under his care by virtue of his employment, but his possession for a special limited purpose may not destroy legal possession of the owner, and therefore his subsequent conversion of the article would be larceny. *Talbert v. United States* (42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581).

Driver of transfer truck who converts property while hauling it from a freight depot is guilty of larceny and not embezzlement. *Weisberg v. United States* (1919, 258 F. 284, 49 App. D.C. 28). See, also, *Talbert v. United States* (42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581).

A bookkeeper and clerk in a hotel, to whom a guest delivers property for safe-keeping, and who subsequently abstracts them from the hotel safe, is guilty of larceny and not embezzlement. *Chanock v. United States* (1920, 267 F. 612, 50 App. D.C. 54, 11 A.L.R. 799).

5. Evidence—Admissibility

Stolen guns, which were obtained by officers from defendant's apartment and automobile as result of unlawful search and seizure in violation of the Fourth Amendment to the Constitution, were inadmissible in grand larceny prosecution. *Lee v. United States* (1956, 232 F. 2d 354, 98 U. S. App. D. C. 97).

The corporate character of the owner or occupant of property stolen or entered may be proved by "reputation"; that is, by evidence tending to show that the corporation was de facto organized and acting as such. *Bord v. United States* (1943, 133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U. S. 671, 87 L. Ed. 539).

6. — Sufficiency

In prosecution for housebreaking and larceny, evidence regarding identification of defendant made a case for the jury. *Williams v. United States* (C.A. D.C. 1960, 282 F. 2d 867).

Evidence was sufficient to sustain conviction for housebreaking, larceny and destroying movable property. *Braddy v. United States of America* (1955, 225 F. 2d 551, 96 U. S. App. D. C. 251).

Evidence justified larceny conviction of an accused whose alleged confederate removed carton of spark plugs from store and placed carton in their automobile while accused was in store notwithstanding no property was marked for or offered in evidence at trial. *Foster v. United States* (1954, 212 F. 2d 249, 94 U. S. App. D. C. 83, certiorari denied 75 S. Ct. 69, 348 U. S. 845, 99 L. Ed. 666).

In prosecution for housebreaking and larceny, evidence was sufficient to establish corporate character of occupant of property entered and owner of property stolen. *Bord v. U.S.* (1943, 133 F. 2d 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

In prosecution for housebreaking and larceny, evidence was sufficient to sustain determination that defendant was one of men who entered building and committed larceny. *Id.*

In prosecution for housebreaking and larceny, record supported Government's theory that, while witness had made conflicting statements regarding whether he would testify, prosecutor reasonably believed that he would testify, and therefore action of prosecutor in calling witness who identified certain tools, but then relied on his privilege and refused to connect himself or defendant with the crime, was not objectionable on ground that defendant was deprived of a fair trial, where court instructed the jury to disregard witness' testimony and the tools which he identified. *Id.*

Evidence that another person had stolen bag containing surgical instruments and placed bag on wheelbarrow used by such person and defendant in collecting junk and stated to defendant that bag had been found among garbage cans and that when contents of bag were discovered defendant made unsuccessful effort to return bag and instruments to owner, and later delivered bag and contents to policeman, was insufficient to convict defendant of grand larceny. *Williams v. U.S.* (1944, 140 F. 2d 351, 78 U. S. App. D. C. 322).

7. Force and violence

Larceny consists in "a wrongful and fraudulent taking" and it does not exclude the idea of force and violence, or of fraud accompanied by force, nor does it imply that the taking must be secret. *Williams v. United States* (3 App. D. C. 335).

8. Fraud, larceny by

Where the victim was induced by artifice to part with possession of property but clearly did not intend to pass title, subsequent conversion by the swindlers completed the crime of larceny by trick. *Ballard v. United States* (1956, 237 F. 2d 582, 99 U. S. App. D. C. 101, certiorari denied 77 S. Ct. 574, 352 U. S. 1017, 1 L. Ed. 2d 554).

Under the statute making it a crime to feloniously take and carry away anything of the value of \$50 or upwards, one who obtains money from another upon representation that he will perform certain services therewith for the latter intending at the time to convert the money and actually converting it to his own use is guilty of larceny. *Graham v. United States* (1951, 187 F. 2d 87, 88 U. S. App. D. C. 129, certiorari denied 71 S. Ct. 741, 341 U. S. 920, 95 L. Ed. 1353).

9. Habeas corpus

Where petitioners were arrested in Pennsylvania, charged with committing certain crimes in the District of Columbia, habeas corpus proceedings would be proper to raise jurisdictional questions respecting their removal to the District. *U.S. ex rel, Miller et al. v. Reing* (D.C. Pa. 1949, 81 F. Supp. 367).

10. Indictment

It is sufficient in the indictment to describe the property by the generic name of the class to which it belongs. *Nordlinger v. United States* (24 App. D. C. 406, 70 L. R. A. 227).

11. Inferences

Where theater was entered and money and property stolen therefrom and on same night adjoining flower shop was entered and money stolen therefrom, it could reasonably be inferred that the man who stole from the theater also stole from the flower shop. *Bord v. U.S.* (1943, 133 F. 2d 313, 76 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

Where evidence showed that crimes of housebreaking and larceny were committed in store building by two men, defendant was found in unexplained association with another who later confessed participation in crimes and each was in possession of some of the stolen property, evidence was sufficient to justify conviction. *Edwards v. U.S.* (1944, 139 F. 2d 365, 78 U.S. App. D.C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

12. Instructions

In prosecution for grand larceny, where judge instructed jury that the testimony of an accomplice should be received with care and scrutinized with caution, there was no error in refusing to charge that conviction could not rest on the uncorroborated testimony of an accomplice. *Ballard v. United States* (1956, 237 F. 2d 582, 99 U. S. App. D. C. 101, certiorari denied 77 S. Ct. 574, 352 U. S. 1017, 1 L. Ed. 2d 554).

In prosecution on count charging impersonation of officer and count charging grand larceny, error, if any, in charge instructing that jury could convict on second count even if they acquitted on first was harmless in view of fact that jury found defendant guilty of both offenses. *Wheeler v. United States* (1951, 190 F. 2d 663, 89 U. S. App. D. C. 143).

In prosecution for grand larceny, court's charge as a whole relating to larceny was an adequate statement of law applicable to the evidence and was fair to defendant. *Graham v. United States* (1951, 187 F. 2d 87, 88 U. S. App. D. C. 129, certiorari denied 71 S. Ct. 741, 341 U. S. 920, 95 L. Ed. 1353).

In prosecution for grand larceny, defendant's general request, made prior to rendition of charge, that court charge that if prosecuting witness gave defendant money intending that he may be able to pass title to it, there was no larceny, was an incorrect statement of law. *Id.*

In prosecution for housebreaking and larceny, where after jury had been out several hours the court recalled jury and stated that a juror should ask himself whether his view is reasonable or unreasonable, that he should not be bullheaded, that he should not be stubborn, and that if he found himself in a small minority he should ask himself "would I be shocking my conscience or reason if I yielded", use of the words "bullheaded" and "stubborn," did not coerce the jury, in view of additional parts of the instruction. *Bord v. U.S.* (1943, 133 F. 2d 313, 76 U.S. App. D.C. 205, certiorari denied 63 S. Ct. 77, 78, 317 U.S. 671, 87 L. Ed. 539).

Where defendant was charged with entering and stealing from theater and with entering and stealing from adjoining flower shop on same night, instruction that, if jury found defendant guilty of entering and stealing from theater, they might but need not draw the inference that it was he who entered and stole from the flower shop, was proper. *Id.*

13. Intent

Unlawful taking is not sufficient, it must be coupled with the intent to steal. *Ryan v. United States* (26 App. D. C. 74, 6 Ann. Cas. 633).

Drunkenness no defense unless "so drunk as to be incapable of forming the intent to steal; that is to say, incapable of consciousness that he is committing a crime. Incapable of discriminating between right and wrong." *Id.*

Where possession is secured by fraud, trick, or artifice the criminal intent must exist at the time the article is received. *Talbert v. United States* (42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581). See, also, *Woodward v. United States* (38 App. D.C. 323); *Miller v. United States* (41 App. D.C. 52, certiorari denied 34 S. Ct. 323, 231 U.S. 755, 58 L. Ed. 468).

Where possession of jewelry is secured by a salesman for the purpose of exhibiting the same to a prospective purchaser, and he subsequently converts it to his own use, the offense is larceny, and it is immaterial when the intent to convert was formed. *Talbert v. United States* (42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581).

14. Joinder

Counts of housebreaking and of larceny committed after the entry may be joined, and the court does not err in refusing to require the government to elect between them. *Lee v. United States* (37 App. D. C. 442).

15. Liability of arresting officer

Arrest of one without warrant on strong suspicion of stealing a pocketbook containing \$30, precluded maintenance of action for false arrest, since the officers could not know the amount of money it contained. *Maghan v. Jerome* (1937, 88 F. 2d 1001, 67 App. D.C. 9).

16. Locus of conversion

The fact that one who, while intoxicated, stole an automobile and converted the same beyond the District of Columbia does not prevent a prosecution here, when the original taking was in the District. *Ryan v. United States* (26 App. D. C. 74, 6 Ann. Cas. 633).

Indictment for larceny will not lie against one who steals property in another state and brings it into the District. *Brown v. United States* (35 App. D. C. 548, Ann. Cas. 1912A, 388). See, also, *Davis v. United States* (18 App. D.C. 468).

17. Plea of guilty

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 247 F. 2d 583, 101 U. S. App. D. C. 177).

Where evidence in prosecution for housebreaking and grand larceny disclosed close association between defendant and codefendant in events leading to their arrests, receiving codefendant's plea of guilty in presence of jury, and calling attention to such plea during taking of evidence and while instructing jury, was prejudicial to defendant's right to be tried solely on evidence against him. *Leroy Payton v. United States* (1955, 222 F. 2d 794, 96 U. S. App. D. C. 1).

18. Prior acquittal

On plea of prior acquittal, the test of the identity of offenses that has commonly been applied in such cases is whether the facts necessary to conviction under the second indictment would have been sufficient, if proved, to warrant a conviction under the first. *Nordlinger v. United States* (24 App. D. C. 406, 70 L. R. A. 227).

19. Questions for jury

Evidence, in prosecution for theft and unauthorized use of motor vehicle, that appellant and another defendant took truck with paint spray pump, both of which appellant knew were not owned by fellow defendant, and that they had traveled 175 miles on way to another state, and had arranged to sell or pledge the pump in exchange for gasoline, oil and whiskey, was sufficient, in absence of any explanation, to raise issue for jury on question of defendant's guilty knowledge and intent. *Gilbert v. United States* (1954, 215 F. 2d 334, 94 U. S. App. D. C. 321).

20. Review

Record on appeal from conviction for attempted grand larceny did not disclose material and prejudicial variance between indictment and conviction and proof, prejudicial error in precluding cross-examination concerning ownership of property, or application of erroneous concept of crime of attempted larceny by trick. *Pearce v. United States* (C.A. D.C. 1960, 286 F. 2d 532).

Record in prosecution for housebreaking and larceny established that defendant received effective assistance of counsel, though defendant's counsel failed to seek to impeach complaining witness by use of police investigation report containing statements attributed to complaining witness. *Williams v. United States* (C.A. D.C. 1960, 282 F. 2d 867).

In prosecution for robbery and housebreaking where the Court of Appeals found no error affecting the substantial rights of the defendant, the judgment would be affirmed. *Baker Jr. v. United States* (1956, 234 F. 2d 685, 98 U. S. App. D. C. 250, certiorari denied 77 S. Ct. 136, 352 U. S. 901, 1 L. Ed. 2d 89, certiorari denied 78 S. Ct. 98, 355 U. S. 864, 2 L. Ed. 2d 70, rehearing denied 78 S. Ct. 152, 355 U. S. 886, 2 L. Ed. 2d 116, certiorari denied 79 S. Ct. 1145, 359 U. S. 1005, 3 L. Ed. 2d 1033, rehearing denied 80 S. Ct. 48, 361 U. S. 857, 4 L. Ed. 2d 97, certiorari denied 80 S. Ct. 1071 362 U. S. 983, 4 L. Ed. 2d 1017, rehearing denied 80 S. Ct. 1603, 363 U. S. 832, 4 L. Ed. 2d 1526).

Where general sentence imposed upon accused, who was charged under two count indictment with housebreaking and larceny, was within the maximum sentence permitted for housebreaking, reviewing court could affirm the judgment without considering alleged errors concerning conviction for larceny. *Nelms v. United States* (1954, 215 F. 2d 678, 94 U. S. App. D. C. 267).

21. Search without warrant

Where police officer, who saw defendant walking along street about 2:00 in the morning, and who thought defendant had narcotics, without a warrant stopped defendant, who admitted that he had not worked for over a year, and had maintained himself by gambling, and officer then informed defendant that he was arresting him for vagrancy and required him to disrobe, search, which led to discovery of stolen money orders, was an unreasonable and unlawful violation of defendant's rights as a

citizen, rendering stolen money orders inadmissible in prosecution for forgery, housebreaking, grand larceny, and interstate transportation of falsely made securities. *White, etc. v. United States* (1959, 271 F. 2d 829, 106 U.S. App. D.C. 246).

Where jewelry had been taken from scene of murder and officers were informed that a man was selling some jewelry on a street, they had right and duty to approach, confront and interrogate him though they had no warrant. *Lee v. United States* (1955, 221 F. 2d 29, 95 U. S. App. D. C. 156).

Where defendant was arrested late at night without a warrant and booked on an open charge for investigation, statements of defendant while in jail that he had nothing to hide and that the officers could go and see for themselves did not establish an agreement that the officers could search the defendant's household without first procuring a warrant. *Judd v. United States* (1951, 190 F. 2d 649, 89 U. S. App. D. C. 64).

22. Seizure defined

Where officers had right and duty to confront and interrogate suspect in investigation of murder, and suspect on alighting from automobile dropped handkerchief containing jewelry into street, action of officers in taking jewelry was not "seizure" in legal sense and same was competent evidence in larceny prosecution and trial court properly refused to suppress it as evidence. *Lee v. United States* (1955, 221 F. 2d 29, 95 U. S. App. D. C. 156).

23. Sentence

In prosecution for grand larceny and unauthorized use of a vehicle, imposition of sentences on defendant of from two to five years on the unauthorized use count and from two to seven years on the grand larceny count, was proper even though the two offenses grew out of the same set of facts and circumstances and offense of unauthorized use was included in that of grand larceny, where sentences were imposed to run concurrently. *Evans v. United States* (1956, 232 F. 2d 379, 98 U. S. App. D. C. 122).

Where person having been sentenced for two to four years for grand larceny, served 25 months and was then resentenced to serve 15 months on grounds that the prior sentences were void because the Indeterminate Sentence Act did not apply to such actions, sentence did not run as of date of the original sentences. *De Benque v. United States* (1936, 85 F. 2d 202, 66 App. D.C. 36, 106 A.L.R. 839, certiorari denied 56 S. Ct. 960, 298 U.S. 681, 80 L. Ed. 1402, rehearing denied 57 S. Ct. 6, 299 U.S. 620, 81 L. Ed. 457).

24. Unexplained possession of stolen property

The unexplained exclusive possession of stolen property, shortly after the commission of larceny, does not raise presumption of law that defendant committed larceny, but it may satisfy jury and warrant verdict of guilty. *Wright v. United States* (1951, 189 F. 2d 699, 89 U. S. App. D. C. 70).

In prosecution for housebreaking and grand larceny, trial court committed no reversible error in charging that if defendant's possession of recently stolen property was not accounted for in that satisfactory, straightforward and truthful way that would stamp it as an honest accounting, then such possession would be a foundation for a presumption of guilt against the possessor, even though trial court could have chosen more exact language in its attempt to express limited character of presumption to which it was referring. *Id.*

"The unexplained exclusive possession of stolen property, shortly after the commission of a larceny, may satisfy the jury and warrant a verdict of guilty" of larceny. *Tractenberg v. United States* (1924, 293 F. 476, 53 App. D.C. 396).

Possession of recently stolen property, unexplained, is sufficient to support conviction for larceny. *Edwards v. U.S.* (1944, 139 F. 2d 365, 78 U.S. App. D.C. 226, certiorari denied 64 S. Ct. 523, 321 U. S. 769, 88 L. Ed. 1064).

25. Variance

Where indictment alleges ownership in A B R, and the proof shows A P R, the variance is not prejudicial. *Jones v. United States* (1923, 289 F. 536, 53 App. D.C. 138). See, also, *Williams v. United States* (3 App. D.C. 335).

27. — Directed verdict

Where court instructed jury that if it should find defendant guilty of embezzlement as to either transaction, it would have to return a verdict of not guilty as to the companion larceny count, but jury found defendant guilty of both embezzlement and larceny as to the same transaction, District Court had right to direct verdict of acquittal on larceny count, and defendant was not prejudiced by any alleged "choice of verdicts" since penalty for embezzlement was less than that for larceny. *United States v. Daigle* (1957, 149 F. Supp. 409, affirmed 101 U.S. App. D.C. 286, 248 F. 2d 608, certiorari denied 78 S. Ct. 344, 355 U.S. 913, 2 L. Ed. 2d 274.)

27. — Directed verdict

In grand larceny prosecution, court properly refused to direct verdict for the defendant. *Graham v. United States* (1951, 187 F. 2d 87, 88, U. S. App. D. C. 129, certiorari denied 71 S. Ct. 741, 341 U. S. 920, 95 L. Ed. 1353).

§ 22-2202. Petit larceny—Order of restitution.

Whoever shall feloniously take and carry away any property of value of less than \$100, including things savoring of the realty, shall be fined not more than \$200 or be imprisoned for not more than one year, or both. And in all convictions for larceny, either grand or petit, the trial justice may, in his sound discretion, order restitution to be made of the value of the money or property shown to have been stolen by the defendant and made way with or otherwise disposed of and not recovered. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 827; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215(c).)

AMENDMENTS

1953—Act June 29, 1953, increased the value from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the value from \$35 to \$50.

1902—Act June 30, 1902, added the second sentence.

NOTES TO DECISIONS

Admissibility of evidence 5
Arrest without warrant 1
Burden of proof 2
Continuance 3
Conversion 4
Evidence
Admissibility 5
Sufficiency 6
Indictment 7
Instructions 8
Plea of guilty 9
Probation 10
Return of articles 11
Sentence 12
Sufficiency of evidence 6
Suppression of evidence 13
Value of property 14

1. Arrest without warrant

Officers, who were investigating drugstore robbery, who knew that defendant had committed similar robbery two years before, and who discovered, on defendant's premises, heap of bottles and cigarettes, which were of type stolen from drugstore, had probable cause to believe defendant was guilty of felony, and, therefore, were justified in arresting defendant without warrant. *Ellison v. United States* (1953, 206 F. 2d 476, 93 U. S. App. D. C. 1).

Stealing of less than \$35 was a misdemeanor and an officer could not arrest for a misdemeanor without a warrant unless it was committed in his presence or within his view. *Maghan v. Jerome* (1937, 88 F. 2d 1001, 67 App. D.C. 9).

The entering of a building with intent to commit any offense is a felony, and where officer's information gave him probable cause to believe that defendant had entered building with intent to steal, and defendant's appearance fitted "lookout" description given officer, no warrant was needed and arrest of defendant was lawful; and fact that district attorney saw fit to reduce charge from housebreaking to petit larceny did not change circumstances of arrest or invalidate confession obtained while defendant was being held under such arrest. *Scott, Jr. v. United States* (D.C. Mun. App. 1959, 147 A. 2d 767).

2. Burden of proof

In prosecution for petit larceny, burden of proof to establish a taking and asportation by defendant is more onerous on the prosecution where the larceny alleged occurs in a self-service store. *Groomes v. United States* (D.C. Mun. App. 1959, 155 A. 2d 73).

3. Continuance

Where the trial court had said a doctor's certificate would be required before the case could be continued on account of appellant's illness, and appellant was produced in court, and the trial continued without further objection, the question of granting the continuance was in the judicial discretion of the trial court. *Campbell v. United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

4. Conversion

One who is handed a bill or coin for the purpose of making change receives only custody of the money, and if he returns less than the correct change, with the felonious intent of converting the remainder to his own use, he is guilty of larceny. *Rice v. United States* (D. C. Mun. App. 1949, 64 A. 2d 567).

5. Evidence—Admissibility

Where items allegedly stolen from complaining witness were plainly visible from hallway through open door of defendant's apartment, and complaining witness gathered up articles claimed and handed them to arresting officer, who had remained in hallway, complaining witness acted as arm of police in reducing articles to possession, and inasmuch as officer did not have a search warrant, search and seizure were unlawful, evidence obtained by complaining witness was inadmissible in prosecution of defendant and, even though case was tried by court without jury, defendant was entitled to a new trial. *Moody v. United States* (D.C. Mun. App. 1960, 163 A. 2d 337).

Where detective arranged to meet defendant in poolroom and upon meeting him suggested that they go to precinct for their discussion and while at station house he asked defendant to see any money he had on his person and defendant voluntarily produced a dollar bill which was found to have serial number corresponding with serial number on a bill stolen the night before from a pharmacy, whereupon he was placed under arrest, one dollar bill was properly admitted in subsequent prosecution for petit larceny. *Jackson v. United States* (D.C. Mun. App. 1958, 146 A. 2d 577).

In prosecution for petit larceny involving theft of currency from a pharmacy formerly employing defendant, on whose person was found a one dollar bill containing a serial number corresponding with one of serial numbers of currency that had been stolen, two one dollar bills taken from poolroom cash register where defendant had just recently made change, having serial numbers corresponding with two bills of stolen currency, were admissible although bills were not directly connected with defendant and standing alone would be insufficient to support a conviction. *Id.*

In prosecution of maid for stealing currency from room in rooming house, admission of officer's testimony that from his investigation he learned that only maid and complaining witness had keys to room did not result in prejudice to maid, where true facts relating to keys were brought to light by other evidence. *Brock v. United States* (D. C. Mun. App. 1956, 122 A. 2d 763).

Where defendant was convicted of petit larceny upon evidence obtained during an unlawful search and seizure, it must be reversed as the search of her desk was an invasion upon her privacy so as to constitute a violation of the Fourth Amendment. *Blok v. United States* (D.C. Mun. App. 1950, 70 A. 2d 55).

In prosecution for petit larceny, which if committed was complete before fight ensued, admission of testimony concerning fight and nature of prosecuting witness' wounds was prejudicial error. *Furr v. U.S.* (D.C. Mun. App. 1943, 32 A. 2d 111).

In prosecution for petit larceny, admission of evidence regarding subsequent fight and nature of wounds received by prosecuting witness was so plainly prejudicial that appellate court had right to notice and correct the error even if it had not been properly saved for review. *Id.*

6. — Sufficiency

Evidence was sufficient to sustain conviction for house-breaking, larceny and destroying movable property. *Braddy v. United States* (1955, 225 F. 2d 551, 96 U. S. App. D. C. 251).

Where jury could find beyond a reasonable doubt that both defendant and his companion entered a room with intent to steal and that either defendant or his companion stole watch, defendant's conviction of larceny of a watch and of entering a room with intent to commit larceny was authorized, notwithstanding that defendant's part in the crimes may have been only to stand guard. *Fretz v. U.S.* (1944, 140 F. 2d 468, 78 U.S. App. D.C. 290).

In prosecution for petit larceny, elements of a taking and asportation by defendant are satisfied, where evidence shows that property was taken from owner and was concealed or put in a convenient place for removal, and fact that possession of defendant was brief or that defendant was detected before goods could be removed from the owner's premises is immaterial. *Groomes v. United States* (D.C. Mun. App. 1959, 155 A. 2d 73).

Where evidence in prosecution for petit larceny disclosed that defendant, while shopping in self-service market, was seen by clerk to remove two articles from shelf and put them in her purse, which was inside a cart containing some groceries, and that defendant then closed the purse, and clerk and manager of store followed defendant to checkout line, and when she saw them she walked toward back of store and gave them the articles from her purse, there was a sufficient showing by the prosecution of a taking and carrying away of the articles by the defendant. *Id.*

Evidence was sufficient to sustain a conviction for petit larceny. *Jackson v. United States* (D. C. Mun. App. 1958, 146 A. 2d 577).

Evidence was sufficient to sustain conviction of stealing currency from locked brief case of occupant of rooming house where defendant was working as maid. *Brock v. United States* (D. C. Mun. App. 1956, 122 A. 2d 763).

Where after defendant left the store, he was arrested for petit larceny by the store detective who was the prosecuting witness and whose testimony was accepted as true by the jury, as it obviously was, the guilt of appellant was established beyond a reasonable doubt. *Campbell v. United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

Defendant's assignment of error that there was insufficient evidence to justify conviction, where the testimony of complaining witness was uncorroborated, is unsound since it has been repeatedly held that generally testimony of a single witness may legally suffice as evidence upon which a jury may found the verdict. *Rice v. United States* (D. C. Mun. App. 1949, 64 A. 2d 567).

7. Indictment

The attempt to identify particular room in indictment charging larceny of watch and entering a room with intent to commit larceny was harmless surplusage. *Fretz v. U.S.* (1944, 140 F. 2d 468, U.S. App. D.C. 290).

8. Instructions

Trial judge did not violate the rule of singling out and declaring the effect of certain facts, without consideration of other modifying facts, where by instructing the jury, he outlined the issues, and said among other things that "it was a question of fact for the jury to determine whether the cash register receipts had been obtained by defendant before, at the time of, or after his appearance at the store from which defendant was convicted of petty larceny of an item from the store." *Campbell v. United States* (D. C. Mun. App. 1949, 65 A. 2d 191).

9. Plea of guilty

In prosecution for housebreaking, larceny and destruction of property, wherein one defendant was permitted to change his plea in open court and in presence of jury and was asked by trial judge whether he admitted committing offense and replied that he did admit being with "them," there was error which, in view of circumstantial and inconclusive nature of evidence, would require reversal of another defendant's conviction. *Gaynor v. United States* (1957, 247 F. 2d 583, 101 U. S. App. D. C. 177).

Upon defendant's motion to withdraw his plea of guilty and to vacate and set aside sentence imposed upon him, court would treat defendant's papers as mo-

tion pursuant to statute pertaining to remedies on motion attacking sentence with reference to sentence being served and as application for relief in nature of common-law writ of error coram nobis with reference to sentences not then being served. *United States v. Sheffield* (1959, 179 F. Supp. 634, certiorari denied 80 S.Ct. 1633, 363 U.S. 853, 4 L. Ed. 2d 1735).

In proceeding treated as motion attacking sentence being served and as application for relief in nature of common-law writ of error coram nobis with regard to sentences not being served, evidence established that defendant was mentally competent at time of his plea of guilty and sentencing and that he had voluntarily and understandingly entered his plea. *Id.*

10. Probation

The Municipal Court of the District of Columbia may in its discretion order restitution or reparation as a condition of probation. *Basile v. United States* (D. C. Mun. App. 1944, 38 A. 2d 620).

11. Return of articles

Where evidence in prosecution for petit larceny disclosed that defendant, while shopping in self-service market, was seen by clerk to remove two articles from shelf and put them in her purse, which was inside a cart containing some groceries, and that defendant then closed the purse, and clerk and manager of store followed defendant to checkout line, and that when she saw them she walked toward back of store and gave them the articles from her purse, fact that defendant changed her mind about taking the articles or returned the articles to escape prosecution did not purge the original taking. *Groomes v. United States* (D.C. Mun. App. 1959, 155 A. 2d 73).

12. Sentence

Where defendant was convicted on all counts of a four count indictment charging him in one count with bribery, and in three counts with petit larceny, and sentences on the petit larceny counts ran concurrently with the sentence on the bribery count, and did not exceed it, validity of the bribery conviction supported the judgment. *Green v. United States* (1959, 267 F. 2d 619, 105 U.S. App. D.C. 342).

13. Suppression of evidence

Where police officer observed defendant and another, both of whom he recognized as having prior convictions for larceny, carrying a console-type record player and followed them into a liquor store, saw that the record player was new and questioned them about the machine and defendant gave improbable and unbelievable answers, officer had probable cause to arrest defendant for petit larceny, and refusal of trial court to suppress the evidence seized at time of arrest was not erroneous. *Brooks v. United States* (D.C. Mun. App. 1960, 159 A. 2d 876).

14. Value of property

In prosecution under petit larceny statute covering thefts of property of value of less than \$100, defendant was not prejudiced by proof that she stole more than \$100. *Brock v. United States* (D. C. Mun. App. 1956, 122 A. 2d 763).

§ 22-2203. Larceny after trust.

If any person entrusted with the possession of anything of value, including things savoring of the realty, for the purpose of applying the same for the use and benefit of the owner or person, so delivering it, shall fraudulently convert the same to his own use he shall, where the value of the thing so converted is \$100 or more, be punished by imprisonment for not less than one nor more than ten years, or by a fine of not more than \$1,000, or both; and where the value of the thing so converted is less than \$100 he shall be punished by imprisonment for not more than one year or by a fine of not more than \$500 or both: *Provided*, That nothing contained in this section shall be construed to alter or repeal any

section contained in this chapter. (Mar. 3, 1901, ch. 854, § 851b, as added Mar. 3, 1913, 37 Stat. 727, ch. 108, and amended Aug. 12, 1937, 50 Stat. 629, ch. 599; June 29, 1953, 67 Stat. 99, ch. 159, § 215(g).)

AMENDMENTS

1953—Act June 29, 1953, increased the value from \$50 to \$100.

1937—Act Aug. 12, 1937, increased the value from \$35 to \$50.

CROSS REFERENCES

Allegations and proof of fraudulent intent, see § 23-203.
Embezzlement, see § 22-1201 et seq.
Forgery and frauds, see § 22-1401 et seq.
Joinder of offenses, see § 23-201.

NOTES TO DECISIONS

Election of offenses 1
Embezzlement 2
Fraud or trick 3
Use and benefit 4

1. Election of offenses

Where indictment charged embezzlement, false pretense, and larceny after trust, any confusion which might have existed as a result of the prosecution being allowed to put in its case before making an election was dispelled by election at end of Government's case and by instructions to jury. *Dobbins v. U.S.* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where indictment charged embezzlement, false pretense, and larceny after trust, defendant's motion that Government be required to elect to place its case on one of the three crimes charged before putting in evidence was addressed to discretion of trial court and its denial of motion was not an abuse of discretion. *Id.*

2. Embezzlement

Taking was an embezzlement and not larceny after trust, *Talbert v. United States* (42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L.Ed. 1581). See, also, *Henry v. United States* (1921, 273 F. 330, 50 App. D.C. 366, certiorari denied 42 S. Ct. 51, 257 U.S. 640, 66 L. Ed. 411).

3. Fraud or trick

This section has no bearing on larceny by fraud or trick. *Talbert v. United States* (42 App. D.C. 1, certiorari denied 34 S. Ct. 997, 234 U.S. 762, 58 L. Ed. 1581).

4. Use and benefit

"Under the provisions of this section, the possession of property must be intrusted 'for the purpose of applying the same for the use and benefit' of the person so intrusting it; that is, the person to whom intrusted must be clothed with some actual dominion and control over the property for the purpose named. Otherwise, he is a mere temporary custodian, and, if he wrongfully appropriates the property he is guilty of larceny, and not of the crime denounced by this section." *Atkinson v. United States* (1923, 289 F. 935, 53 App. D.C. 277).

§ 22-2204. Unauthorized use of vehicles.

Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment. (Mar. 3, 1901, ch. 854, § 826b, as added Feb. 3, 1913, 37 Stat. 656, ch. 23, § 1.)

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Accomplice 1	Prime facie rule 5
Aiding and abetting 2	Questions for jury 6
Defense 3	Sentence 7
Evidence 4	Variance 8

1. Accomplice

In prosecution for the unauthorized use of a vehicle and larceny of other property in District of Columbia, evidence on issue of whether defendant had aided and abetted those who took the property and whether the planning and the taking were within the District sustained conviction, even though it was not shown that defendant was present at the taking or had used the automobile in the District. *Williams v. United States* (1954, 215 F. 2d 35, 94 U. S. App. D. C. 219).

2. Aiding and abetting

One aiding and abetting unauthorized use of automobile stands in same shoes as principal offender. *Allen v. United States* (1958, 257 F. 2d 188, 103 U.S. App. D.C. 184).

3. Defense

In prosecution for grand larceny and for unauthorized use of a vehicle, wherein defense was interposed that defendant was repossessing automobile on request of man engaged in automobile business, testimony and argument of Government to effect that repossession of automobile must be accomplished by a United States marshal and that repossession by an individual was illegal, which testimony and argument led jury to believe that defendant was engaged in an illegal enterprise in repossessing automobile, was prejudicial error, where jury was not instructed to disregard testimony or argument on this point, notwithstanding that jury was instructed that Government had to prove every element of crime, including intent, beyond reasonable doubt. *Evans v. United States* (1956, 232 F. 2d 379, 98 U. S. App. D. C. 122).

Voluntary drunkenness does not constitute a defense to a charge of unauthorized use of a vehicle and specific intent or knowledge is not an element of the offense since the statute involves only a "general criminal intent" which may be presumed from doing the prohibited act. *Proctor v. U.S.* (1950, 177 F. 2d 656, 85 U.S. App. D. C. 341).

4. Evidence

Evidence was sufficient to sustain conviction for unauthorized use of an automobile. *Allen v. United States* (1958, 257 F. 2d 188, 103 U.S. App. D.C. 184).

In action for injuries sustained in an automobile accident, where owner testified that the driver did not have permission to use automobile, statements of driver about 10 or 15 minutes after the accident to an investigating officer that owner told driver that he could take the car, and statement of the driver to plaintiff that defendant would be angry with the driver because the defendant loaned the driver his car, were not admissible as excited utterances, since the driver had a motive for falsely representing his authority to have possession of the vehicle to avoid a criminal prosecution. *Sawyer et ano. v. Miseli* (D.C. Mun. App. 1959, 156 A. 2d 141).

5. Prima facie rule

In prosecution for unlawfully taking, using, operating, and removing a certain automobile truck from a certain street without owner's consent, the jury were entitled to apply the prima facie rule applicable to unexplained possession of recently stolen property. *Epps v. U.S.* (1946, 157 F. 2d 11, 81 U.S. App. D.C. 244).

6. Questions for jury

Evidence, in prosecution for theft, and unauthorized use of motor vehicle, that appellant and another defendant took truck with paint spray pump, both of which appellant knew were not owned by fellow defendant, and that they had traveled 175 miles on way to another state, and had arranged to sell or pledge the pump in exchange for gasoline, oil and whiskey, was sufficient, in absence of any explanation, to raise issue for jury on question of defendant's guilty knowledge and intent. *Gilbert v. United States* (1954, 215 F. 2d 334, 94 U.S. App. D. C. 321).

Evidence whether defendant who was found staggering with bleeding forehead from alley in vicinity of damaged automobile in which were found pieces of glass which appeared to fit perfectly the pieces in broken lens of

spectacles found in defendant's pocket, was guilty of unauthorized use of motor vehicle, was for jury. *Patalas v. United States* (1951, 185 F. 2d 507, 87 U. S. App. D. C. 379.)

In prosecution for unlawfully taking, using, operating, and removing a certain automobile truck without the consent of the owner, whether defendant was guilty was for jury. *Epps v. U.S.* (1946, 157 F. 2d 11, 81 U.S. App. D.C. 244).

7. Sentence

In prosecution for grand larceny and unauthorized use of a vehicle, imposition of sentences on defendant of from two to five years on the unauthorized use count and from two to seven years on the grand larceny count, was proper even though the two offenses grew out of the same set of facts and circumstances and offense of unauthorized use was included in that of grand larceny, where sentences were imposed to run concurrently. *Evans v. United States* (1956, 232 F. 2d 379, 98 U. S. App. D. C. 122).

8. Variance

Where indictment charged defendant with unlawfully taking, using, operating, and removing certain automobile truck from a certain street without owner's consent and proof showed that such truck was parked right on such street, there was no variance. *Epps v. U.S.* (1946, 157 F. 2d 11, 81 U.S. App. D.C. 244).

§ 22-2204a. Theft from vehicles.

Whoever, after March 7, 1942, and in any period during which any restrictions on the sale or use of any of the articles hereinafter referred to are in effect pursuant to any law of the United States, shall feloniously take and carry away any oil or gasoline, or any other lubricant or fuel; or any antifreeze mixture, compound, or solution; or any tire, tire casing, inner tube, or rim; or any wheel, tire chain, battery, or other part, equipment, or accessory, of the value of less than \$100, being then and there in, on, part of, or attached to any vehicle in the District of Columbia, shall suffer imprisonment for not more than three years: *Provided*, That nothing contained in this section shall be construed to affect the offense of grand larceny as defined by existing law. (Mar. 3, 1901, ch. 854, § 826c, as added Mar. 7, 1942, 56 Stat. 143, ch. 165, and amended June 29, 1953, 67 Stat. 99, ch. 159, § 215(b).)

AMENDMENT

1953—Act June 29, 1953, increased the value from \$50 to \$100.

§ 22-2205. Receiving stolen goods.

Any person who shall, with intent to defraud, receive or buy anything of value which shall have been stolen or obtained by robbery, knowing or having cause to believe the same to be so stolen or so obtained by robbery, if the thing or things received or bought shall be of the value of \$100 or upward, shall be imprisoned for not less than one year nor more than ten years; or if the value of the thing or things so received or bought be less than \$100, shall be fined not more than \$500 or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 829; June 29, 1953, 67 Stat. 98, ch. 159, § 213.)

AMENDMENT

1953—Act June 29, 1953, inserted "with intent to defraud," following "Any person who shall", deleted "with intent to defraud the owner thereof" preceding "if the thing or things", substituted "knowing or having cause to believe" for "knowing", increased the value from \$35 to \$100 and providing for a fine of not more than \$500 for offense involving the lesser sum and decreased the limit on imprisonment for such offense from two to one year.

CROSS REFERENCES

Allegation and proof of fraudulent intent, see § 23-203.
Joinder of offenses, see § 23-201.
Receiving embezzled goods, see § 22-1204.

NOTES TO DECISIONS

Accomplice in larceny 1
Admissibility of evidence 3
Arrest 2
Corroboration 4
Evidence 3-6
 Admissibility 3
 Corroboration 4
 Sufficiency 5
 Unexplained possession 6
Instructions 7
Larceny 8
Sufficiency of evidence 5
Unexplained possession 6

1. Accomplice in larceny

One who advises, incites, or connives at the offense of larceny but is not present at the taking (although chargeable as a principal under 1901 code, § 908 [§ 22-105]) may be convicted of receiving stolen property when he subsequently purchases it from the thief. *Weisberg v. United States* (1919, 258 F. 284, 49 App. D.C. 28).

2. Arrest

Where officers, who knew that furniture had been stolen and who had information linking accused to the crime, went to accused's second-hand furniture store and observed articles in show windows similar to those which had been stolen, asked accused for records required to be kept by second-hand dealers, asked to be shown more of same type of furniture which accused denied having, and looked around premises without objection by accused and found five new chairs hidden beneath old furniture, arrest without warrant was legal. *McQuaid v. United States* (1952, 198 F. 2d 987, 91 U. S. App. D. C. 229, certiorari denied 73 S. Ct. 499, 344 U. S. 929, 97 L. Ed. 715).

3. Evidence—Admissibility

Admissibility of evidence of other offenses is not subject to the qualification that the goods must have been received by the accused from the same person. *Witters v. United States* (1939, 106 F. 2d 837, 70 App. D.C. 316, 125 A.L.R. 1031).

4. — Corroboration

In prosecution for receiving stolen goods, testimony that defendant had goods in his possession shortly after theft thereof and retained such possession while attempting with others to sell them was sufficient corroborative evidence to support his admissions that he received goods and knew they had been stolen. *Inman v. United States* (1957, 243 F. 2d 256, 100 U. S. App. D. C. 150, certiorari denied 79 S. Ct. 132, 358 U. S. 888, 3 L. Ed. 2d 116).

5. — Sufficiency

In prosecution for knowingly receiving stolen goods, evidence relating to identity, ownership, and value of goods sustained conviction. *McQuaid v. United States* (1952, 198 F. 2d 987, 91 U. S. App. D. C. 229, certiorari denied 73 S. Ct. 499, 344 U. S. 929, 97 L. Ed. 715).

6. — Unexplained possession

A person's unexplained possession of goods known by him to have been stolen is a forceful circumstance supporting his admissions of receipt of goods to such extent as to justify jury in concluding that admissions were true. *Inman v. United States* (1957, 243 F. 2d 256, 100 U. S. App. D. C. 150, certiorari denied 79 S. Ct. 132, 358 U. S. 888, 3 L. Ed. 2d 116).

7. Instructions

In prosecution for knowingly receiving stolen property, instruction that it was not necessary to find that accused knew that property was stolen specifically from company named in indictment was not error where other instructions were given on theory that identification and ownership were essential elements of the crime and further instructions were not requested and there were no objections to instructions given. *McQuaid v. United States* (1952, 198 F. 2d 987, 91 U. S. App. D. C. 229, certiorari denied 73 S. Ct. 499, 344 U. S. 929, 97 L. Ed. 715).

In prosecution for receiving stolen goods of the value of \$35 or more, jury should have been instructed to find the value of the goods, and not merely that the goods were of

some value, even though defense counsel did not request such instruction, and even though indictment charged that the stolen goods had a value of about \$1,115.01. *McQuaid v. United States* (1951, 193 F. 2d 696, 90 U. S. App. D. C. 59).

Failure of court to charge in prosecution for receiving stolen goods of the value of about \$1,115.01, that the jury should find the value of the stolen goods was not prejudicial error, where sentence imposed on defendant was not for the more serious offense of receiving stolen goods of the value of \$35 or more, but for receiving goods of a value of less than \$35 and where defendant wanted new trial, not resentence. *Id.*

Jury were properly instructed that defendant's knowledge that goods were stolen must be proved as a separate substantive fact. *Baer v. United States* (1924, 293 F. 843, 54 App. D.C. 24).

8. Larceny

In prosecution for receiving stolen goods, whether evidence supporting defendant's admissions of his receipt of goods and knowledge that they were stolen would have supported conviction of larceny is immaterial, as one technically guilty of larceny, but not present when it occurred, may be convicted of receiving stolen goods. *Inman v. United States* (1957, 243 F. 2d 256, 100 U. S. App. D.C. 150, certiorari denied 79 S. Ct. 132, 358 U. S. 888, 3 L. Ed. 2d 116).

"Under the prevailing modern rule the crime of receiving stolen goods is a substantive offense, separate and distinct from the larceny itself." *Weisberg v. United States* (1919, 258 F. 284, 49 App. D.C. 28).

§ 22-2206. Stealing property of District of Columbia.

Whoever shall embezzle, steal, or purloin any money, property, or writing, the property of the District of Columbia, shall suffer imprisonment for not exceeding five years, or be fined not more than five thousand dollars, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 831.)

CROSS REFERENCES

Allegation and proof of fraudulent intent, see § 23-203.
Joinder of offenses, see § 23-201.
Possession of firearms, additional penalty, see §§ 22-335 to § 100.

NOTE TO DECISION

1. Evidence

In prosecution for housebreaking and larceny, United States District Court, under the circumstances, did not abuse its discretion in admitting evidence of defendant's participation in another alleged crime of similar character committed the same evening. *Adams v. United States* (1956, 239 F. 2d 451, 99 U. S. App. D. C. 288).

§ 22-2207. Receiving property stolen from the District of Columbia.

Whoever shall receive, conceal, or aid in concealing, or have in possession, with intent to convert to his own use, any money, property, or writing, the property of the District of Columbia, knowing the same to have been embezzled, stolen, or purloined from the District of Columbia by any other person, shall be punished by a fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both. (Mar. 3, 1901, 31 Stat. 1325, ch. 854, § 832.)

CROSS REFERENCES

Allegation and proof of fraudulent intent, see § 23-203.
Joinder of offenses, see § 23-201.

§ 22-2208. Destroying stolen property.

Whoever shall maliciously destroy anything of value of the amount or value of \$100 or upward which shall have been stolen, knowing the same to have been stolen, shall suffer imprisonment for not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 828; June 29, 1953, 67 Stat. 99, ch. 159, § 215(d).)

AMENDMENT

1953—Act June 29, 1953, increased the valuation from 3201, 22-3202.

CROSS REFERENCES

Allegations and proof of fraudulent intent, see § 23-203.
Joinder of offenses, see § 23-201.

Chapter 23.—LIBEL—BLACKMAIL

Sec.

- 22-2301. Libel.
- 22-2302. Libel—Publication—Sufficiency.
- 22-2303. Libel—Justification.
- 22-2304. False charges of unchastity.
- 22-2305. Blackmail.

§ 22-2301. Libel.

Whoever publishes a libel shall be punished by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding five years, or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 815.)

NOTES TO DECISIONS

Common law 1
Privileged communication 2
Sentence 3

1. Common law

Where this section provides the punishment for libel, defining publication and justification but not libel itself, common-law libel is thus meant. *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

2. Privileged communication

A scurrilous letter, addressed to the District Commissioners, charging certain of their subordinate officers with malfeasance in office, copies of which were sent to such officials, is not privileged, especially when no foundation for the charge appears. *Raymond v. United States* (25 App. D.C. 555, certiorari denied 26 S. Ct. 755, 200 U.S. 619, 50 L. Ed. 623).

3. Sentence

One convicted under this section, and sentenced to 5 years' imprisonment at hard labor is not thereby subjected to "cruel or unusual punishment." *Raymond v. United States* (25 App. D.C. 555, certiorari denied 26 S. Ct. 755, 200 U.S. 619, 50 L. Ed. 623).

§ 22-2302. Libel—Publication—Sufficiency.

To knowingly send or deliver any libelous communication to the party libeled is a sufficient publication to subject the person sending or delivering the same to punishment as provided in section 22-2301. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 816.)

NOTE TO DECISION

1. Indictment

Indictment is clearly inconsistent with an inference that the asserted libel was a privileged communication or an act done in the performance of a legal duty, because of the allegation in the indictment that the libelous words charged were not only false, scandalous, malicious, and defamatory, but were uttered with the unlawful and malicious intention to vilify, defame, scandalize, and disgrace the subject of the publication. *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

§ 22-2303. Libel—Justification.

Any publication of a libel shall be justified if it appear that the matter charged as libelous was true and was published with good motives and for justifiable ends. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 817.)

§ 22-2304. False charges of unchastity.

Whoever wrongfully accuses any woman of unchastity shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both, and shall also be liable to a

civil action for damages by the party injured. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 818.)

NOTES TO DECISIONS

Conspiracy 1
Crime against United States 2
Privileged communication 3

1. Conspiracy

In action for damages under this section, an alleged conspiracy or combination is not one of the elements of the cause of action, as it is not created by the conspiracy, but by the wrongful acts done by the defendants to the injury of the plaintiff. *Ewald v. Lane* (1939, 104 F. 2d 222, 70 App. D.C. 89, certiorari denied 60 S. Ct. 81, 308 U.S. 568, 84 L. Ed. 477).

2. Crime against United States

One who "wrongfully accuses a woman of unchastity commits a crime against the United States. And * * * an indictment for a conspiracy to commit * * * such an offense" charges an offense under said section 371 of title 18, U.S. Code. *Fletcher v. United States* (42 App. D.C. 53, certiorari denied 35 S. Ct. 283, 235 U.S. 706, 59 L. Ed. 434).

3. Privileged communication

Statement by physician to unmarried woman in the presence of a third party (who is there at the latter's request) that she is pregnant is privileged, in the absence of malice. *Brice v. Curtis* (38 App. D. C. 304)

§ 22-2305. Blackmail.

Whoever verbally or in writing accuses or threatens to accuse any person of a crime or of any conduct which, if true, would tend to disgrace such other person, or in any way subject him to the ridicule or contempt of society, or threatens to expose or publish any of his infirmities or failings, with intent to extort from such other person anything of value or any pecuniary advantage whatever, or to compel the person accused or threatened to do or to refrain from doing any act, and whoever with such intent publishes any such accusation against any other person shall be imprisoned for not more than five years or be fined not more than one thousand dollars, or both. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 819.)

NOTES TO DECISIONS

Affidavit, probable cause 1
Collection agency 2
Intent 3
Review 4

1. Affidavit, probable cause

When creditor, with intent to extort money, had accused debtor with conduct which, if true, would tend to subject him to the contempt of society, said debtor had probable cause for swearing out the affidavit under § 819 of the code (this section). *Slater v. Taylor* (31 App. D.C. 100, 18 L.R.A., N.S., 77).

2. Collection agency

No recovery can be had against a collection agency when they alleged that person's credit standing would be jeopardized if debt were not paid, as this does not violate the blackmail statute. *Clark v. Associated Retail Credit Men of Washington, D.C.* (1939, 105 F. 2d 62, 70 App. D.C. 183).

3. Intent

In blackmail prosecution, evidence sustained finding of intent to extort. *Connor v. United States* (1953, 200 F. 2d 750, 91 U. S. App. D. C. 417).

4. Review

Where no objection had been made during trial to admission of evidence, and proceedings with respect to pretrial motion, other than written motion and order denying it, were not part of record on appeal, reviewing court could not sustain defendant's contention that trial court had erred in denying his pretrial motion to suppress certain evidence. *Wade, Jr. v. United States* (1958, 259 F. 2d 950, 104 U.S. App. D.C. 135).

Chapter 24.—MURDER—MANSLAUGHTER

Sec.

- 22-2401. Murder in first degree—Purposeful killing—Killing while perpetrating certain crimes.
- 22-2402. Murder in first degree—Placing obstructions upon or displacement of railroad.
- 22-2403. Murder in second degree.
- 22-2404. Punishment for murder in first and second degrees.
- 22-2405. Punishment for manslaughter

§ 22-2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary, or without purpose so to do kills another in perpetrating or in attempting to perpetrate any arson, as defined in section 22-401 or 22-402, rape, mayhem, robbery, or kidnapping, or in perpetrating or attempting to perpetrate any housebreaking while armed with or using a dangerous weapon, is guilty of murder in the first degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 798; June 12, 1940, 54 Stat. 347, ch. 339.)

AMENDMENT

1940—Act June 12, 1940, enlarged the crime of murder in the first degree by adding those provisions commencing "or without purpose so to do."

NOTES TO DECISIONS

- Admissibility of evidence 11
- Arraignment 1
- Assault 2
- Common law 3
- Conduct of prosecutor 4
- Confessions 5
- Conviction of lesser offense 6
- Corpus delicti 7
- Deliberation 8
- Double jeopardy 9
- Elements of crime 10
- Evidence
- Admissibility 11
- Sufficiency 12
- Grounds for impeachment 13
- Housebreaking 14
- Indictment 15
- Instructions 16
- Intent 17
- Intoxication 18
- Jury 19
- Malice 20
- Means of commission 21
- Mental capacity 22
- Motive 23
- Prejudicial error 24
- Punishable by imprisonment in the penitentiary 25
- Purposeful 26
- Questions withheld from jury 27
- Review 28
- Robbery 29
- Self-defense 30
- Severance 31
- Sufficiency of evidence 12
- Summation of evidence 32
- Time 33
- Trial proceedings 34
- Verdict 35
- Victim's conduct contributing to death 36

1. Arraignment

Arraignment consists of three parts: (1) Calling the defendant by name and commanding him to hold up his hand, that his identification may be certain; (2) reading to him the indictment; (3) taking his plea. *Johnson v. United States* (38 App. D.C. 347, affirmed 32 S. Ct. 748, 225 U.S. 405, 56 L. Ed. 1142).

2. Assault

"A conviction for an assault and battery is no bar to a subsequent indictment for manslaughter, or murder, in case the person assaulted dies within a year and a day." *Hopkins v. United States* (4 App. D.C. 430).

Failure of deceased to secure proper medical attention after assault no defense to charge of homicide. *Id.*

3. Common law

"The definition of murder in section 798 of the 1901 code (this section) is the common-law definition of the

crime." *Hamilton v. United States* (26 App. D.C. 382). See, also, *Bishop v. United States* (1940, 107 F. 2d 297, 71 App. D.C. 132).

4. Conduct of prosecutor

In prosecution for murder, where prosecution did not abide by the court's ruling that it could not impeach its own witness and over repeated objections sought to convince jury that the witness had given a statement that was inconsistent with his sworn testimony at trial and made references to a prior statement of the witness not in evidence and improper conduct was renewed in summation to the jury, improper conduct of the prosecutor required reversal where conduct of the prosecutor might have affected the verdict on the issue of self defense or the degree of homicide. *Belton v. United States* (1958, 259 F. 2d 811, 104 U.S. App. D.C. 81).

5. Confessions

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with a deadly weapon, evidence sustained admission in evidence of defendant's written confession, subject to final determination by jury, upon all evidence, as to its voluntary nature. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U.S. App. D.C. 2, certiorari denied 72 S. Ct. 639, 343 U.S. 908, 96 L. Ed. 1326).

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. *Id.*

The drunken condition of accused when making a confession, unless such drunkenness goes to the extent of mania, does not affect the admissibility of such confession in evidence. *Bell v. United States* (1931, 47 F. 2d 438, 60 App. D.C. 76, 74 A.L.R. 1098).

While it is the general rule that a confession to be admissible must relate to the offense charged, it is equally true that it may include other offenses when there can be no separation of the relevant and irrelevant parts. *Robinson v. United States* (1933, 63 F. 2d 147, 61 App. D.C. 370, certiorari denied 53 S. Ct. 697, 289 U.S. 749, 77 L. Ed. 1494).

Where the evidence showed that one charged with murder in the first degree had made confession of his crime after being in custody but eleven hours, without fear or compulsion, the voluntariness of his confession was for the jury. *McAfee v. United States* (1940, 111 F. 2d 199, 72 App. D.C. 60, certiorari denied 60 S. Ct. 1094, 310 U.S. 643, 84 L. Ed. 1410).

In prosecution for murder, where neither of defendants made any attack upon the voluntariness of their confessions, either on direct examination or cross-examination, and not until on redirect examination did they intimate that confessions were obtained by threats of police to hold relatives of defendants until confessions were made, admitting confessions was not error. *Hawkins v. U.S.* (1947, 158 F. 2d 652, 81 U.S. App. D.C. 376, certiorari denied 67 S. Ct. 1347, 331 U.S. 830, 91 L. Ed. 1844, rehearing denied 67 S. Ct. 1728, 331 U.S. 869, 91 L. Ed. 1872).

Error, if any, in permitting defendant's written confession to be received in evidence on ground that it clearly appeared that statement had been obtained through force, coercion and intimidation was rendered harmless by fact that defendant took stand in his own behalf and of his own accord gave testimony which was in all essential respects similar to statements in confession. *Wheeler v. U.S.* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

6. Conviction of lesser offense

Under indictment charging first degree murder done during perpetration or attempted perpetration of rape, mayhem, robbery, kidnapping, or housebreaking while armed with or using a dangerous weapon, defendant may, if evidence warrants, be found guilty of the neces-

sarily included offense of second degree murder. *Green v. United States* (1955, 218 F. 2d 856, 95 U.S. App. D. C. 45).

Where defendant is guilty of murder or nothing, it is not error to refuse to charge as to manslaughter. *Horton v. United States* (15 App. D. C. 310).

When, in homicide case, the only defense is insanity, but there is no evidence to reduce the crime from murder to manslaughter, it was not error for the trial court to state to the jury that the evidence will not justify a verdict of manslaughter. *Id.*

Where several strong men join in a criminal attack upon a defenseless man, knock him down, and, when he attempts to escape, pursue him and then with augmented numbers continue the assault, and one of the conspirators, while his confederates are beating their victim, plunges a knife into him, they should all be charged with manslaughter, even though they did not contemplate the use of the knife, for the conspirators must be presumed to know that great force and violence probably will result. *Patten v. United States* (42 App. D. C. 239).

To reduce homicide from murder to manslaughter, defendant must not only show that he acted under the influence of passion but "in addition that there was a sufficient cause of provocation for his passion." *Jackson v. United States* (48 App. D. C. 272).

Law presumes that defendant, while attempting to perpetuate a robbery, foresaw and intended whatever consequences might naturally result from such an encounter, and the law, not as a matter of fact, but as a conclusion of legal reasoning and experience, considers this state of mind to be implied malice, the homicide would not be manslaughter which is an unlawful killing without malice, but murder either in first or second degree. *Marcus v. United States* (1937, 86 F. 2d 854, 66 App. D.C. 298).

7. Corpus delicti

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with deadly weapon, without considering defendant's written confession, evidence was sufficient to prove corpus delicti. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U.S. App. D. C. 2, certiorari denied 72 S. Ct. 639, 343 U.S. 908, 96 L. Ed. 1326).

8. Deliberation

Evidence that defendant first struck his victim because she had complained about his work, that he went to floor above, obtained a stick from a fireplace, returned downstairs and killed her, that in the killing he used the stick and also choked her, and that to insure her death he used a knife, was sufficient to permit jury to find deliberation. *Fisher v. U.S.* (1945, 149 F. 2d 28, 80 U.S. App. D.C. 96, affirmed 66 S. Ct. 1318, 328 U.S. 463, 90 L. Ed. 1382, 166 A.L.R. 1176, rehearing denied 67 S. Ct. 24, 329 U.S. 818, 91 L. Ed. 697).

9. Double jeopardy

Where jury was authorized at first trial to find defendant guilty of either first degree murder or second degree murder, and jury found defendant guilty of second degree murder, but on appeal that conviction was reversed and the case was remanded for a new trial, second trial of defendant for first degree murder placed him in jeopardy twice for same offense in violation of the constitutional prohibition against double jeopardy, and defendant had not waived that defense by making successful appeal of erroneous conviction of second degree murder. *Green v. United States* (1957, 78 S. Ct. 221, 355 U.S. 184, 2 L. Ed. 2d 199, 61 A. L. R. 2d 1119).

Where jury was authorized to find defendant guilty of either first degree murder or alternatively of second degree murder and jury found him guilty of second degree murder, defendant, by appealing, did not prolong his original jeopardy, and when his conviction for second degree murder was reversed and case remanded he could not be tried again for first degree murder without placing him in new jeopardy. *Id.*

10. Elements of crime

Premeditation and deliberation are necessary elements of first degree murder. *Mergner v. U.S.* (1945, 147 F. 2d 572, 79 U.S. App. D. C. 373, certiorari denied 65 S. Ct. 1085, 325 U.S. 850, 89 L. Ed. 1971).

Murder first degree is defined by statute as a purposeful killing done either with premeditated malice or in

committing or attempting to commit a felony and the statute also characterizes as such a killing one in the perpetration or attempted perpetration of any one of the enumerated felonies although there was no purpose to kill. *Goodall v. U.S.* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

Since the indictment did not charge defendant with purposely killing another, but only with killing him while attempting to rob him, it was necessarily found under the second segment of the statute providing that the intent to kill is not an ingredient of the crime and need not be alleged or proved. *Id.*

11. Evidence—Admissibility

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first-degree murder, wherein defendant interposed defense that he and companion had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of the American people conditions in Puerto Rico, defendant was properly allowed to testify as to his own intent. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U.S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U.S. 968, 96 L. Ed. 1364).

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with deadly weapon, ruling that statement of witness that he told defendant that lie detector indicated that defendant was lying, would not be admitted as evidence of any alleged lying of defendant, but merely as evidence bearing upon question whether defendant's confession was, in fact, voluntary, was correct. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U.S. App. D. C. 2, certiorari denied 72 S. Ct. 639, 343 U.S. 908, 96 L. Ed. 1326).

To make one criminal act evidence of another, there must be a connection to show that he who committed the one must have done the other, and the admissibility of such evidence is a judicial question. *Burge v. United States* (26 App. D. C. 524).

Evidence received tending to show defendant and wife quarreled and fought, sufficiently established the corpus delicti to justify receiving testimony of defendant's statements. *Murray v. United States* (1923, 288 F. 1008, 53 App. D.C. 119, certiorari denied 43 S. Ct. 703, 262 U.S. 757, 67 L. Ed. 1218).

In prosecution for murder committed while attempting to perpetrate robbery, admitting evidence that defendant entered plea of not guilty at preliminary hearing before committing magistrate, and that when defendant was asked to plead he answered that he was guilty of robbing and shooting, but that it was not premeditated or that he had not committed premeditated murder, was not prejudicial error where the evidence added nothing prejudicial either to confession or to evidence given by defendant at trial. *Mumforde v. U.S.* (1942, 130 F. 2d 411, 76 U.S. App. D.C. 107, certiorari denied 63 S. Ct. 53, 317 U.S. 656, 87 L. Ed. 527).

In murder prosecution, evidence of uncommunicated complaint which victim of defendant had made about his work prior to the offense was properly excluded, where the complaint was not a threat, and there was no claim of self-defense. *Fisher v. U.S.* (1945, 149 F. 2d 28, 80 U.S. App. D.C. 96, affirmed 66 S. Ct. 1318, 328 U.S. 463, 90 L. Ed. 1382, 166 A.L.R. 1176, rehearing denied 67 S. Ct. 24, 329 U.S. 818, 91 L. Ed. 697).

In first degree murder prosecution, evidence that defendant deliberately pursued and shot deceased's sister immediately after defendant shot deceased was admissible as tending to show that defendant's shooting of deceased was not an accident in an attempt at self-defense against deceased's husband, but was done with deliberate intent to kill. *Copeland v. U.S.* (1946, 152 F. 2d 769, 80 U.S. App. D.C. 308, certiorari denied 66 S. Ct. 1010, 328 U.S. 841, 90 L. Ed. 1615).

In prosecution of three defendants jointly indicted on charge of murder in perpetration of robbery, where defendants suggested possibility that victim died of heart attack, exhibiting victim's clothing to jury and showing bullet hole in back of victim's coat was not improper. *Hall v. U.S.* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S.

853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

In murder prosecution, receiving evidence that revolver with which victim was shot had been stolen from house of certain person was not error on ground that it constituted evidence of offense other than that for which defendants were on trial, in absence of any evidence showing that any of the defendants had stolen the revolver or had received it knowing it to have been stolen. *Id.*

An examination of murder weapon by ballistics expert during trial was not part of the trial, and the fact that such examination was made in the absence of the defendant does not render inadmissible evidence concerning it. degree, indictment must stand. *Goodall v. U.S.* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

12. — Sufficiency

In prosecution under District of Columbia murder-during-robbery statute, for death of policeman whom defendant shot and killed while policeman, who began pursuit some minutes after robbery, was pursuing defendant, evidence whether asportation was continuing was sufficient to sustain conviction. *Carter v. United States* (1955, 223 F. 2d 332, 96 U. S. App. D. C. 40, certiorari denied 76 S. Ct. 324, 350 U. S. 949, 100 L. Ed. 827).

In arson and murder prosecution, evidence was sufficient to establish that victim's death had been caused by the fire in house in which her body was found. *Green v. United States* (1955, 218 F. 2d 856, 95 U. S. App. D. C. 45).

In prosecution for murder in first degree committed in perpetration of offense of housebreaking while armed with a deadly weapon, without considering defendant's written confession, evidence was sufficient to justify submission of case to jury and to support verdict of guilty. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U. S. App. D. C. 2, certiorari denied 72 S. Ct. 639, 343 U. S. 908, 96 L. Ed. 1326).

Evidence was sufficient to sustain conviction for murder in first degree. *Pritchett v. United States* (1951, 185 F. 2d 438, 87 U.S. App. D. C. 374, certiorari denied 71 S. Ct. 608, 341 U.S. 905, 95 L. Ed. 1344).

Evidence supported conviction of codefendant who participated in robbery but who did not do the shooting or killing of another in perpetrating a robbery. *Wheeler v. U.S.* (1948, 165 F. 2d 225, 82 U.S. App. D. C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115).

Evidence that defendant found deceased with a woman with whom defendant was friendly, that some discussion ensued, and that later all went outside, where an altercation occurred and defendant cut deceased with a knife resulting in death, was sufficient evidence of deliberation and premeditation to go to jury upon charge of first-degree murder. *Thomas v. United States* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U. S. 822, 91 L. Ed. 1838).

Under an indictment in the common-law form for murder in the first degree, the prosecution may prove facts to bring the case within any of the provisions of this section defining murder in the first degree. *Burton v. United States* (1945, 151 F. 2d 17, 80 U. S. App. D. C. 208, certiorari denied 66 S. Ct. 473, 326 U. S. 789, 90 L. Ed. 479).

Evidence of premeditation and deliberation was sufficient to sustain conviction for first degree murder. *Mergner v. U.S.* (1945, 147 F. 2d 572, 79 U.S. App. D.C. 373, certiorari denied 65 S. Ct. 1085, 325 U.S. 850, 89 L. Ed. 1971).

Evidence sustained conviction for murder committed while attempting to perpetrate robbery. *Mumforde v. U.S.* (1942, 130 F. 2d 411, 76 U.S. App. D.C. 107, certiorari denied 63 S. Ct. 53, 317 U.S. 656, 87 L. Ed. 527).

13. Grounds for impeachment

Though the statute allows an exception to the general rule that one cannot impeach his own witness by use of previously made contradictory statements, to come within the exception, actual surprise must be found. *Belton v. United States* (1958, 259 F. 2d 811, 104 U.S. App. D.C. 81).

14. Housebreaking

Where this section defined murder in the first degree as purposely killing a human being either with deliberate or premeditated malice, or by poison, or in perpetrating

or attempting to perpetrate any offense punishable by imprisonment in the penitentiary, and since housebreaking is so punishable, one who commits a homicide while engaged in that offense may be charged with first degree murder. *Monroe v. United States* (1926, 10 F. 2d 645, 56 App. D.C. 80).

15. Indictment

Statute of 1 Hen. V, ch. 5 (1413) requiring indictment to set forth "estate, or degree, or mystery of defendant and the town or county, etc., of which he was conversant," is not in force in the District. *Lanckton v. United States* (18 App. D. C. 348).

An indictment charging the commission of murder in a house situated in the District is not defective because it does not particularly describe the location of the house. *Id.*

It is not necessary to charge in the indictment that accused was of sound mind and discretion. *Hill v. United States* (22 App. D. C. 395).

Indictment for murder is not defective for want of an express allegation of an intent to kill. *Hamilton v. United States* (26 App. D.C. 382). See, also, *Hill v. United States* (22 App. D.C. 395).

An indictment for murder which alleges that defendant did "choke, suffocate and strangle" of which the person died, is sufficient even though there is no allegation that the choking was "mortal." *Hamilton v. United States* (26 App. D. C. 382).

Requirement of copy of indictment and list of jurors and witnesses is mandatory. *Aldridge v. United States* (1931, 47 F. 2d 407, 60 App. D.C. 45, reversed on other grounds 51 S.Ct. 470, 283 U.S. 308, 75 L. Ed. 1054, 73 A.L.R. 1203).

Where indictment informed defendant in the plainest sort of language that he was charged with killing while attempting robbery, i. e., accused of murder in the first degree, indictment must stand. *Goodall v. U.S.* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied, 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

16. Instructions

In prosecution under indictment charging murder and robbery of victim wherein principal defense was insanity, it was not error for trial court to decline to give requested instruction that evidence of diminished intellect would permit jury to return a verdict of a lesser degree of homicide than first degree murder. *Stewart v. United States* (1960, 275 F. 2d 617, 107 U.S. App. D.C. 159, certiorari granted 80 S. Ct. 1266, 363 U.S. 818, 4 L. Ed. 2d 1516).

Where, in arson and murder prosecution, all testimony as to what occurred in burning house pointed to first degree murder only, giving of second degree murder instruction was error. *Green v. United States* (1955, 218 F. 2d 856, 95 U.S. App. D. C. 45).

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, instruction attempting to distinguish between "mental disease" and "mental disorder", read in light of explanation offered by record, could have led jury to conclude defendant could be acquitted by reason of insanity only if defendant suffered from abnormality due to physical deterioration of or injury to brain, and was erroneous and prejudicial to defendant. *Stewart v. United States* (1954, 214 F. 2d 879, 94 U. S. App. D. C. 293).

Conviction for first degree murder committed in robbing a grocery store would be reversed by Court of Appeals for District of Columbia where given instruction prejudicial to defendant was fatally defective, regardless of whether errors in instruction were properly preserved. *Id.*

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, instruction stating that a psychopath is not insane within meaning of law, and that a psychopath is person of low intelligence, although expert testimony was that a psychopath was usually of superior intelligence, was erroneous as court invasion of combined functions of expert witness and jury by assertions treating factual issues as already settled by testimony or law. *Id.*

In prosecution of Puerto Rican defendant, whose companion shot and killed guard in front of dwelling of President of the United States, for first degree murder,

wherein defendant interposed defense that he and companion, though armed with pistols, had no intent to kill anyone but merely wished to create an incident in order to bring to the attention of American people conditions in Puerto Rico, court properly charged jury that defendant's testimony as to conditions in Puerto Rico had nothing to do with the case, over objection of defendant that such conditions were relevant and material to issue of his intent and materially responsive to prosecutor's claim of motive. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

Charge to jury was proper which stated that the defendant might be found guilty of murder or manslaughter, or acquitted altogether if he killed deceased in the reasonable apprehension of danger to his own life, and it was not error for the trial court to exclude testimony to show vicious and dangerous character of deceased. *Travers v. United States* (6 App. D. C. 450).

Instructions, that insanity was induced by operation of strong drink upon a mind rendered unsound by an injury, or that he was incapable of forming a specific intent to kill so as to reduce the crime to manslaughter, are not sufficient when the evidence does not support such instructions and where the jury is informed by other instructions that they must find that he had sufficient mental capacity to distinguish right from wrong at time of act, beyond a reasonable doubt. *Snell v. United States* (16 App. D. C. 501).

A requested instruction of self-defense is defective which fails to state what the defendant was in imminent danger of. *Jackson v. United States* (48 App. D. C. 272).

Where instruction regarding second-degree murder and manslaughter was given at request of defendant's counsel, if the instruction was subject to criticism on ground that it was confusing because it opened up a matter not properly for jury's consideration, it was favorable to defendant, and he could not complain. *Mumforde v. U.S.* (1942, 130 F. 2d 411, 76 U.S. App. D.C. 107, certiorari denied 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

Where defendant testified that he entered store with definite purpose of committing robbery, but that a moment later he changed his mind and drew pistol from pocket hoping to quiet woman in charge, and thus to escape detection and arrest, but in excitement pistol was unintentionally discharged, instruction that, if defendant voluntarily abandoned his plan to rob before fatal shot was fired, defendant would not be guilty of murder in first degree, fully protected defendant's legal rights. *Id.*

The perpetration of a robbery, during which act a homicide is committed, legally takes the place of that premeditation to kill which is necessary for murder in the first degree, and it was not error to give such instruction merely because the indictment for murder tendered no such issue as robbery. *Burton v. U.S.* (1945, 151 F. 2d 17, 80 U.S. App. D.C. 208, certiorari denied 66 S. Ct. 473, 326 U.S. 789, 90 L. Ed. 479).

Instruction that defendant had a vital interest in outcome of case, and in testing truth and weighing force of defendant's testimony jury might do so in light of that interest as well as in light which might be shed by all other evidence in case, was not objectionable. *Fisher v. U.S.* (1945, 149 F. 2d 28, 80 U.S. App. D.C. 96, affirmed 66 S. Ct. 1318, 328 U.S. 463, 90 L. Ed. 1382, 166 A.L.R. 1176, rehearing denied 67 S. Ct. 24, 329, U.S. 818, 91 L. Ed. 697).

Instruction that in considering questions of intent, premeditation and deliberation, jury should consider entire personality of defendant, his mental, nervous, emotional and physical characteristics as developed by evidence was properly refused because it confused issue of insanity with question whether psychopathic characteristics of defendant prevented him from forming deliberate intent necessary to constitute first degree murder. *Id.*

Failure to volunteer an instruction on question whether defendants were exhausted by hours of questioning when they confessed to murder charge was not error, where there was hardly sufficient evidence to warrant such an instruction and none was requested. *Hawkins v. U. S.* (1947, 158 F. 2d 652, 81 U.S. App. D.C. 376, certiorari

denied, 67 S. Ct. 1347, 331 U.S. 830, 91 L. Ed. 1844, rehearing denied 67 S. Ct. 1728, 331 U.S. 869, 91 L. Ed. 1872).

In prosecution for murder resulting in conviction of second-degree murder, the court's charge covering premeditation, malice, and self-defense was not erroneous. *Thomas v. U.S.* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U.S. 832, 91 L. Ed. 1838).

Where robbery of fountain cash register at front of drug store by one of codefendants jointly indicted on charge of killing another in perpetrating robbery was a part of general holdup of store in perpetration of which other defendant killed proprietor while obtaining money in cash register in rear of store, defendant who did not do the shooting was not entitled to an instruction that two separate robberies had been committed, that such defendant could be convicted only of being accessory after the fact or that such defendant could be convicted only of offense of robbery. *Wheeler v. U.S.* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

Fact that there was evidence that one of the three defendants jointly indicted on charge of murder in perpetration of robbery threw away the gun and bullets after the murder did not require an instruction that jury could find such defendant guilty as accessory after the fact, where such defendant's testimony and other circumstances stamped him as an accessory before the fact and therefore guilty as a principal. *Hall v. U.S.* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

Court's comments concerning alibi as a defense were proper and not prejudicial where it was said that such defense should be given such weight and consideration to which it is entitled to under all facts and circumstances. *Goodall v. U.S.* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

Appellant's claim that Court failed to charge that if jury believed him guilty of killing but if any reasonable doubt existed as to whether he committed murder first or murder second, it should be resolved in favor of the lesser crime, is without merit since such an instruction is necessary only when from the evidence as a whole the jury might reasonably find the dependent guilty in either degree and must decide which degree. *Id.*

17. Intent

Under District of Columbia statute, murder committed in course of robbing a grocery store is first degree murder although there is no premeditation or intent or desire to kill. *Stewart v. United States* (1954, 214 F. 2d 879, 94 U.S. App. D. C. 293).

Intent to kill must always be proved in first-degree murder prosecution under first clause of local statute in order to convict, but motive for the killing is not always a material element in defense. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

Defendant is guilty of murder if the deceased, in seeking to escape the violent assault of accused had a well-grounded belief that he would take her life or inflict serious injury, and so believing inadvertently fell into a canal and was drowned, and it is not necessary to show by the prosecution nor that the jury shall believe that the defendant had the malicious intent to do bodily harm. *Norman v. United States* (20 App. D. C. 494).

"A deliberate intent to take life is declared to be an essential element of murder in the first degree, and this, of course, must be shown as a fact." *Sabens v. United States* (40 App. D.C. 440). See, also, *Jordan v. United States* (1937, 87 F. 2d 64, 66 App. D.C. 309, certiorari denied 58 S. Ct. 762, 303 U.S. 654, 82 L. Ed. 1114).

Under this section defining "murder in first degree" as the killing of another while armed with or using a dangerous weapon in the perpetration or attempted perpetration of a robbery, it is not necessary to show that the killing was done purposely to raise the offense to first degree murder. *Mumforde v. U.S.* (1942, 130 F. 2d 411, 76 U. S. App. D. C. 107, certiorari denied 63 S. Ct. 53, 317 U. S. 656, 87 L. Ed. 527).

In prosecution for homicide, the recurrence of other acts of the sort tends to negative inadvertence, defensive purpose, or any form of innocent intent. *Copeland v. U. S.* (1946, 152 F. 2d 769, 80 U.S. App. D.C. 308, certiorari denied 66 S. Ct. 1010, 328 U.S. 841, 90 L. Ed. 1615).

18. Intoxication

"Voluntary intoxication is neither an excuse nor a palliation for crime." *Lanckton v. United States* (18 App. D. C. 348).

Although defendant forms a deliberate and premeditated intent to kill while sober, and then voluntarily becomes drunk, he cannot be convicted of murder in the first degree, if at the time of the commission of the offense he was too drunk to deliberate and premeditate. *Sabens v. United States* (40 App. D. C. 440).

A charge given by the court of its own motion was proper to the effect that voluntary intoxication was generally not a justification for crime and that it is only considered when evidence tends to show condition of mind which rendered him incapable of forming an intent. *Smith v. United States* (1921, 269 F. 860, 50 App. D.C. 208).

Under this section, evidence of intoxication may be shown for purpose of proving lack of capacity to deliberate or premeditate; and under conflicting evidence, the question is for the jury. *McAfee v. United States* (1940, 111 F. 2d 199, 72 App. D.C. 60, certiorari denied 60 S. Ct. 1094, 310 U.S. 643, 84 L. Ed. 1410).

19. Jury

What is reasonable adequate provocation is generally for the jury. *Jackson v. United States* (48 App. D. C. 272).

"It is in the discretion of the court to permit the jury to separate in a homicide case, and his action in that respect will not be reviewed unless it appear affirmatively that prejudice resulted to the defendant." *McHenry v. United States* (1922, 276 F. 761, 51 App. D.C. 119, 34 A.L.R. 1109).

In prosecution of three defendants jointly indicted on charge of murder in perpetration of robbery, where two of three defendants testified that written statements given by them to officers were extorted by physical mistreatment, and officers denied having mistreated defendants, question as to whether written statements were voluntary and admissible was for jury. *Hall v. U.S.* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

20. Malice

However sudden the killing may be, if the means used, or the manner of doing it, or other external circumstances attending it, indicate a sedate and deliberate mind and formed design to kill, it will be upon express malice. *Travers v. United States* (6 App. D. C. 450).

"Implied malice constitutes murder in the second degree." *Sabens v. United States* (40 App. D. C. 440).

A heavy paling, with sharp, protruding nails, is a deadly weapon, from the use of which malice must be presumed. *Patten v. United States* (42 App. D.C. 239). See, also, *Hopkins v. United States* (4 App. D.C. 430).

A homicide committed purposely and with deliberate and premeditated malice is murder in the first degree and "Malice aforethought" may be shown expressly, or may be "implied" from the commission of the act itself. *Bishop v. United States* (1940, 107 F. 2d 297, 71 App. D.C. 132).

21. Means of commission

"The proof of the means of commission of a homicide need not conform strictly to the averment of such means in the indictment. If the means of death proved agree in substance with that charged, it is sufficient." *Hamilton v. United States* (26 App. D. C. 382).

22. Mental capacity

The criteria for evaluation of mental condition of accused at time of commission of crime and as to his capacity to be tried are not the same. *Stewart v. United States* (1960, 275 F. 2d 617, 107 U.S. App. D.C. 159, certiorari granted 80 S. Ct. 1266, 363 U.S. 818, 4 L. Ed. 2d 1516).

In prosecution under indictment charging defendant with first degree murder and robbery of his victim wherein principal defense was insanity of accused, who had been found competent to stand trial after appropriate proceeding and who took stand and exhibited

bizarre symptoms and abnormal behavior which if truly reflecting his mental state would have made a trial legally impossible, accused by his demeanor put his mental condition as of time of trial in issue and testimony of government witnesses concerning defendant's mental condition at a time appreciably after commission of crime was properly admitted to rebut impression of madness. *Id.*

In prosecution for first degree murder committed in robbing a grocery store, defended on ground of insanity, it was jury's function to determine from all evidence, including expert testimony, whether defendant suffered from abnormal mental condition and whether nature and extent of condition from which defendant suffered relieved defendant of criminal responsibility under then prevailing standards. *Stewart v. United States* (1954, 214 F. 2d 879, 94 U. S. App. D. C. 293).

Mental dullness, weakness, or incapacity does not excuse from the consequences of crime, unless the evidence proves that defendant was at the time of the commission of the act so mentally impaired that he could not distinguish between right and wrong. *Travers v. United States* (6 App. D. C. 450).

Law does not recognize the doctrine of emotional insanity. *Taylor v. United States* (7 App. D. C. 27).

Refusal of the trial justice to admit in evidence an exemplification of the record of the Georgia State Sanitarium, showing the mental condition, treatment, and incarceration of certain relatives of the defendant, was proper. *Snell v. United States* (16 App. D. C. 501).

Where jury were fully informed that before they could find the accused guilty of the crime charged, insanity or unsoundness of mind being set up as a defense, they were required to find that the accused had sufficient capacity to distinguish between right and wrong, at the time of and with respect to the act which was the subject of inquiry, beyond a reasonable doubt. *Id.*

23. Motive

If fact of killing by an accused is in issue, prosecutor is permitted as part of his effort to prove that accused committed the act, to prove that accused had a motive for killing the deceased, and accused as part of his effort to prove that he did not commit the act, is permitted to prove that he had no motive for killing the deceased. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

If killing is intended by accused and none of the established legal excuses for the killing is pleaded, the motive of the killer is wholly immaterial. *Id.*

Government is not required to prove motive, but jury may consider absence of such proof as a circumstance in defendant's favor. *Lanckton v. United States* (18 App. D. C. 348).

Motive may be proved, because it "may be very important in determining whether or not the accused was actuated by deliberate, premeditated malice." *McHenry v. United States* (1922, 276 F. 761, 51 App. D.C. 119, 34 A.L.R. 1109). See, also, *Lomax v. United States* (37 App. D.C. 414); *McUin v. United States* (17 App. D.C. 323).

24. Prejudicial error

In prosecution for murder, where a police officer testified that defendant had failed to make a report to the police because of his record and defendant's counsel brought out the fact that the record referred to was failure to settle hotel bills, the net effect was not prejudicial to defendant. *Burton v. U.S.* (1945, 151 F. 2d 17, 80 U.S. App. D.C. 208, certiorari denied 66 S. Ct. 473, 326 U.S. 789, 90 L. Ed. 479).

In murder prosecution, where a nurse who made a written statement to the police took the stand and her testimony was substantially the same as the written statement, any error in permitting statement to be introduced in evidence was not prejudicial. *Id.*

Accused in murder prosecution was required to plead and prove his own case and was responsible for the production in court of witnesses necessary to do so, and failure of the government to produce certain witnesses could not be regarded as prejudicial. *Thomas v. U. S.* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U.S. 822, 91 L. Ed. 1838).

25. Punishable by imprisonment in the penitentiary

"The words 'punishable by imprisonment in the penitentiary' do not mean an offense that can be punished only by such imprisonment, but include such as may be so punished." *United States v. Evans* (28 App. D.C. 264).

26. Purposely

Word "purposely" as used in statute dealing with first-degree murder, is synonymous with "intentionally", and does not refer to the purpose of, or the intention in, the killing. *Collazo v. United States* (1952, 196 F. 2d 573, 90 U. S. App. D. C. 241, certiorari denied 72 S. Ct. 1065, 343 U. S. 968, 96 L. Ed. 1364).

Quare: Whether it is necessary to charge in indictment for first-degree murder that the killing was "purposely" done. As to this point the court did not decide but stated that, it is a safe rule, in criminal pleading, to follow the language of the statute, where there is any uncertainty in respect of its meaning. *United States v. Evans* (28 App. D. C. 269).

Proof of purpose in murder prosecution need not be direct; it may be inferred from the circumstances attending the killing. *Jordon v. United States* (1937, 87 F. 2d 64, 66 App. D.C. 309, certiorari denied 58 S. Ct. 762, 303 U. S. 654, 82 L. Ed. 1114).

Prosecution required to show purpose to kill in murder prosecution. *Id.*

27. Questions withheld from jury

Under all the facts and circumstances, the question whether there had been only second degree murder because of the killer's intoxication should not have been submitted to the jury. *Goodall v. U.S.* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

28. Review

It is the duty of an appellate court to correct any error prejudicial to the defendant, even though not properly raised in the trial court. *Pattern v. U.S.* (42 App. D.C. 239). See, also, *Burge v. U.S.* (26 App. D.C. 524).

29. Robbery

Fact that a robbery is being perpetrated by one who killed another, without purpose to do so and without deliberate or premeditated malice, supplies the element necessary to constitute the crime of first degree murder under this section, and under this section the crime of robbery is still in progress so long as the essential ingredient of asportation continues. *Carter v. United States* (1955, 223 F. 2d 332, 96 U. S. App. D. C. 40, certiorari denied 76 S. Ct. 324, 350 U. S. 949, 100 L. Ed. 827).

One who kills as he robs is charged by this section with having that degree of malice which is indispensable to murder in the first degree. *Wheeler v. U.S.* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

Evidence supported conviction of murder while perpetrating robbery. *Medley v. U.S.* (1946, 155 F. 2d 857, 81 U.S. App. D.C. 85, certiorari denied 66 S. Ct. 1377, 328 U.S. 873, 90 L. Ed. 1642, rehearing denied 67 S. Ct. 35, 329 U.S. 822, 91 L. Ed. 99).

Homicide committed while attempting robbery is first degree murder. *United States v. Evans* (28 App. D.C. 264).

30. Self-defense

To justify application of the law of self-defense, the defendant must show clearly that he was attacked, and that he had good reason to believe that he was in imminent peril of his life or of great bodily harm. *Hopkins v. United States* (4 App. D. C. 430).

Accidental homicide and homicide in self-defense are wholly irreconcilable. *Fearson v. United States* (10 App. D. C. 536).

Court properly charged the jury that they should consider the words and acts of the deceased and any threats against the accused at the time of the killing. *Wallace v. United States* (18 App. D. C. 152).

Stabbing of a woman is not justifiable as self-defense in absence of anything to show that defendant suffered pain, or was apprehensive of bodily harm so serious as to suggest the use of a deadly weapon. *Grant v. United States* (28 App. D. C. 169).

Before one can be permitted to take life under the apprehension that he is in danger of life or serious bodily harm from the violence of another, it must appear that he had a reasonable right to believe, from all the facts and circumstances presented to his mind, that he was in such danger. *Sacrine v. United States* (38 App. D. C. 371).

In homicidal cases, where the defense is self-defense, the majority of the courts hold "that it is proper to give incidents or specific acts of violence within the knowledge of the witness or coming under his observation." *Marshall v. United States* (45 App. D.C. 373).

A charge to the jury that it must appear that there was no reasonable occasion for the defendant to escape from the conflict was error, as the true test is whether circumstances presented to the mind of the defendant were such that would have produced upon the mind of any reasonable, prudent person, the reasonable belief that the deceased was about to kill him or do him serious bodily harm. *Id.*

A charge is sufficient which states that "if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant, he may stand his ground, and if he kills him he has not exceeded the bounds of lawful self-defense." *Price v. United States* (1922, 276 F. 628, 51 App. D.C. 106).

31. Severance

Refusal of motion of one of two defendants jointly indicted on charge of killing another in perpetrating a robbery for a severance on ground that such defendant could not obtain a fair and impartial trial because codefendant had made admissions and confessions out of his presence and hearing was not an abuse of discretion, where codefendant's testimony from witness stand was substantially to same effect as his former extrajudicial statement implicating moving defendant. *Wheeler v. U.S.* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

Refusal to grant three defendants jointly indicted on charge of murder in perpetration of robbery separate trials was not an abuse of discretion, where trial court duly limited effect of evidence introduced which was competent against one defendant and incompetent as to others. *Hall v. U.S.* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

32. Summation of evidence

Fact that trial court, when summarizing the evidence, took longer to summarize evidence of the prosecution did not establish that it had placed undue emphasis on evidence of prosecution and had minimized evidence of defendant, where more time was taken to summarize evidence of prosecution because it was more voluminous than that of defendant, and it was not claimed by defendant that certain facts were "singled out" without consideration of other modifying facts. *Wheeler v. U. S.* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 333 U.S. 830, 92 L. Ed. 1115). See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

33. Time

Some appreciable time must elapse in order that reflection and consideration amounting to the deliberation and premeditation required for first-degree murder may occur. *Bullock v. U.S.* (1941, 122 F. 2d 213, 74 App. D.C. 220, certiorari denied 63 S. Ct. 39, 317 U. S. 627, 87 L. Ed. 507).

34. Trial proceedings

An examination of murder weapon by ballistics expert during trial was not part of the trial and the fact that such examination was made in the absence of the defendant does not render inadmissible the evidence concerning it. *Goodall v. U.S.* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 924).

35. Verdict

In District of Columbia a jury may not qualify a verdict of murder in the first degree by adding thereto "without

capital punishment." *Johnson v. United States* (38 App D.C. 347, affirmed 32 S. Ct. 748, 225 U.S. 405, 56 L. Ed. 1142).

Where the evidence was sufficient for jury on charge of first-degree murder and jury was properly instructed, court's refusal to direct a verdict on first-degree murder charge could not be held to have erroneously influenced jury in reaching its verdict of second-degree murder. *Thomas v. U.S.* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U.S. 822, 91 L. Ed. 1838).

36. Victim's conduct contributing to death

One who, in striking another, inflicts a blow which may not be mortal in and of itself but thereby starts a chain of causation which leads to death, is guilty of homicide even if victim contributes to his own death or hastens it by failing to take proper treatment. *United States v. Hamilton* (1960, 182 F. Supp. 548).

Where, after defendant had jumped on and kicked victim's face, tubes were inserted into victim's nasal passages and trachea to maintain his breathing process, but victim later pulled out the tubes and died of asphyxiation due to aspiration or inhalation of blood caused by the severe injuries to his face, defendant was guilty of homicide, not merely of assault with a dangerous weapon, even if victim consciously and deliberately pulled out tubes and would have lived if he had not. *Id.*

§ 22-2402. Murder in first degree—Placing obstructions upon or displacement of railroad.

Whoever maliciously places an obstruction upon a railroad or street railroad, or displaces or injures anything appertaining thereto, or does any other act with intent to endanger the passage of any locomotive or car, and thereby occasions the death of another, is guilty of murder in the first degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 799.)

§ 22-2403. Murder in second degree.

Whoever with malice aforethought, except as provided in sections 22-2401, 22-2402, kills another, is guilty of murder in the second degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 800; June 12, 1940, 54 Stat. 347, ch. 339.)

AMENDMENT

1940—Act June 12, 1940, re-enacted section without change.

NOTES TO DECISIONS

- Generally 1
- Accident 2
- Admissibility of evidence 3
- Conviction of lesser offense 4
- Examination of witnesses 5
- Indeterminate Sentence Act 6
- Instructions 7
- Intervening cause of death 8
- Malice 9
- Manslaughter 10
- Premeditation 11
- Questions withheld from jury 12
- Reduction to manslaughter 13
- Sufficiency of evidence 14

1. Generally

"Murder in the second degree" is the unlawful killing of another, where there is not a premeditated design and plan to effect death, but where there is malice aforethought. *Fryer v. United States* (1953, 207 F. 2d 134, 93 U. S. App. D. C. 34, certiorari denied 74 S. Ct. 135, 346 U. S. 885, 98 L. Ed. 389, rehearing denied 74 S. Ct. 305, 346 U. S. 928, 98 L. Ed. 420).

2. Accident

If defendant did not have purpose to kill or if pistol went off accidentally, he would be guilty of murder in the second degree. *Marcus v. United States* (1937, 86 F. 2d 854, 66 App. D.C. 298).

Instruction to jury was correct to the effect that if in perpetrating the crime the killing was not done purposely but by accident or otherwise, appellant was not guilty of murder in the first degree. *Jordon v. United States* (1937, 87 F. 2d 64, 66 App. D.C. 309, certiorari denied 58 S. Ct. 762, 303 U.S. 654, 82 L. Ed. 1114).

3. Admissibility of evidence

On plea of self-defense evidence of deceased's character and belligerency, though unknown to defendant, is admissible in corroboration of defendant's testimony that deceased was the aggressor. *Evans v. United States* (1960, 277 F. 2d 354, 107 U. S. App. D. C. 324).

In prosecution for homicide resulting in conviction of second degree murder where defendant claimed killing was necessary in order to repel sexual assault by deceased who was drunk at the time of killing, it was reversible error to refuse to admit testimony to the effect that deceased was aggressive when drunk. *Id.*

Error in exclusion of testimony is not harmless if the excluded testimony, while not sufficient to produce an acquittal, might have induced jury to convict of a lesser included offense. *Id.*

In prosecution of defendant for killing of his wife's paramour who had engaged in improper relations with defendant's wife, wherein defendant asserted that he was of unsound mind at time of commission of the homicide in that he had "blacked out" at time of shooting, and that his state of mind was due to destruction of sanctity of his home, questioning of defendant about his relations with another woman was not error even though it might incidentally indicate commission of other crimes, since the evidence was relevant and material to defendant's attitude towards his own wife and home. *Bell v. United States* (1954, 210 F. 2d 711, 93 U. S. App. D. C. 173, certiorari denied 74 S. Ct. 682, 347 U. S. 956, 98 L. Ed. 1101, certiorari denied 77 S. Ct. 684, 353 U. S. 924, 1 L. Ed. 2d 720, certiorari denied 78 S. Ct. 1002, 356 U. S. 963, 2 L. Ed. 2d 1070).

In murder prosecution, where preceding witnesses had testified that defendant stabbed deceased with a knife, testimony that immediately after the stabbing deceased exclaimed "I've been stuck" was admissible as part of the res gestae, although the witness so testifying did not also testify that the attack had taken place. *U. S. v. Edmonds* (1946, 63 F. Supp. 968).

In prosecution for murder of husband, forged letter written by accused to a friend of husband and purporting to be a confession of murder by fictitious person was admissible, though letter was postmarked and delivered several months after crime was committed. *Harris v. U.S.* (1948, 169 F. 2d 887, 83 U.S. App. D.C. 348, certiorari denied 69 S. Ct. 161, 335 U.S. 873, 93 L. Ed. 417).

4. Conviction of lesser offense

Although the indictment charged murder in first degree, appellant could have been found guilty of second degree murder had the evidence warranted it, since a defendant may be found guilty of any offense necessarily included in the crime charged in the indictment. *Goodall v. United States* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 1389).

5. Examination of witnesses

In murder prosecution, where defense counsel had elicited from defendant on direct examination the fact that he had been in jail continuously from time of his arrest, court properly permitted government counsel on cross-examination to inquire of defendant whether it was not a fact that the court had set bail at \$1,500 and that defendant therefore had an opportunity to obtain release while awaiting trial if he had been able to secure bond. *U.S. v. Edmonds* (1946, 63 F. Supp. 968).

In murder prosecution, permitting government counsel on cross-examination to inquire of defendant whether it was not a fact that the court had set bail at \$1,500 and that defendant could have obtained his release while awaiting trial if he had been able to secure bond, after defendant's counsel had brought out the fact that defendant had been in jail continuously from time of his arrest, did not affect the course of the trial so as to be ground for new trial. *Id.*

Defendant was not prejudiced by trial court's propounding questions to him when he was testifying as a witness, where defendant by the interchange was enabled to make a logical answer explaining his conduct, entirely consistent with his theory of self-defense. *Griffin v. U.S.* (1948, 164 F. 2d 903, 83 U.S. App. D.C. 20, certiorari denied 68 S. Ct. 727, 333 U.S. 857, 92 L. Ed. 1137).

6. Indeterminate Sentence Act

Indeterminate Sentence Act is inapplicable to second degree murder and the existing statute providing a penalty of imprisonment for life or for not less than 20 years remains in effect, and definite term of 20 years is a valid sentence. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

7. Instructions

In homicide prosecution, omission to define "malice aforethought" and omission to charge on involuntary manslaughter constituted plain error, and second-degree murder conviction would have to be reversed and case remanded for new trial even though trial counsel had not requested such charges. *McDonald v. United States* (C.A.D.C. 1960, 284 F. 2d 232).

In prosecution for first degree murder, instruction to jury that second degree murder is killing with malice aforethought, but without intent to kill, was erroneous as to such limitation. *Kitchen v. United States* (1953, 205 F. 2d 720, 92 U.S. App. D.C. 382).

In prosecution for murder, court properly instructed that, if defendant did flee from the scene, jury had right to consider that fact as a consciousness of guilt, if jury deemed it proper to do so. *U.S. v. Edmonds* (1946, 63 F. Supp. 968).

In murder prosecution, where court called jury's attention to defendant's denial that he fled from the scene, and permitted jury to determine that question before they could consider flight as a consciousness of guilt, court did not err in refusing to elaborate by giving an additional charge to the effect that defendant claimed that he ran from the scene not for the purpose of avoiding arrest but because of fear of attack by decedent's companion. *Id.*

Appellant's claim that Court failed to charge that if jury believed him guilty of killing but if any reasonable doubt existed as to whether he committed murder first or murder second, it should be resolved in favor of the lesser crime, is without merit, since such an instruction is necessary only when from the evidence as a whole the jury might reasonably find guilty in either degree and must decide which degree. *Goodall v. U.S.* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 1389).

8. Intervening cause of death

Evidence sustained conviction of manslaughter notwithstanding defense of an intervening cause of death. *Ross v. United States* (1959, 267 F. 2d 618, 105 U.S. App. D.C. 341, certiorari denied 79 S. Ct. 1464, 360 U.S. 939, 3 L. Ed. 2d 1551).

9. Malice

"Malice" is a state of mind showing a heart fatally bent on mischief and unmindful of social duties and may also be defined as a condition of mind that prompts a person to do an injurious act wilfully to the injury of another; and malice may be implied or inferred from the act committed, or it may be expressed. *Fryer v. United States* (1953, 207 F. 2d 134, 93 U.S. App. D.C. 34, certiorari denied 74 S. Ct. 135, 346 U.S. 885, 98 L. Ed. 389, rehearing denied 74 S. Ct. 305, 346 U.S. 928, 98 L. Ed. 420).

Where a homicide directly resulted from excessive speed of the driver of an automobile carrying contraband liquor, after being told to stop by arresting officers, the illegal transportation was an offense punishable by imprisonment in the penitentiary, and constitutes the malice essential to murder in the second degree. *Lee v. United States* (1940, 112 F. 2d 46, 72 App. D.C. 147).

A defendant's voluntary intoxication does not of itself negative the malice required to constitute second-degree murder and thereby reduce second-degree murder to voluntary manslaughter. *Nestlerode v. U.S.* (1941, 122 F. 2d 56, 74 App. D.C. 276).

Presence of absence of malice aforethought constitutes difference between second-degree murder and manslaughter. *United States v. Hamilton* (1960, 182 F. Supp. 548).

Where there is malice aforethought in regard to a homicide, crime is second-degree murder, but, if malice aforethought is lacking, crime is manslaughter. *Id.*

"Malice aforethought" or "malice" is a word of art and, in law of homicide, denotes a vicious and wicked

state of mind and may be described as a heart fatally bent on mischief and unmindful of social duty. *Id.*

Where, as result of exchange of banter, subsequent argument, and then acrimonious quarrel, defendant knocked victim to the ground and, in fit of ungovernable rage, jumped on and kicked victim's face, thereby inflicting wounds which contributed to victim's death, there was no malice in the legal sense, and, therefore, crime was that of manslaughter. *Id.*

"Legal malice" does not necessarily mean a malicious or malevolent purpose or personal hatred or hostility toward deceased, but a state of mind which shows a heart unmindful of social duty and fatally bent on mischief, or which prompts a person to do an injurious act willfully to the injury of another. *U.S. v. Edmonds* (1946, 63 F. Supp. 968).

A killing under the influence of passion, induced by insufficient provocation, may be "murder in the second degree," and an accidental or unintentional killing constitutes murder in the second degree if it is accompanied by malice. *Id.*

10. Manslaughter

Where defendant struck a person who fell to the sidewalk and whose head hit the concrete and where several days later such person died as a result of the head injuries, the defendant was guilty of manslaughter. *Williams v. United States* (1959, 267 F. 2d 625, 105 U.S. App. D.C. 348).

11. Premeditation

An intentional killing that is not premeditated and not connected with another crime is "murder in the second degree". *Kitchen v. United States* (1953, 205 F. 2d 720, 92 U.S. App. D.C. 382).

12. Questions withheld from jury

Under all the facts and circumstances, the question whether there had been only second degree murder because of the killer's intoxication should not have been submitted to the jury. *Goodall v. U.S.* (1950, 180 F. 2d 397, 86 U.S. App. D.C. 148, 17 A.L.R. 2d 1070, certiorari denied 70 S. Ct. 1009, 339 U.S. 987, 94 L. Ed. 1389).

13. Reduction to manslaughter

If the killing is committed in a sudden heat of passion, caused by adequate provocation, the crime may be reduced from murder to manslaughter, but a trivial or slight assault is not sufficient provocation for that purpose. *U.S. v. Edmonds* (1946, 63 F. Supp. 968).

Jury was warranted in concluding that conduct of deceased in kicking defendant was not adequate provocation for the fatal stabbing of deceased, so as to reduce the killing to manslaughter. *Id.*

14. Sufficiency of evidence

In homicide prosecution, evidence raised question for jury as to whether defendant was not guilty by reason of insanity. *Rose v. United States* (C.A.D.C. 1960, 283 F. 2d 376).

Evidence that defendant approached deceased and others with a knife in his hand and wantonly stabbed deceased during an altercation, resulting in death, warranted conviction of murder in the second degree. *U.S. v. Edmonds* (1946, 63 F. Supp. 968).

Evidence that defendant found deceased with a woman with whom defendant was friendly, that some discussion ensued, followed by an altercation during which defendant cut deceased with a knife resulting in death, justified a finding that defendant acted with the malice aforethought essential to crime of second degree murder. *Thomas v. U.S.* (1947, 158 F. 2d 97, 81 U.S. App. D.C. 314, certiorari denied 67 S. Ct. 1303, 331 U.S. 822, 91 L. Ed. 1838).

Evidence sustained conviction of second degree murder as against contention that fatal wound was inflicted in self-defense. *Parker v. U.S.* (1947, 158 F. 2d 185, 81 U.S. App. D.C. 282, certiorari denied 67 S. Ct. 861, 330 U.S. 829, 91 L. Ed. 1278).

§ 22-2404. Punishment for murder in first and second degrees.

The punishment of murder in the first degree shall be death by electrocution. The punishment of murder in the second degree shall be imprisonment for life, or for not less than twenty years. (Mar. 3, 1901,

31 Stat. 1321, ch. 854, § 801; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1.)

AMENDMENT

1925—Act Jan. 30, 1925, changed punishment of murder in first degree, from hanging to electrocution.

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Accident 1
Double jeopardy 2
Indeterminate Sentence Act 3
Prosecution for second-degree murder 4
Supersedece 5

1. Accident

If defendant did not have purpose to kill or if pistol went off accidentally, he would then be guilty of murder in the second degree and punishable by imprisonment for life, or for not less than 20 years. *Marcus v. United States* (1937, 86 F. 2d 854, 66 App. D.C. 298).

2. Double jeopardy

Where jury was authorized at first trial to find defendant guilty of either first degree murder or second degree murder, and jury found defendant guilty of second degree murder, but on appeal that conviction was reversed and the case was remanded for a new trial, second trial of defendant for first degree murder placed him in jeopardy twice for same offense in violation of the constitutional prohibition against double jeopardy, and defendant had not waived that defense by making successful appeal of erroneous conviction of second degree murder. *Green v. United States* (1957, 78 S. Ct. 221, 355 U.S. 184, 2 L. Ed. 2d 199, 61 A.L.R. 2d 1119).

Where jury was authorized to find defendant guilty of either first degree murder or alternatively of second degree murder and jury found him guilty of second degree murder, defendant, by appealing, did not prolong his original jeopardy, and when his conviction for second degree murder was reversed and case remanded he could not be tried again for first degree murder without placing him in new jeopardy. *Id.*

3. Indeterminate Sentence Act

Indeterminate Sentence Act is inapplicable to second degree murder and the existing penalty of imprisonment for life or for not less than 20 years remains in effect. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

4. Prosecution for second-degree murder

Prosecution in District of Columbia for second-degree murder was properly conducted in name of the United States rather than in name of District of Columbia. *Morton v. Welch* (C.C.A. Va. 1947, 162 F. 2d 840, certiorari denied 68 S. Ct. 44, 332 U.S. 779, 92 L. Ed. 363, certiorari denied 68 S. Ct. 1498, 334 U.S. 848, 92 L. Ed. 1771).

5. Supersedece

Provisions of the Criminal Code as to murder and manslaughter do not supersede or repeal the Code of the District of Columbia. *Johnson v. United States* (1912, 32 S. Ct. 748, 225 U.S. 405, 56 L. Ed. 1142).

§ 22-2405. Punishment for manslaughter.

Whoever commits manslaughter shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding fifteen years, or by both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 802.)

CROSS REFERENCES

Negligent homicide, see §§ 40-606, 40-607.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Definition of manslaughter 1
Indictment
Generally 2
Sufficiency 3
Involuntary manslaughter 4
Joinder of defendants 5
Jury 6
Sufficiency of indictment 3

1. Definition of manslaughter

"Manslaughter" is the unlawful killing of a human being without malice aforethought. *U.S. v. Edmonds*

(1946, 63 F. Supp. 968). See, also, *Fryer v. United States* (1953, 207 F. 2d 134, 93 U.S. App. D.C. 34, certiorari denied 74 S. Ct. 135, 346 U.S. 885, 98 L. Ed. 389, rehearing denied 74 S. Ct. 305, 346 U.S. 928, 98 L. Ed. 420).

2. Indictment—Generally

Crime must be charged with reasonable particularity of time, place, and circumstances. *United States v. Geare* (1924, 293 F. 997, 54 App. D.C. 30).

3. Sufficiency

Where manslaughter indictment against landlord, its vice president, and tenant, who operated rooming house, charged acts of negligence which were not violations of common law duties jointly owed by defendants, and indictment was uncertain concerning statutory and regulatory requirements with which defendants allegedly failed to comply, the indictment was bad on demurrer. *U.S. v. Interstate Properties* (1946, 153 F. 2d 469, 80 U.S. App. D.C. 392).

If regulation is pleaded which requires notice from an official to person who owns or controls building that a specific condition must be remedied within a certain period of time, fact should be stated concerning the giving of such notice and allegations of manslaughter indictment that findings and directives were made known to defendants were insufficient, but nature of findings and directives and when and how they were made known to defendants should have been made to appear. *Id.*

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with negligently failing to have a dumb-waiter shaft constructed of fire-resistive materials and negligently failing to provide a front fire escape, and that defendants were under duty to roomers to comply with all orders, rules, regulations, and ordinances relating to use, occupancy and safety of buildings, and particularly building code and elevator code of District of Columbia, and that regulations required dumb-waiter shaft to be of fire-resistive construction, the indictment did not sufficiently plead existence of applicable regulations requiring use of fire-resistive materials in dumb-waiter shafts and installation of front fire escape. *Id.*

4. Involuntary manslaughter

Conviction on charge of involuntary manslaughter affirmed, upon evidence that defendant operated an automobile while drinking and in a criminally careless manner, and ran over and caused the death of a man whom he knew to be so intoxicated he could hardly stand. *Story v. United States* (1927, 16 F. 2d 342, 57 App. D.C. 3, 53 A.L.R. 246, certiorari denied 47 S. Ct. 576, 274 U.S. 739, 71 L. Ed. 1318).

5. Joinder of defendants

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with violation of alleged joint duty to use reasonable care to maintain premises in a reasonably safe condition, that defendants negligently failed to have a dumb-waiter shaft constructed of fire-resistive materials, that they negligently failed to forbid use of shaft as a receptacle for waste, and that they negligently failed to provide a front fire escape, the acts of negligence charged were not violations of common-law duties jointly owed by the defendants, and there was a misjoinder of defendants under common law principles. *U. S. v. Interstate Properties* (1946, 153 F. 2d 469, 80 App. D.C. 392).

6. Jury

Deliberations of the jury should be confined to the charge in the indictment, and if defendant was not charged generally with negligence but with specific acts of negligence, namely, unlawful speeding and reckless driving, and if the death was not caused by those acts or one of them, he was entitled to a verdict of not guilty. *Sinclair v. United States* (1920, 265 F. 991, 49 App. D.C. 351).

Chapter 25.—PERJURY

Sec.

22-2501. Perjury—Subornation of perjury.

§ 22-2501. Perjury—Subornation of perjury.

Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person,

in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. Any such false testimony, declaration, deposition, or certificate given in the District of Columbia, but intended to be used in a judicial proceeding elsewhere, shall also be perjury within the meaning of this section. (Mar. 3, 1901, 31 Stat. 1329, ch. 854, § 858.)

CROSS REFERENCES

Alcoholic Control Board, false testimony before, see § 25-126.

Building or homestead association, wilful false swearing in certificate, report, or public notice required of, see § 26-404.

Commission on Licensure to Practice the Healing Art, false swearing before as perjury, see § 2-128.

Form of indictment, see §§ 23-204, 23-205.

Fraternal benefit associations, false representations concerning, see § 35-913.

Insurance companies, false statements of officers concerning assets, see § 35-108.

Life insurance companies, false statements of, see § 35-408.

Liquor permits or licenses, false statements in application for, see § 23-115.

Professional bondsmen and their assistants, affidavits from, see § 23-608.

Tax boards, false statements before, see § 47-606.

Tax schedule for personal property, false statement in return of, see § 47-1203.

Witnesses, false testimony generally, see § 14-102.

NOTES TO DECISIONS

Administration of oaths 1
Admissibility of evidence 2
Authorized by law 3
Belief as to falsity of testimony 4
Circumstantial evidence 5
Civil service 6
Congress as tribunal 25
Conspiracy 7
Constitutionality 8
Corroboration 9
Crime against United States 10
Defense 11
Federal Penal Code 12
Habeas corpus 13
Indictment 14
Instructions 15
Issue 16
Marriage license 17
Materiality of evidence 18
Nature of perjury 19
Number of offenses 20
Reversal 21
Sentence 23
Sufficiency of evidence 23
Tribunal 24, 25
Congress 25

1. Administration of oaths

This section is broad enough to cover false testimony given under oath before any tribunal or any officer or person authorized to administer oaths. *U. S. v. Meyers* (1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.L.R. 2d 1, certiorari denied 69 S. Ct. 602, 336 U. S. 912, 93 L. Ed. 1076).

A United States senator as chairman of a subcommittee was an "officer or person authorized to administer oaths" within meaning of this section. *Id.*

2. Admissibility of evidence

In prosecution for perjury, teletype message sent by F. B. I. in Washington to Texas agent containing accusations that defendant had been guilty of fornication in District of Columbia was improperly received because of charge of another criminal offense. *Pyle v. U.S.* (1946, 156 F. 2d 852, 81 U.S. App. D.C. 209).

In perjury prosecution based on testimony of defendant in rape prosecution denying that signature on statement introduced in evidence was his, where no signatures were obtained from defendant during the perjury trial, signatures which were part of record from rape case were admissible and were not objectionable as requiring defendant to give testimony. *Buckner v. U.S.* (1946, 154 F. 2d 317, 81 U.S. App. D.C. 38).

Submission of illegally obtained evidence to a previous Grand Jury, which did not indict defendant, would not necessarily raise an inference that the same or similar unlawful evidence was presented to a Grand Jury which was impaneled two years later and returned an indictment charging defendant with perjury. *United States v. Weinberg* (1953, 108 F. Supp. 567).

3. Authorized by law

An oath to portion of application for duplicate certificate of title for a motor vehicle, requiring a statement of reason for the application, was not "authorized by law" within meaning of this section. *Shelton v. U.S.* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

Information called for by regulations under Traffic Act § 40-601 et seq., in an application for certificate of title is not required to be under oath so as to constitute a false statement perjury, though lien statement which Motor Vehicle Lien Law, § 40-701 et seq., requires that application contain, must be under oath. *Id.*

4. Belief as to falsity of testimony

To return a verdict of guilty on a charge of perjury, jury must be convinced beyond reasonable doubt not only that accused testified falsely but that he did not, at the time, believe his testimony to be true. *Young v. United States* (1954, 212 F. 2d 236, 94 U. S. App. D. C. 54, certiorari denied 74 S. Ct. 870, 347 U. S. 1015, 98 L. Ed. 1137).

Generally, a belief as to falsity of testimony may be inferred by jury in perjury prosecution from proof of falsity itself, although in some cases this may not be so, as, for instance, where testimony concerns a triviality or an occurrence of long before. *Id.*

5. Circumstantial evidence

Falsity of sworn statement and that the accused actually remembered the facts which he had formerly sworn to may be proved by circumstantial evidence and the only issue in such a case is whether it meets the test of proof beyond a reasonable doubt. *Behrle v. United States* (1939, 100 F. 2d 714, 69 App. D.C. 304).

6. Civil service

Under civil-service regulations, false statements as to whether one had previously been employed by the Government, and whether he resigned or was discharged, was perjury within section R.S. § 5392 (section 1621 of title 18, U.S. Code). *Johnson v. United States* (26 App. D.C. 128).

7. Conspiracy

Crime of conspiracy to commit perjury under § 37 United States Penal Code of March 4, 1909 (35 Stat. 1088, ch. 321, U. S. Comp. Stat. Supp. 1911, p. 1588), relating to offenses against United States, and D. C. 1901, § 858 (this section) (31 Stat. 1329, ch. 854), denouncing perjury offenses, is charged by indictment alleging pending divorce suit in Supreme Court of District of Columbia, but such indictment does not come within meaning of the Code of 1901, § 910 (§ 22-107) which provides for punishment of offenses not covered by District Code or any law inapplicable to District of Columbia by United States. *Fletcher v. United States* (42 App. D.C. 53, certiorari denied 35 S. Ct. 283, 235 U.S. 706, 59 L. Ed. 434).

8. Constitutionality

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because it restricted freedom of belief and expression in violation of the First Amendment to the Federal Constitution providing that Congress shall make no law abridging freedom of speech, or of the press. *United States v. Lattimore* (1953, 112 F. Supp. 507, affirmed in part, reversed in part on other grounds 215 F. 2d 847, 94 U. S. App. D. C. 268).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness was lying when he stated that neither he nor anyone in his party made any pre-arrangements with the Communist Party in order to get into Yenan, China was invalid for failure to meet requirements of the Sixth Amendment to the federal Constitution which protects an accused in right to be informed of the nature and cause of the accusation against him and Federal Rule of Criminal Procedure which requires that indictment shall be a plain, concise, and definite written statement of essential facts constituting offense charged. *Id.*

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because in violation of the Sixth Amendment to the federal Constitution protecting accused in right to be informed of nature and cause of such accusation against him. *Id.*

9. Corroboration

Perjury cannot be proved by uncorroborated testimony of one witness, since falsity of one person's oath cannot be established by another person's oath alone. *Doto v. United States* (1955, 223 F. 2d 309, 96 U. S. App. D. C. 17, certiorari denied 76 S. Ct. 59, 350 U. S. 847, 100 L. Ed. 754).

In a perjury prosecution the rule is that the uncorroborated oath of one witness is not enough to establish, for purposes of conviction of perjury, the falsity of sworn testimony, and it is not the rule that no person may be convicted of perjury unless the falsity of the statement made under oath is established by the testimony of two independent witnesses or by one witness and the corroborating facts and circumstances. *Maragon v. United States* (1951, 187 F. 2d 79, 87 U. S. App. D. C. 349, certiorari denied 71 S. Ct. 804, 341 U. S. 932, 95 L. Ed. 1361).

10. Crime against United States

A crime against United States is committed by any person who violates either § 818 (§ 22-2304) or this section of the Federal Code. *Arnstein v. United States* (1924, 296 F. 946, 54 App. D.C. 199).

11. Defense

A defense to a charge of perjury may not be established by the device of lifting a statement of the accused out of its immediate context and thereby giving it a meaning wholly different from that which its context clearly shows. *Meyers v. United States* (1949, 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

12. Federal Penal Code

Had Congress intended that the perjury statute in the Federal Penal Code should have effect in the District of Columbia, it would have said so in clear language. *Carpenter v. United States* (1939, 100 F. 2d 716, 69 App. D.C. 306).

13. Habeas Corpus

If it be assumed, arguendo, that the Court erred in its trial of a perjury committed before Congress in holding that three Senators (admittedly present) of a Congressional subcommittee were qualified, at most it was a mere error of law not subject to attack by habeas corpus as habeas corpus does not lie to correct mere errors in law but proper remedy is by appeal. *Meyers v. U.S.* (1950, 181 F. 2d 802, 86 U.S. App. D.C. 320, certiorari denied 70 S. Ct. 1030, 339 U.S. 983, 94 L. Ed. 923).

14. Indictment

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests was void for vagueness. *United States v. Lattimore* (1954, 215 F. 2d 847, 94 U. S. App. D. C. 268).

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied when he testified that he did not "know" that certain contributor to magazine edited by witness was a Com-

munist was not, because of the use of the word "know", invalid, on ground of vagueness. *Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied when he testified that, apart from Russian contributions, he never published, while editor of magazine, an article by a person whom he knew to be a Communist was sufficiently certain and involved a valid and proper inquiry. D. C. *Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he knew that contributor to magazine, which was edited by witness, was a "Communist" was not invalid, on ground of vagueness, because of the use of the word "Communist." *Id.*

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness testified falsely when he gave a negative answer to question whether it was necessary, before he went beyond line of demarcation between Nationalist China and Communist China, to have permission of Communist authorities and when he testified that neither he nor any one in his party made any prearrangement with the Communist Party in order to get into Communist China was invalid because of a fatal variance in its terms. *Id.*

Failure to set forth person before whom oath was taken together with his authority to administer same was not fatal to perjury indictment, especially in view of rule requiring merely that indictment be plain, concise, and definite written statement of essential facts constituting offense charged and providing that it need not contain any other matter not necessary to such statement. *United States v. Young* (1953, 113 F. Supp. 20, affirmed 212 F. 2d 236, 94 U. S. App. D. C. 54, certiorari denied 74 S. Ct. 870, 347 U. S. 1015, 98 L. Ed. 1137)

15. Instructions

Instruction that "perjury" is simply the giving of false testimony under oath, testimony that a party does not believe to be true, and that if he testifies before a competent tribunal as to a fact which is false, and he does not believe it to be true, then that is "perjury", was sufficient, though court did not in terms define the word "willfully". *Maragon v. United States* (1951, 187 F. 2d 79, 87 U.S. App. D.C. 349, certiorari denied 71 S. Ct. 804, 341 U.S. 932, 95 L. Ed. 1361).

In perjury prosecution, instructions charging jury on matter of corroboration were proper. *Buckner v. U. S.* (1946, 154 F. 2d 317, 81 U.S. App. D.C. 38).

16. Issue

Question is not whether appellant made the statement voluntarily or involuntarily or whether the statement made was true or false, for it was not the truth or falsity of what he said which was involved, but simply the fact of his having said it. *O'Brien v. United States* (1938, 99 F. 2d 368, 69 App. D.C. 135).

17. Marriage license

Under the statute defining perjury, generally, or by requirements of the statute which defines it in terms of false swearing by an applicant for a marriage license, the ultimate test of materiality in either case is whether such statements have a natural tendency to influence the clerk in his investigation of the facts, in the exercise of his official discretion, and in the administration of the law. *Robinson v. United States* (1940, 114 F. 2d 475, 72 App. D.C. 254).

18. Materiality of evidence

Where perjury prosecution was based upon alleged perjurious statement, which was made by defendant while testifying before the Senate Special Committee to Investigate Organized Crime in Interstate Commerce, that defendant was a United States citizen, question as to defendant's citizenship was material to inquiry which committee was authorized to make. *Doto v. United States* (1955, 223 F. 2d 309, 96 U. S. App. D. C. 17, certiorari denied 76 S. Ct. 59, 350 U. S. 847, 100 L. Ed. 754).

In order to obtain a conviction for perjury of witness who allegedly testified falsely before a Subcommittee of

the Senate Judiciary Committee, the government was required to prove that question, which witness allegedly answered untruthfully, was material to the investigation being carried on by the Subcommittee. *United States v. Lattimore* (1954, 215 F. 2d 847, 94 U. S. App. D. C. 268).

Perjury is committed when one states, contrary to his oath, any material matter which he does not believe to be true. *Pyle v. U.S.* (1946, 156 F. 2d 852, 81 U.S. App. D.C. 209).

Although perjury must relate to a matter which was material to the issue, the materiality need not be immediate, but it is sufficient if the false testimony gives weight to or detracts from testimony as to material facts in issue. *Id.*

Where defendant's testimony in prosecution of another for unlawful transportation of a girl for immoral purposes did not vary on issue of transportation from defendant's prior written statement, variations between statement and testimony on question of whether statement was given voluntarily, as to who paid rent on her apartment and other details, related to immaterial matters and furnished no basis for perjury charge. *Id.*

In a perjury case arising out of a congressional investigation, which concededly may be broad in its scope as far as determining necessity for corrective legislation is concerned, element of materiality must be present or charges fall. *United States v. Lattimore* (1953, 112 F. Supp. 507, affirmed in part, reversed in part on other grounds, 215 F. 2d 847, 94 U. S. App. D. C. 268).

19. Nature of perjury

The word "wilfully" in a perjury statute means "knowingly" or "intentionally". *Maragon v. United States* (1951, 187 F. 2d 79, 87 U. S. App. D. C. 349, certiorari denied 71 S. Ct. 804, 341 U. S. 932, 95 L. Ed 1361).

The criminal nature of perjury is not removed by the fact that the perjurer later in the proceedings states the truth. *Meyers v. United States* (1949, 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

20. Number of offenses

One making two false statements, one violating this section and the other violating Motor Vehicle Lien Law, § 40-714, commits two offenses, though both statements are under one oath. *Shelton v. U.S.* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

21. Reversal

Where counts charging perjury were merged and it could not be determined upon which false statement in application for certificate of title the jury rested its general verdict, but verdict if upon statement as to liens would not support sentence, judgment of conviction was subject to reversal. *Shelton v. U.S.* (1948, 165 F. 2d 241, 82 U.S. App. D.C. 32).

22. Sentence

Where appellant was convicted on three counts, each of which charged him with suborning one of another's perjuries, and received only one sentence, the judgment must be affirmed where appellant was properly convicted on any one of the three counts against him. *Meyers v. United States* (1949, 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

23. Sufficiency of evidence

Evidence was sufficient to sustain conviction for perjury. *Doto v. United States* (1955, 223 F. 2d 309, 96 U. S. App. D. C. 17, certiorari denied 76 S. Ct. 59, 350 U. S. 847, 100 L. Ed. 754).

Evidence sustained conviction of defendant for perjury for testifying under oath before Investigating Subcommittee of the Senate Committee on Expenditures in the Executive Departments that he had only one bank account. *Maragon v. United States* (1951, 187 F. 2d 79, 87 U.S. App. D.C. 349, certiorari denied 71 S. Ct. 804, 341 U.S. 932, 95 L. Ed. 1361).

Corroborative evidence was sufficient to sustain conviction for perjury. *Buckner v. U.S.* (1946, 154 F. 2d 317, 81 U.S. App. D.C. 38).

24. Tribunal

The word "tribunal", as used in this section, implies an officer or body having authority to adjudicate matters,

U.S. v. Meyers (1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

25. — Congress

Where appellant was convicted of perjury before a Congressional Committee, such conviction must be reversed where the committee did not constitute a quorum, as all of the elements of the crime charged shall be proved beyond a reasonable doubt and an element of the crime of perjury is the presence of a competent tribunal, and a tribunal that is not competent is no tribunal. *Christofjel v. United States* (1949, 69 S. Ct. 1447, 338 U.S. 84, 93 L. Ed. 1826).

In prosecution for perjury allegedly committed by witness before Subcommittee of the Senate Judiciary Committee, count of indictment charging that witness lied in denying that he knew that contributor to magazine, which was edited by witness, was a Communist was not defective, as a matter of law, on ground that question was not material to study being made by Subcommittee with reference to subversive activities of Communist agents. *United States v. Lattimore* (1954, 215 F. 2d 847, 94 U.S. App. D.C. 268).

In passing on motion to dismiss indictment charging that witness perjured himself before Subcommittee of the Senate Judiciary Committee, it was proper to draw from Subcommittee's hearings explanatory material necessary to an understanding of the terms and parts of the indictment, but it was not permissible to refer to the hearings for facts which might become issues on the pleas and which might be subject to dispute. *Id.*

One may be indicted for perjury before Congress under this section. *Meyers v. United States* (1949, 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.R.L. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

Chapter 26.—PRISON BREACH—MISPRISIONS

Sec.

22-2601. Prison breach.

22-2602. Misprisions by officers or employees of jail

22-2603. Introducing contraband into penal institution.

§ 22-2601. Prison breach.

Any person committed to a penal institution of the District of Columbia who escapes or attempts to escape therefrom, or from the custody of any officer thereof or any other officer or employee of the District of Columbia, or any person who procures, advises, connives at, aids, or assists in such escape, or conceals any such prisoner after such escape, shall be guilty of an offense and upon conviction thereof in any court of the United States shall be punished by imprisonment for not more than five years, said sentence to begin, if the convicted person be an escaped prisoner, upon the expiration of the original sentence. (July 15, 1932, 47 Stat. 698, ch. 492, § 8; June 6, 1940, 54 Stat. 243, ch. 254, § 6 (a).)

AMENDMENT

1940—Act June 6, 1940, substituted "committed to" for "confined in" and added the words "or from the custody of any officer thereof or any other officer or employee of the District of Columbia."

SAVINGS PROVISION

Section 6(b) of act June 6, 1940, provided that: "This amendment of section 8 [this section] of said act approved July 15, 1932, shall not have the effect to release or extinguish any punishment, penalty, or liability incurred under such section, and such section as originally enacted shall be treated as still remaining in force for the purpose of sustaining any proper prosecution of the violation of such section committed prior to the passage of this amendatory act [June 6, 1940]."

The remaining sections of this act, as amended, are compiled herein as §§ 24-401 to 24-410.

CROSS REFERENCE

Possession of firearms, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Attempts 1
Proof 2
Sentence 3

1. Attempts

Attempts at escape are forbidden to all inmates and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold v. Soileau* (C.C.A. 5, 1933, 67 F. 2d 259).

2. Proof

Question was whether defendant had passed in the saws, and it was not necessary for the government to show that there had been no sawing in the morning but only that appellant had given the saws to the prisoner. *Hale v. United States* (C.C.A. 6, 1934, 67 F. 2d 673).

3. Sentence

Person sentenced under this section is subject to authority of Attorney General, and can be confined in penitentiary outside of the District. *Beard v. Sanford* (C.C.A. 5, 1938, 99 F. 2d 750).

Escape sentence should be served after the termination of the original sentence. *Gambill v. Aderhold* (D.C. Ga. 1933, 4 F. Supp. 567).

§ 22-2602. Misprisions by officers or employees of jail.

Any officer of the District jail, or any guard thereof, or any attaché or employee connected therewith, who shall demand, or directly or indirectly receive, any compensation, fee, reward, or gratuity for any information given in respect to any prisoner confined therein, or awaiting trial upon bail, or for any service, assistance, or influence rendered, given, or exerted, with any view, intent, or purpose of having such person thus charged or held for trial, or held on bail to await trial, taken, offered, or used, either as a volunteer or as a substitute, for any other in the military or naval service, or who shall corruptly receive, for any act done by virtue of his office or employment, any fee, compensation, reward, or gratuity, shall be deemed guilty of a misdemeanor, and shall on conviction be punished by a fine of not less than two hundred and fifty dollars, and not more than one thousand dollars, and by imprisonment in the District jail for a term not less than three months nor more than one year. (R. S., D. C., § 1180.)

§ 22-2603. Introducing contraband into penal institution.

Any person, not authorized by law, or by the Commissioners of the District of Columbia, or by the general superintendent of penal institutions of the District of Columbia, who introduces or attempts to introduce into or upon the grounds of any penal institution of the District of Columbia, whether located within the District of Columbia or elsewhere, any narcotic drug, weapon, or any other contraband article or thing, or any contraband letter or message intended to be received by an inmate thereof, shall be guilty of a felony, and, upon conviction thereof in the United States District Court for the District of Columbia or in any court of the United States, shall be punished by imprisonment for not more than ten years. (Dec. 15, 1941, 55 Stat. 800, ch. 572, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127).

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Chapter 27.—PROSTITUTION—PANDERING

Sec.

- 22-2701. Prostitution—Inviting for purposes of, prohibited.
- 22-2702. Repealed.
- 22-2703. Suspension of sentence of guilty person—Conditions—Enforcement.
- 22-2704. Abducting, secreting, or enticing child from her home for purposes of prostitution—Harboring such child.
- 22-2705. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.
- 22-2706. Compelling female to live life of prostitution against her will—Penalty.
- 22-2707. Procure—Punishment for receiving money or other valuable thing for arranging assignation or debauchery—Penalty.
- 22-2708. Punishment for causing wife to live in prostitution.
- 22-2709. Punishment for detaining inmate in disorderly house for debt there contracted.
- 22-2710. Procurer for house of prostitution—Penalty.
- 22-2711. Procurer for third persons—Penalty.
- 22-2712. Running house of prostitution—Penalty.
- 22-2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance.
- 22-2714. Abatement of nuisance under section 22-2713 by injunction—Temporary injunction—Effect of injunction.
- 22-2715. Abatement of nuisance under section 22-2713—Trial—Dismissal of complaint—Prosecution to judgment—Costs.
- 22-2716. Trials for violating injunction granted under section 22-2714—Punishment.
- 22-2717. Order of abatement—Sale of property—Entry of closed premises punishable as contempt.
- 22-2718. Disposition of proceeds of sale.
- 22-2719. Bond for abatement—Order for delivery of premises—Effect of release.
- 22-2720. Tax for maintaining such nuisance.
- 22-2721. Granting immunity to witnesses.
- 22-2722. Keeping bawdy or disorderly houses.

§ 22-2701. Prostitution—Inviting for purposes of, prohibited.

It shall not be lawful for any person to invite, entice, persuade, or to address for the purpose of inviting, enticing, or persuading, any person or persons sixteen years of age or over in the District of Columbia, for the purpose of prostitution, or any other immoral or lewd purpose, under a penalty of not more than \$250 or imprisonment for not more than ninety days, or both. (Aug. 15, 1935, 49 Stat. 651, ch. 546, § 1; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 102; June 29, 1953, 67 Stat. 93, ch. 159, § 202(b).)

AMENDMENTS

1953—Act June 29, 1953, increased the maximum fine from \$100 to \$250 and made it unlawful to commit the offense anywhere in the District of Columbia by eliminating the words "in or upon any avenue, street, road, highway, open space, alley, public square, enclosure, public building or other public place, store, shop, or reservation or at any public gathering or assembly" preceding "in the District of Columbia" and the words "to accompany, go with, or follow him or her to his or her residence, or to any other house or building, enclosure, or other place" following such phrase and the sentence "And it shall not be lawful for any person to invite, entice, or persuade, or address for the purpose of inviting, enticing, or persuading any such person or persons from any door, window, porch, or portico of any house or building to enter any house, or go with, accompany, or follow him or her to any place whatever, for the purpose of prostitution, or any other immoral or lewd purpose, under the like penalties herein provided for the same conduct in the streets, avenues, roads, highways, or alleys, public squares, open spaces, enclosures, public buildings or other public

places, stores, shops, or reservations or at any public gatherings or assemblies."

1948—Act June 9, 1948, limited the solicitation to persons sixteen years of age or over and inserted in the first sentence the words "public building or other public place, store, shop, or reservation or at any public gathering or assembly" preceding "in the District of Columbia" and in the second sentence the words "public buildings or other public places, stores, shops, or reservations or at any public gatherings or assemblies" following "enclosures."

CROSS REFERENCES

Duties of Metropolitan police, see §§ 4-145, 4-146.

Prosecutions, see § 22-109.

Transfer or suspension of liquor license pending prosecution, see §§ 25-117, 25-118.

NOTES TO DECISIONS

Admissibility of evidence 5
 Arresting officer, testimony of evidence 6
 Character evidence 7
 Constitutionality 1
 Corroboration of evidence 8
 Counsel for indigent defendant 2
 Enforcement 3
 Evidence 4—11
 In general 4
 Admissibility 5
 Arresting officer, testimony of 6
 Character evidence 7
 Corroboration 8
 Hearsay 9
 Presumption of innocence 10
 Sufficiency 11
 Hearsay evidence 9
 Military service record 12
 Place of action 13
 Presumption of innocence 10
 Prior record of defendant 14
 Questions for
 Congress 15
 Jury 16
 Reopening of prosecution 17
 Review 18
 Subpoena duces tecum 19
 Sufficiency of evidence 11
 Trial by
 Court 20
 Jury 21
 United States attorney, prosecution by 22
 White Slave Act 23

1. Constitutionality

This section declaring it a crime "to invite, entice, persuade * * * any person * * * for purpose of prostitution," is not unconstitutional as setting up no ascertainable standard of guilt or so vague, indefinite and general as to violate rights of one accused of such offense under Fifth Amendment, but is clear in language and purpose, free of ambiguity, and lays down definite and easily understandable standard of criminal liability. *Hawkins v. United States* (D. C. Mun. App. 1954, 105 A. 2d 250).

2. Counsel for indigent defendant

When prosecution involves a matter of serious moral turpitude but there is no appeal as a matter of right to Municipal Court of Appeals because penalty imposed is less than \$50, indigent defendant is entitled to aid of counsel in preparing application for leave to appeal. *Wildeblood v. United States* (1959, 273 F. 2d 73, 106 U.S. App. D.C. 338).

3. Enforcement

Enforcement of this section making it unlawful for any person to invite another to accompany him for lewd and immoral purpose must be with design to prevent offense, to prevent unwarranted irreparable destruction of reputations, and to prevent criminal offense of blackmail in connection with charge of verbal invitation, and it must not foster conditions or practices which make easy and encourage such offense. *Kelly v. United States* (1952, 194 F. 2d 150, 90 U.S. App. D.C. 125).

4. Evidence—In general

Testimony asserting sodomy must be subjected to most careful scrutiny, and such principle is applicable to invitation to sodomy. *Kelly v. United States* (1952, 194 F. 2d 150, 90 U.S. App. D.C. 125).

That defendant "asked him if he wanted a date" did not necessarily include prostitution. *Williams v. United States* (1940, 110 F. 2d 554, 71 App. D.C. 377).

It is not necessary to prove any particular language or conduct to establish that a defendant solicited prostitution. *Curran v. U.S.* (D.C. Mun. App. 1947, 52 A. 2d 121).

5. — Admissibility

In prosecution for soliciting prostitution, where officer's opinion or assumption as to what consideration the \$5 demanded by defendant would cover was elicited by defense counsel on cross-examination, defendant could not complain that such evidence was inadmissible. *Hall v. U.S.* (D.C. Mun. App. 1943, 34 A. 2d 631).

6. — Arresting officer, testimony of

Great caution should be applied in considering testimony of arresting officer in cases where alleged assault is nonviolent sexual touching which by its nature left no traces and to which there were no other witnesses. *Guarro v. United States* (1956, 237 F. 2d 578, 99 U.S. App. D.C. 97).

7. — Character evidence

In prosecution for statutory offense of unlawfully inviting another to accompany accused for lewd and immoral purpose, evidence of good character of accused is particularly applicable in that it is usually only defense, except word of accused, and should be considered by court. *Kelly v. United States* (1952, 194 F. 2d 150, 90 U.S. App. D.C. 125).

In prosecution for soliciting a person for immoral or lewd purposes an acquittal is not required to follow whenever evidence of good character of accused is presented. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

Character evidence alone is not determinative of guilt or innocence of an accused and at most it can be basis for inference by trier of facts that a person possessing good character would, in all probability and based on experience of human relations, not be guilty of crime charged. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

8. — Corroboration

In prosecution for soliciting for the purpose of prostitution, it was not necessary that testimony of the person solicited be corroborated. *Parker v. United States* (D. C. Mun. App. 1958, 143 A. 2d 98).

Corroboration of testimony of witness for prosecution is not required in a case of solicitation for prostitution. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

A conviction of soliciting for a lewd and immoral purpose may be based on uncorroborated testimony of one government witness. *Brenke v. United States* (D. C. Mun. App. 1951, 78 A. 2d 677).

9. — Hearsay

In prosecution for soliciting for prostitution, even if evidence of conversation between sailor to whom arresting officer had been talking and one of sailors walking behind defendant were hearsay and improperly admitted, error, if any, was not prejudicial where finding of guilt was based upon solicitation which occurred subsequently. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

10. — Presumption of innocence

In prosecution for addressing a person for immoral purposes, brought to court without a jury, record did not establish that accused was not afforded presumption of innocence. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

11. — Sufficiency

Evidence was insufficient to sustain conviction for unlawful invitation by accused to another to accompany accused for lewd and immoral purpose. *Kelly v. United States* (1952, 194 F. 2d 150, 90 U.S. App. D.C. 125).

Evidence was sufficient to sustain conviction of soliciting for purpose of prostitution. *Parker v. United States* (D. C. Mun. App. 1958, 143 A. 2d 98).

Evidence sustained conviction for soliciting for prostitution. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

Evidence justified conviction for soliciting a person for immoral or lewd purposes. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

Evidence justified conviction for addressing a person for immoral purposes. *King v. United States* (D. C. Mun. App. 1952, 90 A. 2d 229).

In prosecution for soliciting prostitution of any person sixteen years of age or older, lack of testimony as to age of police officers allegedly solicited by defendant did not entitle her to acquittal when officers were in court so that judge, sitting without jury, could use his senses and draw inferences as to their ages by his personal observation. *Cunningham v. United States* (D. C. Mun. App. 1952, 86 A. 2d 918).

Evidence justified finding that witnesses were solicited directly and personally by defendant and sustained conviction for soliciting prostitution. *Id.*

Evidence as to the provocative position of defendant on a park bench, physical blandishment, challenging verbal invitation, prompt discussion of financial terms, and the ready arrangement for a room, sustained conviction of soliciting prostitution. *Hall v. U.S.* (D.C. Mun. App. 1943, 34 A. 2d 631).

Evidence sustained conviction of soliciting prostitution. *Curran v. U. S.* (D. C. Mun. App. 1947, 52 A. 2d 121).

12. Military service record

Defendant's honorable discharge from United States Army approximately five years before offense charged did not require defendant's acquittal of charge of soliciting for lewd and immoral purpose as a matter of law. *Brenke v. United States* (D. C. Mun. App. 1951, 78 A. 2d 677).

13. Place of action

An information that does not charge that defendant acted in any such place as provided in the statute charges no crime. *Williams v. United States* (1940, 110 F. 2d 554, 71 App. D.C. 377).

14. Prior record of defendant

Fact that defendant during nine-year period had received six sentences for soliciting prostitution did not forfeit her right to equal protection of the law, but it did affect credibility of her testimony. *Hamilton v. U. S.* (1943, 31 A. 2d 887, reversed on other grounds 140 F. 2d 679, 78 U.S. App. D.C. 316).

15. Questions for Congress

Whether the District of Columbia was already adequately protected from the evils of prostitution without the added prohibition of transportation for that purpose was for Congress, not the courts, to decide. *U. S. v. Beach* (1945, 65 S. Ct. 602, 324 U.S. 193, 89 L. Ed 865, opinion conformed to 149 F. 2d 837, 80 U.S. App. D.C. 160, certiorari denied 66 S. Ct. 47, 326 U.S. 745, 90 L. Ed. 445).

16. Questions for jury

In prosecution for soliciting a person for immoral or lewd purposes, whether a solicitation occurred and whether solicitation was by defendant or by arresting officer, were for jury where testimony was conflicting and conflicting inferences could reasonably be drawn therefrom. *Bicksler v. United States* (D. C. Mun. App. 1952, 90 A. 2d 233).

17. Reopening of prosecution

Reopening of prosecution for soliciting for prostitution, after both government and defense had rested and final argument had commenced, to receive corroborating testimony as to defendant's presence at time and place of alleged offense was within sound discretion of trial court. *Price v. United States* (D. C. Mun. App. 1957, 135 A. 2d 854).

18. Review

Where prior to taking of testimony on information motion to dismiss on ground that information did not charge crime was denied, and evidence was taken and motion on ground that no crime was charged and that crime had not been established was granted because evidence was insufficient, and judgment of not guilty was then entered on record, judgment was that evidence failed to sustain offense charged and state had no right to appeal. *Korol v. United States* (D. C. Mun. App. 1951, 82 A. 2d 129).

In prosecution for soliciting prostitution, conflicting evidence raised question for trial judge, whose decision was conclusive on appeal where supported by substantial

evidence. *Curran v. U. S.* (D. C. Mun. App. 1947, 52 A. 2d 121).

19. Subpoena duces tecum

Where appellant was convicted for violation of this section, it was not error for the court to refuse to issue a compulsory process for obtaining witnesses as the rule is well established that a party is not entitled of right to a subpoena duces tecum in any form at any time and under any circumstances; and a subpoena duces tecum too indefinite in terms, too broad in scope or untimely requested may properly be denied. *Kelly v. United States* (D. C. Mun. App. 1950, 73 A. 2d 232).

20. Trial by court

In prosecution for addressing a person for immoral purposes, brought to court without jury, record did not establish that court failed to afford accused protection accused would have been afforded by properly instructed jury. *King v. United States* (D.C. Mun. App. 1952, 90 A. 2d 229).

21. Trial by jury

Refusal to grant motion for trial by jury, defendant being charged with soliciting prostitution, was error. *Blackburn v. United States* (1936, 84 F. 2d 269, 66 App. D.C. 15).

The act of prostitution was not an offense indictable at common law, so as to entitle a person accused thereof to a trial by jury under the Constitution of the United States. *Bailey v. United States* (1938, 98 F. 2d 306, 69 App. D.C. 25).

22. United States attorney, prosecution by

Prosecution for violation of statute rendering it unlawful to invite, entice or persuade any person fifteen years of age or over for purpose of prostitution or any other immoral or lewd purposes, should be conducted by United States attorney in name of and for benefit of United States, since offense is punishable by both fine and imprisonment. *United States v. Paul Strothers* (1956, 228 F. 2d 34, 97 U.S. App. D. C. 63).

23. White Slave Act

The transportation of a woman wholly within the District of Columbia with the intent or purpose to induce or entice the woman transported to practice prostitution violates the Mann Act, U.S. Code, title 18, § 2421. *U. S. v. Beach* (1945, 65 S. Ct. 602, 324 U.S. 193, 89 L. Ed. 865, opinion conformed to 149 F. 2d 837, 80 U.S. App. D.C. 160, certiorari denied 66 S. Ct. 47, 326 U.S. 745, 90 L. Ed. 445).

The Mann Act, U.S. Code, title 18, § 2421, penalizing the transportation in the District of Columbia of any woman with the intent or purpose to induce or entice the woman transported to practice prostitution does not conflict with any other legislation applicable to the District. *Id.*

§ 22-2702. Repealed. Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5.

Section, act Aug. 15, 1935, 49 Stat. 651, ch. 546, § 2, related to inmate or frequenter of house of ill fame.

§ 22-2703. Suspension of sentence of guilty person—Conditions—Enforcement.

The court may impose conditions upon any person found guilty under section 22-2701, and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The director of public health of the District of Columbia, the Women's Bureau of the

Police Department, the Board of Public Welfare, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Aug. 15, 1935, 49 Stat. 651, ch. 546, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

TRANSFER OF FUNCTIONS

The Commissioners of the District of Columbia and the Director of the Department of Corrections as successors to the powers and duties of the Board of Public Welfare and the Director of Public Welfare over penal institutions, establishment of a Department of Corrections headed by a Director under direction and control of a Commissioner as successor to former Department of Corrections and abolition of Board of Public Welfare and transfer of specified functions thereof to Department of Public Welfare, see section 24-443 and Reorg. Orders No. 34, dated May 28, 1953, as amended, and No. 58, dated June 30, 1953, as amended, set out in the Appendix to Title 1, Administration.

CROSS REFERENCE

Police matrons, see §§ 4-116 to 4-118.

§ 22-2704. Abducting, secreting, or enticing child from her home for purposes of prostitution—Harboring such child.

Any person who, for purposes of prostitution, persuades, entices, or forcibly abducts from her home or usual abode, or from the custody and control of her parents or guardian, any female under sixteen years of age shall be punished by imprisonment for not less than two nor more than twenty years; and whoever knowingly secretes or harbors any such female so persuaded, enticed, or abducted as aforesaid shall suffer imprisonment for not more than eight years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 813.)

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

§ 22-2705. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.

Any person who, within the District of Columbia shall place or cause, induce, procure, or compel the placing of any female in the charge or custody of any other person, or in a house of prostitution, with intent that she shall engage in prostitution, or who shall compel, induce, entice, or procure or attempt to compel, induce, entice, or procure any female to reside with any other person for immoral purposes or for the purpose of prostitution, or who shall compel, induce, entice, or procure or attempt to compel, induce, entice, or procure any such female to reside or continue to reside in a house of prostitution, or compel, induce, entice, or procure or attempt to compel, induce, entice, or procure her to engage in prostitution, or who takes or detains a female against her will, with intent to compel her by force, threats, menace, or duress to marry him or to marry any other person; or any parent, guardian, or other person having legal custody of the person of a female, who consents to her taking or detention by any person, for the purpose of prostitution or sexual intercourse, shall be guilty of a

felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than \$1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 1; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 1.)

AMENDMENT

1941—Act Jan. 3, 1941, reworded the section throughout, broadened the scope of the offense, and provided that the offense should constitute a felony.

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Cross examination 1
Evidence 3
Indictment 2
Verdict 4

1. Cross examination

Appellant's contention that the trial court improperly restricted his cross examination of complaining witnesses is without foundation where the record shows that the court permitted extensive, and in fact, exhaustive cross examination, particularly on matters affecting the witnesses' credibility. *Wright v. United States* (1950, 183 F. 2d 821, 87 U.S. App. D.C. 67).

2. Indictment

It was proper to charge in first count of indictment that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and in second count to charge an attempt. *Welch v. U.S.* (1943, 135 F. 2d 465, 77 U.S. App. D.C. 317, certiorari denied 63 S. Ct. 1329, 319 U. S. 769, 87 L. Ed. 1718).

3. Evidence

Evidence was sufficient to sustain conviction for attempting to compel, induce, entice, and procure a certain female to engage in prostitution. *Welch v. U.S.* (1943, 135 F. 2d 465, 77 U.S. App. D.C. 317, certiorari denied 63 S. Ct. 1329, 319 U. S. 769, 87 L. Ed. 1718).

4. Verdict

Where first count of indictment charged that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and second count charged an attempt, even if there had been inconsistency between directed verdict on first count and verdict finding defendants guilty on second count, that would constitute no reason for setting aside verdict of jury. *Welch v. U.S.* (1943, 135 F. 2d 465, 77 U.S. App. D.C. 317, certiorari denied 63 S. Ct. 1329, 319 U. S. 769, 87 L. Ed. 1718).

Where first count of indictment charged that defendants compelled, induced, enticed and procured a certain female to engage in prostitution, and second count charged an attempt, the fact that court directed a verdict on the first count and that jury convicted defendants on the second count resulted in no inconsistency. *Id.*

§ 22-2706. Compelling female to live life of prostitution against her will—Penalty.

Any person who, within the District of Columbia, by threats or duress, detains any female against her will, for the purpose of prostitution or sexual intercourse, or any person who shall compel any female, against her will, to reside with him or with any other person for the purposes of prostitution or sexual intercourse, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and a fine of not more than \$1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 2; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 2.)

AMENDMENT

1941—Act Jan. 3, 1941, reworded the section throughout, broadened the scope of the offense, and provided that the offense should constitute a felony.

CROSS REFERENCES

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

§ 22-2707. Procurer—Punishment for receiving money or other valuable thing for arranging assignation or debauchery—Penalty.

Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of arranging for or causing any female to have sexual intercourse with any other person or to engage in prostitution, debauchery, or any other immoral act, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and a fine of not more than \$1,000. (June 25, 1910, 36 Stat. 833, ch. 404, § 3; Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 3.)

AMENDMENT

1941—Act Jan. 3, 1941, reworded the section throughout, broadened the scope of the offense, and increased the penalty.

NOTES TO DECISIONS

Amount of money received 1
Attempt 2
Brothel keepers 3
Cohabit, definition of 4
Construction 5
Conviction, grounds for 6
Cross examination 7
Elements of offense 8
Evidence 9
Indictment 10
Instructions 11
Procuring patrons 12
Review 13
Sentence 14

1. Amount of money received

Under this section, it is immaterial whether the procurer receives much or little and it is not important whether payment is made all at once in a lump sum or in scattered amounts at different times. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

2. Attempt

Where defendant, upon obtaining affirmative reply to his question whether police officers were looking for girls, inquired what type they wanted, priced the girls at \$10 each, and revealed, in answer to question put by one officer, that defendant's fee was \$2, fact that defendant's actions never progressed beyond stage of conversation and that no money was received was not fatal to a conviction for an attempt to receive money for arranging for a female to have sexual intercourse, and, had the money passed, the principal crime itself would have been consummated. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

Mere preparation is not an attempt, but preparation may progress to the point of attempt, and question whether it has is one of degree which can be resolved only on basis of facts of each case. *Id.*

3. Brothel keepers

This section does not penalize brothel keeper as such or agents who procure patrons for brothels or for woman elsewhere so long as they do nothing toward bringing the woman there for that purpose and for money or value received. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U.S. App. D. C. 147).

4. Cohabit, definition of

The word "cohabit" as formerly used in this section, making it unlawful for person to receive money or valuable thing for procuring or placing in house of prostitution or elsewhere any female for purpose of causing her illegally to cohabit with any male person or persons, covers promiscuous and casual relations and is not used in strict sense of cohabiting with a single person in manner of husband and wife. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

5. Construction

Where there had been contradictory rulings in district court in interpreting this section, neither interpretation could be taken to have settled the law or as showing intent of Congress. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U. S. App. D. C. 147).

Term "arranging" may include within its meaning the act of procuring as a part of the arrangement, but it cer-

tainly does not confine itself to only that activity and has much broader significance embracing many more activities than the one of procuring. *Byas v. United States* (1950, 182 F. 2d 94, 86 U.S. App. D.C. 309).

6. Conviction, grounds for

Under this section, the keeping and maintaining of a girl for prohibited purpose cannot be grounds for conviction. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U.S. App. D. C. 147).

7. Cross examination

Appellant's contention that the trial court improperly restricted his cross examination of complaining witnesses is without foundation where the record shows that the court permitted extensive, and in fact, exhaustive cross examination, particularly on matters affecting the witnesses' credibility. *Wright v. United States* (1950, 183 F. 2d 821, 87 U.S. App. D.C. 67).

8. Elements of offense

Under this section the placing of woman in house of prostitution or elsewhere for purpose of causing her to cohabit illegally with male person or persons and prohibited intent must coincide but payment for the placing need not do so and it may occur before, at, or after the placing, but whenever it takes place it must be for or on account of that act. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U. S. App. D. C. 147).

Under this section, the gist of the offense is the placing of a female in a house of prostitution or elsewhere for purpose of causing her illegally to cohabit with any male person or persons and not the receiving of money. *Id.*

Principal elements of crime described in this section making it unlawful for any one to receive money or other valuable thing for arranging for or causing any female to have sexual intercourse with any other person or engage in prostitution, debauchery, or any other immoral act are the receipt of money and the arranging of an assignation. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

This section making it unlawful for any one to receive money or other valuable things for arranging for or causing any female to have sexual intercourse with any other person or to engage in prostitution, debauchery, or any other immoral act includes not only the actual act of procurement but also the agreement to procure. *Id.*

9. Evidence

Evidence clearly supported finding that appellant at least participated in arranging for a female to commit an act of prostitution with a police officer. *Byas v. United States* (1950, 182 F. 2d 94, 86 U. S. App. D. C. 309).

Evidence of conditions of the defendant's house at the time of her arrest for violating statute, which established presence of the two women referred to in the indictment, was competent and relevant in proof of one element of each offense, i. e., "engagement in prostitution." *Smith v. U.S.* (1950, 180 F. 2d 775, 86 U.S. App. D.C. 195).

Evidence sustained conviction for attempt to receive money for arranging for a female to have sexual intercourse. *Sellers Jr. v. United States* (D. C. Mun. App. 1957, 131 A. 2d 300).

10. Indictment

To sustain conviction under this section, the government must charge and prove an act of procuring a woman for or placing her in a house of prostitution or elsewhere, for the purpose of causing her to cohabit illegally with a male person or persons, and that the defendant received money or other valuable thing for or on account of the procuring or placing. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U. S. App. D. C. 147).

Where appellant was convicted on seven counts of an eight count indictment of receiving money for arranging for one to engage in prostitution, with four counts relating to one female and three to another, the crimes charged in the several counts were of the same character, permitting joinder of the counts. *Smith v. U. S.* (1950, 180 F. 2d 775, 86 U.S. App. D.C. 195).

11. Instructions

In prosecution for violating this section, instruction informing jury to find defendant guilty if jury believed defendant kept, placed, or maintained girl at premises

for prohibited purpose was reversibly erroneous, since it permitted jury to find defendant guilty without regard to placing or the intent with which it was done. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

In prosecution for pandering, where defendant produced witnesses who testified to his general reputation, and court refused requested instruction on weight to be given to evidence of good character but expressed purpose to instruct on the subject, failure to give instruction on weight to be given to evidence of good character was error. *Colbert v. U.S.* (1946, 146 F. 2d 10, 79 U.S. App. D.C. 261).

An erroneous instruction may be withdrawn or corrected at any time, at least prior to the time the jury retires to deliberate. *Byas v. United States* (1950, 182 F. 2d 94, 86 U.S. App. D.C. 309).

Where judge told the jury that the essential elements of the crime would have to be proved by the government beyond a reasonable doubt before verdict of guilty could be found and immediately thereafter in a concise statement he set out the elements, no error was committed. *Id.*

Objection to court's use of the word "arrange" is without merit since it needs no judicial definition as is a common word and admits of no double entendre which casts an umbrage of legal nicety beyond its ordinary meaning. *Id.*

12. Procuring patrons

This section does not punish merely procuring patrons for a woman, or sharing her earnings, or keeping or maintaining her even with intent to cause her to cohabit illegally. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

13. Review

In prosecution for violating this section, where arresting officer was permitted to testify that defendant and his daughter were registered at hotel as man and wife, whether testimony was properly allowed to remain in evidence for purpose of showing defendant's knowledge of his daughter's activities would not be determined where reversal was required on other grounds. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

Defendant's contentions that this section outlaws only the act of placing, and that receiving money for or on account of some other act than placing, does not violate this section would be considered on merits notwithstanding claim that the contentions were too late because raised for the first time on appeal, in view of unusual circumstances in which appeal had been taken and perfected. *Id.*

Court will not entertain an appeal based on a complaint that because of inartful exercise of his right to challenge jurors peremptorily, a party has created such prejudice as to deny himself a fair trial. *Byas v. United States* (1950, 182 F. 2d 94, 86 U.S. App. D.C. 309).

14. Sentence

In prosecution for violating this section where defendant was convicted under separate counts which, in the light of evidence presented to sustain them, differed only in charging separate acts of receiving money for a single placing and where defendant was sentenced under each conviction, the sentence was invalid since it was a sentence for two crimes when only one had been charged. *Boykin v. U.S.* (1942, 130 F. 2d 416, 76 U.S. App. D.C. 147).

§ 22-2708. Punishment for causing wife to live in prostitution.

Any person who by force, fraud, intimidation, or threats, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned not less than one nor more than ten years. (June 25, 1910, 36 Stat. 833, ch. 404, § 4.)

CROSS REFERENCE

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

§ 22-2709. Punishment for detaining inmate in disorderly house for debt there contracted.

Any person or persons who attempt to detain any girl or woman in a disorderly house or house of prostitution because of any debt or debts she has contracted, or is said to have contracted, while living in said house of prostitution or disorderly house shall be guilty of a felony, and on conviction thereof be imprisoned for a term not less than one nor more than five years. (June 25, 1910, 36 Stat. 833, ch. 404, § 5.)

§ 22-2710. Procurer for house of prostitution—Penalty.

Any person who, within the District of Columbia, shall pay or receive any money or other valuable thing for or on account of the procuring for, or placing in, a house of prostitution, for purposes of sexual intercourse, prostitution, debauchery, or other immoral act, any female, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than \$1,000. (June 25, 1910, ch. 436, § 6, as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

§ 22-2711. Procurer for third persons—Penalty.

Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of procuring and placing in the charge or custody of another person for sexual intercourse, prostitution, debauchery, or other immoral purposes any female shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than \$1,000. (June 25, 1910, ch. 436, § 7, as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

§ 22-2712. Running house of prostitution—Penalty.

Any person who, within the District of Columbia, knowingly, shall accept, receive, levy, or appropriate any money or other valuable thing, without consideration other than the furnishing of a place for prostitution or the servicing of a place for prostitution, from the proceeds or earnings of any female engaged in prostitution shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than five years and by a fine of not more than \$1,000. (June 25, 1910, ch. 404, § 8, as added by Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4.)

§ 22-2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance.

Whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place used for the purpose of lewdness, assignation, or prostitution in the District of Columbia is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such lewdness, assignation, or prostitution is conducted permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (Feb. 7, 1914, 38 Stat. 280, ch. 16, § 1.)

CROSS REFERENCE

Powers and duties of Metropolitan Police, see §§ 4-145, 4-146.

NOTE TO DECISION

1. In general

Intent of this act was "to enjoin and abate houses of lewdness, assignation, and prostitution" as therein defined, but to subject owners or lessees to the provisions of the act only when guilty knowledge was brought home to them. *Holmes v. United States* (1921, 269 F. 489, 50 App. D.C. 147, 12 A.L.R. 427).

§ 22-2714. Abatement of nuisance under section 22-2713 by injunction—Temporary injunction—Effect of injunction.

Whenever a nuisance is kept, maintained, or exists as defined in sections 22-2710 to 22-2718 the attorney of the United States for the District of Columbia, or the Attorney-General of the United States, or any citizen of the District of Columbia, may maintain an action in equity in the name of the United States of America, upon the relation of such attorney of the United States for the District of Columbia, the Attorney-General of the United States, or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days' notice, in writing, shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the District of Columbia, and any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided. (Feb. 7, 1914, 38 Stat. 280, ch. 16, § 2.)

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, U. S. Code, title 28, Appendix.

§ 22-2715. Abatement of nuisance under section 22-2713—Trial—Dismissal of complaint—Prosecution to judgment—Costs.

The action when brought shall be triable at the first term of court, after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed, except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the attorney of the United States for the District of Columbia or the Attorney-General of the United States of America in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, it may direct the attorney of the United States for the District of Columbia to prosecute said action to judgment; and if the action is continued more than one term of court, any citizen of the District of Columbia, or the attorney of the United States for the District of Columbia, may be substituted for the complaining

party and prosecute said action to judgment. If the action is brought by a citizen, and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen. (Feb. 7, 1914, 38 Stat. 281, ch. 16 § 3; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, U. S. Code, title 28, Appendix.

§ 22-2716. Trials for violating injunction granted under section 22-2714—Punishment.

In case of the violation of any injunction granted under the provisions of section 22-2714, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information, under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may at any stage of the proceedings demand the production and oral examination of the witnesses. A party found guilty of contempt, under the provisions of this section, shall be punished by a fine of not less than \$200 nor more than \$1,000 or by imprisonment in the District jail not less than three nor more than six months or by both fine and imprisonment. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 4.)

§ 22-2717. Order of abatement—Sale of property—Entry of closed premises punishable as contempt.

If the existence of the nuisance be established in an action as provided in sections 22-2713 to 22-2721, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed he shall be punished as for contempt, as provided in section 22-2716. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 5.)

§ 22-2718. Disposition of proceeds of sale.

The proceeds of the sale of the personal property, as provided in section 22-2717, shall be applied in the payment of the costs of the action and abatement, and the balance, if any, shall be paid to the defendant. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 6.)

§ 22-2719. Bond for abatement—Order for delivery of premises—Effect of release.

If the owner appears and pays all costs of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court or, in vacation, by the collector of taxes of the District of Columbia, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept within a period of one year thereafter, the court, or, in vacation, the judge, may, if satisfied of his

good faith, order the premises closed under the order of abatement to be delivered to said owner and said order of abatement canceled so far as the same may relate to said property; and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from judgment, lien, penalty, or liability to which it may be subject by law. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 7.)

§ 22-2720. Tax for maintaining such nuisance.

Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by sections 22-2713 to 22-2721, there shall be assessed against said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of \$300. The assessment of said tax shall be made by the assessor of the District of Columbia and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the chief of police, and a return of said assessment shall be made to the collector of taxes. Said tax shall be a perpetual lien upon all property, both personal and real used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any other penalties provided by law. The provisions of the law relating to the collection and distribution of taxes upon personal and real property shall govern in the collection and distribution of the tax herein prescribed in so far as the same are applicable and not in conflict with the provisions of said sections. (Feb. 7, 1914, 38 Stat. 282, ch. 16, § 8.)

CROSS REFERENCE

Collection and disbursement of taxes, see § 47-301 et seq.

§ 22-2721. Granting immunity to witnesses.

The United States attorney or other attorney representing the prosecution for violation of sections 22-2713 to 22-2721, with the approval of the court, may grant immunity to any witness called to testify in behalf of the prosecution. (Feb. 7, 1914, 38 Stat. 282, ch. 16, § 9; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U. S. Code, title 28, § 501.

§ 22-2722. Keeping bawdy or disorderly houses.

Any person convicted of keeping a bawdy or disorderly house shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or both. (July 16, 1912, 37 Stat. 192, ch. 235, § 1.)

NOTES TO DECISIONS

Appeal 1
Arrest 2
Common law 3
Evidence 4

Instructions 5
Probation officer recommending sentence 6
Questions for court 7
Waiver 8

1. Appeal

On appeal from conviction of operating a disorderly house where defendant contended that hotel register was improperly admitted, being unlawfully seized property because warrant of arrest was void for insufficiency of supporting affidavit, Municipal Court of Appeals ordered warrant of arrest and supporting affidavit made part of record. *Darnall v. U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

2. Arrest

In prosecution for keeping a disorderly house, affidavit made by arresting officer in applying for warrant was sufficient to establish probable cause. *Packard et al. v. United States* (D. C. Mun. App. 1950, 77 A. 2d 19).

Affidavit for warrant of arrest, which merely recited police officer's legal conclusion that defendant was maintaining a disorderly house, and which was devoid of single recital of fact to support conclusion and referred to a name other than that of defendant, was insufficient to support warrant. *Darnall v. U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

3. Common law

What may not have been an infamous crime at common law, may, by statute, be made such and in determining whether a crime is infamous, we must look to the penalty the law imposes, and though the crime of keeping a disorderly house may not have been an infamous crime at common law, it is within the power of Congress to impose a penalty that will make it such in the District of Columbia. *Palmer v. Lenovitz* (35 App. D. C. 303).

4. Evidence

Where warrant of arrest for maintaining disorderly house was void, the arrest, which was for a misdemeanor not committed in presence or within view of arresting officers, was unlawful and hotel register seized at time of arrest was unlawfully seized and inadmissible in evidence. *Darnall v. U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

In prosecution for maintaining disorderly house, admission in evidence of hotel register which was seized at time of defendant's arrest under void warrant, notwithstanding defendant's subsequent motion to suppress register as evidence, and objection at time of trial to its admission, was reversible error. *Id.*

Evidence was sufficient to sustain conviction for operating a disorderly house. *Collins v. U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

5. Instructions

Instructions given to jury in prosecution for operating a disorderly house were not tainted with prejudicial error. *Collins v. U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

6. Probation officer recommending sentence

Where accused pleaded guilty to maintaining disorderly house and, on plea for probation, trial judge announced that probation officer had recommended maximum sentence and, on objection to consideration of recommendation, trial judge, without express ruling thereon, sentenced defendant to the near maximum penalty, sentence was set aside. *Ishkanian v. U. S.* (D. C. Mun. App. 1944, 35 A. 2d 176).

A recommendation by a probation officer to trial judge as to sentence to be imposed is not merely unauthorized by §§ 24-101 to 24-105 but is an infringement upon court's judicial function, which officer has no right to exercise and judge no right to permit. *Id.*

7. Questions for court

In prosecution for maintaining disorderly house, objection to introduction of hotel register as unlawfully seized evidence because of invalidity of warrant of arrest raised question for judge presiding at trial. *Darnall v. U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

8. Waiver

In prosecution for maintaining a disorderly house, defendant, by failing to move to quash warrant of arrest before he entered plea of not guilty, did not "waive" right to object to introduction of hotel register, seized at time

of arrest, as unlawfully seized evidence. *Darnall v. U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

Chapter 28.—RAPE

Sec.

§ 22-2801. Definition and penalty.

§ 22-2801. Definition and penalty.

Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for not more than thirty years: *Provided*, That in any case of rape the jury may add to their verdict, if it be guilty, the words "with the death penalty," in which case the punishment shall be death by electrocution: *Provided further*, That if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 808; Apr. 19, 1920, 41 Stat. 567, ch. 153, § 808; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1.)

AMENDMENTS

1925—Act Jan. 30, 1925, provided for execution of death penalty by electrocution instead of by hanging.

1920—Act Apr. 19, 1920, eliminated provision for minimum five-year term of imprisonment.

CROSS REFERENCES

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Admissibility of evidence 8
Assignment of error, review 23
Circumstantial evidence 9
Confession 10
Constitutionality 1, 2
Due process 2
Continuance 3
Corroboration of evidence 11
Defense 5
Death penalty 4
Discretion of court 6
Due process, constitutionality 2
Elements of offense 7
Evidence 8-15
Admissibility 8
Circumstantial evidence 9
Confession 10
Corroboration 11
Examination of witnesses 12
Hearsay 13
Res gestae 14
Sufficiency 15
Examination of witnesses 12
Hearsay evidence 13
Indictment 16
Instruction 17
Intent 18
Mental capacity 19
Plea of guilty 20
Questions for jury 21
Res gestae 14
Review 22, 23
Assignment of error 23
Sentence 24
Speedy trial 25
Sufficiency of evidence 15
Trial procedure 26
Under age of consent 27

1. Constitutionality

This section which empowers the jury to add the words "with the death penalty" to verdict in cases of rape does not violate U. S. Const. Art. 3, § 2, cl. 3 and U. S. Const. Amend. 6, guaranteeing right to "jury trial" on theory that at the time of the adoption of the Constitution common-law juries did not fix penalty. *Lindsey v. U.S.* (1943, 133 F. 2d 368, 77 U.S. App. D.C. 1).

2. — Due process

In rape prosecution, where record left serious doubt as to whether defendant had enjoyed due process of law regarding his right to effective assistance of counsel and right to testify in his own behalf, defendant was entitled to have sentence vacated. *Mason v. United States* (1952, 193 F. 2d 23, 90 U.S. App. D.C. 1).

3. Continuance

A general indignation toward those who commit rape is not regarded as "bias or prejudice", and it cannot be assumed in support of a motion for an indefinite continuance, on ground that alleged confession of another man to ten or more similar offenses has inflamed the mind of the community so that a particular defendant cannot receive a fair trial, that all juries impaneled at any given time will not give any defendant a fair trial. *Robinson v. U.S.* (1942, 128 F. 2d 322, 76 U.S. App. D.C. 29).

In rape prosecution, trial court did not err in denying defendant's motion for an indefinite continuance on ground that alleged confession of another man to ten or more similar offenses had inflamed the mind of the community so that defendant could not receive a fair trial where there was no specific showing of any kind in support of motion. *Id.*

4. Death penalty

In prosecution for rape of nine-year-old girl, death sentence was within sound discretion of jury alone, and in considering imposition of death sentence, jury could give weight to any consideration such as age, sex, ignorance, illness or intoxication. *Tatum v. United States* (1951, 190 F. 2d 612, 88 U. S. App. D. C. 386).

Where evidence was sufficient to sustain verdict of guilty in prosecution for rape, jury had exclusive power to determine whether death penalty should be imposed. *Williams v. U.S.* (1942, 131 F. 2d 21, 76 U.S. App. D.C. 299).

5. Defense

Where defense announced that defenses would be, first, that no crime had been committed by defendant, and, secondly, that if he had committed crime, he was not guilty by reason of insanity, court, in stating that defense would have to take one position or other, as defenses were inconsistent, committed error which reviewing court, under rule, would notice on appeal and for which it would reverse judgment, as there was no inconsistency and as inconsistent defenses could be interposed. *Whittaker v. United States* (1960, 231 F. 2d 631, 108 U.S. App. D.C. 268).

In prosecution for rape and robbery, the defendant did not have the obligation of making out a complete defense. *McKenzie v. U.S.* (1942, 126 F. 2d 533, 75 U.S. App. D. C. 270).

6. Discretion of court

In rape prosecution, record sustained trial court's determination, on motion for new trial, that evidence did not sustain charges that defendant was not competently represented by trial counsel. *Ewing v. U.S.* (1943, 135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, where hearing on motion for new trial had been continued over and over to allow some supposed new lead to be followed out and when, after final continuance had been granted, with court's insistence that hearing be brought to an end, defendant filed affidavits and insisted on cross-examining those who had made counter affidavits, but court took matter under advisement and at next sitting brought hearing to close without taking further evidence, action of court in determining the matter on affidavits was not an abuse of discretion. *Id.*

7. Elements of offense

The elements of the crime of carnally knowing and abusing a female child under statute of the District of Columbia are penetration of a child under the age of 16. *Wheeler v. United States* (1954, 211 F. 2d 19, 93 U.S. App. D. C. 159, certiorari denied 74 S. Ct. 876, 347 U. S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U. S. 852, 99 L. Ed. 671).

8. Evidence—Admissibility

In prosecution for asserted taking of indecent liberties with child and asserted carnal knowledge, where examining physician was out of jurisdiction and unavailable, report of his medical examination was not admissible. *Whittaker v. United States* (1963, 281 F. 2d 631, 108 U.S. App. D.C. 263).

Incriminating statements made prior to illegal detention of a defendant without taking him to committing

magistrate were not inadmissible because of such detention. *Perry v. United States* (1958, 253 F. 2d 337, 102 U. S. App. D. C. 315, certiorari denied 78 S. Ct. 785, 356 U. S. 941, 2 L. Ed. 2d 816).

In prosecution for rape, admission into evidence of manifest kept by taxi driver was not error, where such exhibit met requirements of Federal Business Records Act of being made in usual course of business and within reasonable time after event in issue, in absence of showing of prejudice to defendant. *Hines v. United States* (1955, 220 F. 2d 381, 95 U. S. App. D. C. 118).

In prosecution for rape, action of trial court in admitting into evidence certain articles of wearing apparel worn by victim, which were not turned over to police until morning after crime, was not error, where reasons for articles not being turned over until next morning were adequately explained. *Id.*

In prosecution for carnally knowing a female child, allowing child to testify, over objection that defendant had abused her similarly on previous occasions was proper in view of fact that there was independent evidence which pointed to defendant as having committed the offense charged. *Crawford v. United States* (1952, 198 F. 2d 976, 91 U. S. App. D. C. 234).

Where prosecuting witness is under age of consent her reputation for unchastity is inadmissible. Her reputation for truth and veracity may be attacked, as in the case of any other witness. *Sacks v. United States* (41 App. D. C. 34). See, also, *Kidwell v. United States* (38 App. D. C. 566); *Monalokos v. United States* (41 App. D. C. 19).

Prosecuting witness in cases of rape may testify as to whether or not she made complaint, when and to whom, although the details of the disclosure are not admissible except on cross-examination or to confirm her testimony after it is impeached, or unless a part of the res gestae. *Harris v. United States* (1921, 269 F. 481, 50 App. D. C. 139). See, also, *Snowden v. United States* (2 App. D. C. 89); *Lyles v. United States* (20 App. D. C. 559); *Roney v. United States* (43 App. D. C. 533).

In prosecutions for statutory rape testimony of similar acts prior to the offense charged in the indictment is admissible. *Weaver v. United States* (1924, 299 F. 893, 55 App. D. C. 26).

On charge of carnal knowledge, evidence of subsequent marriage of parties is admissible. *Id.*

In prosecution for sex offenses, evidence of prior acts between the same parties is admissible as showing a disposition to commit the act charged, the probabilities being that the emotional predisposition or passion will continue. *Bracey v. U.S.* (1944, 142 F. 2d 85, 79 U. S. App. D. C. 23, certiorari denied 64 S. Ct. 1274, 322 U. S. 762, 88 L. Ed. 1589).

In prosecution for carnally knowing and abusing a 12 year old girl, where defendant elected to defend on issue of conspiracy against himself, and the only evidence which he offered in support of that defense was that which he produced by cross-examination of his 11 year old daughter, who testified that she disliked her father, rebuttal testimony indicating that daughter's dislike was based on father's commission of similar offense against daughter was properly admitted. *Id.*

In rape prosecution, where defense witness had testified to facts which, if believed, established defendant's innocence, and during cross-examination regarding interview with prosecutrix's mother, as to which defense witness had not testified on direct examination, witness denied that she had stated she believed defendant guilty; that he was facing the electric chair, and that she had to be on his side, but the prosecutrix's mother subsequently testified that the defense witness made such statements, evidence was admissible within the "self-contradiction rule," within the "impeachment rule," and for purpose of affecting credibility of defense witness by showing bias, and was not objectionable as being on "collateral matter." *Ewing v. U.S.* (1943, 135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

9. — Circumstantial evidence

In prosecution for carnally knowing and abusing a female child under the age of 16 years, child's statement, which had been given to the police, and which was used

to impeach the child's testimony exonerating defendant, did not constitute direct evidence of the crime charged. *Wheeler v. United States* (1954, 211 F. 2d 19, 93 U. S. App. D. C. 159, certiorari denied 74 S. Ct. 876, 347 U. S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U. S. 852, 99 L. Ed. 671).

In prosecution for rape, circumstantial evidence was sufficient to corroborate complaining witness' testimony. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

Only circumstantial evidence is required to corroborate complaining witness' testimony in rape case. *Id.*

10. — Confession

Where issue of voluntariness of confessions was for jury, defendant was not prejudiced because trial judge did not in the first instance hear the testimony as to the admissibility of the confession, out of the presence of the jury. *De Lorenzo v. United States of America* (1955, 219 F. 2d 506, 95 U. S. App. D. C. 74, certiorari denied 75 S. Ct. 897, 349 U. S. 964, 99 L. Ed. 1286).

In rape prosecution, issue of voluntariness of confessions was for jury to determine. *Id.*

11. — Corroboration

In rape prosecution "corroboration," in the sense that there must be circumstances in proof which tend to support the prosecutrix's story, is required. *Ewing v. U.S.* (1943, 135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, evidence that defendant was present in apartment visiting with prosecutrix and another shortly before crucial time and spent night either in living room or in room across hall, that force was used against door of prosecutrix's bedroom making a new break in already defective lock with no other evidence to explain the new condition, that complaint was made to friends within twelve hours, to police within 24 hours, and was followed by defendant's arrest and confrontation with prosecutrix and medical evidence that the prosecutrix had recently had intercourse for the first time, was sufficient "corroboration." *Id.*

12. — Examination of witnesses

In rape prosecution where during cross-examination defense witness, who had testified to facts which, if believed, established defendant's innocence, was asked whether in interview with prosecutrix's mother witness had given affirmative answer to question whether she thought defendant was guilty and prosecutrix's mother later testified that the defense witness stated that she believed defendant guilty, the province of the jury was not invaded. *Ewing v. U.S.* (1943, 135 F. 2d 633, 77 U. S. App. D. C. 14, certiorari denied 63 S. Ct. 829, 318 U. S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U. S. 803, 87 L. Ed. 1167).

In rape prosecution, action of prosecuting attorney in cross-examining defense witness as to whether defendant suggested to witness that they get some whiskey and girls and have a party was not prejudicial error where witness' negative response was later corroborated by defendant. *Id.*

In prosecution for rape, and for robbery of cleaning establishment, where court warned defendants' counsel that if he asked question of witness regarding whether defendant had been identified as the man who robbed another cleaning establishment about a week prior to the commission of the offenses involved, he would do so at his peril, refusal to allow the contradiction of witness' answer was proper. *McKenzie v. U.S.* (1942, 126 F. 2d 533, 75 U. S. App. D. C. 270).

13. — Hearsay

Where female child, whom defendant was charged with having carnally known and abused, went to her grandmother's home three blocks away within an hour, at most, after alleged attack, and when child arrived she was highly distraught, in shock, and crying, and when grandmother asked child what was wrong with her, child replied that defendant just had something to do with her, court properly admitted grandmother's testimony concerning child's statement to grandmother, under the spontaneous exclamation exception to the hearsay rule. *Wheeler v. United States* (1954, 211 F. 2d 19, 93 U. S.

App. D. C. 159, certiorari denied 74 S. Ct. 876, 347 U. S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U.S. 852, 99 L. Ed. 671).

In prosecution for carnally knowing a female child, where defendant initiated inquiry into child's statement and made full use thereof to cast doubt upon his identity as the assailant, the interest of justice would not require reversal because of admission, without objection, of other statement by child on same subject which defendant, upon appeal, maintained should have been excluded by trial court as hearsay. *Crawford v. United States* (1952, 198 F. 2d 976, 91 U.S. App. D.C. 234).

14. — Res gestae

In prosecution for rape of child about five years old the statements of the child made to her grandmother on the same day of crime was admissible as part of the res gestae. *Snowden v. United States* (2 App. D.C. 89).

15. — Sufficiency

In prosecution for rape, evidence was sufficient to sustain conviction. *Hines v. United States* (1955, 220 F. 2d 381, 95 U.S. App. D. C. 118). See also, *Robinson v. United States* (1942, 128 F. 2d 322, 76 U. S. App. D.C. 29).

Evidence warranted a conviction for rape, and death penalty therefor. *Holmes v. United States* (1949, 171 F. 2d 1022, 84 U.S. App. D.C. 168).

In rape prosecution, testimony of complaining witness and the circumstantial evidence supporting it, which were sufficient to show that the intercourse occurred and took place by force and against her will in the sense that her resistance was overcome by physical force and threats which put her in fear of her life, sustained jury's implicit finding, that the act was without the "consent" of the complaining witness. *Ewing v. U.S.* (1943, 135 F. 2d 633, 77 U.S. App. D.C. 14, certiorari denied 63 S. Ct. 829, 318 U.S. 776, 87 L. Ed. 1145, rehearing denied 63 S. Ct. 991, 318 U.S. 803, 87 L. Ed. 1167).

In rape prosecution, "consent" is not shown when the evidence discloses resistance is overcome by threats which put the woman in fear of death or grave bodily harm or by those combined with some degree of physical force. *Id.*

16. Indictment

Count of indictment charging defendant with violating this section punishing one who carnally knows a female child under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by this section, if jury is told that it cannot find defendant guilty of both counts and can find him guilty under the second count only if he is found not guilty under the first count. *Thompson v. United States* (1956, 228 F. 2d 463, 97 U. S. App. D. C. 116).

That indictment charging rape contained four counts relating to two acts of intercourse did not prejudice defendant, where defendant made no election, stated that he was ready to go to jury on all four counts, and in no way questioned charge allowing case to go to jury only on two counts charging carnal knowledge of a girl under age of consent because testimony was that complaining witness was under 16. *Robinson v. U.S.* (1942, 128 F. 2d 322, 76 U. S. App. D. C. 29).

That indictment charging rape was signed by an Assistant United States Attorney rather than by the United States Attorney concerned a "matter of form" which did not prejudice defendant. *Id.*

Where indictments charging rape and robbery were returned by a grand jury which did not have upon it any member of the negro race, the indictments could not be quashed on ground that systematic course of procedure had been adopted for purpose of excluding negroes from grand jury on account of their color, in absence of proof or offer of proof of intentional exclusion of negroes from service on grand jury. *McKenzie v. U.S.* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

17. Instructions

In prosecution on two-count indictment for taking indecent liberties with child and for carnal knowledge, court acted properly at close of government's case when

it granted partial judgment of not guilty under second count, stating that there was no evidence to support carnal knowledge charge but submitting to jury lesser included offense of assault with intent to commit carnal knowledge, but court erred in failing to instruct that jury was first to consider included charge of assault with intent to commit carnal knowledge and was only to consider alleged taking of indecent liberties with child if it found defendant not guilty of the former crime. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

In rape prosecution, wherein jury had been instructed on verdicts of guilty with death penalty, guilty as charged, not guilty by reason of insanity, or not guilty, and jury after deliberating several hours asked court whether jury could be assured that defendant legally would be imprisoned for remainder of his life, court's response that the maximum term that court could impose was 30 years but that court also was required to impose a minimum sentence so that longest term court could impose would be indeterminate sentence of 10 to 30 years and that at end of minimum sentence parole board would have to decide whether maximum should be served or anything less than the maximum, did not constitute error. *Mallory v. United States* (1956, 236 F. 2d 701, 98 U. S. App. D. C. 406, reversed on other grounds 77 S. Ct. 1356, 354 U. S. 449, 1 L. Ed. 2d 1479).

Count of indictment charging defendant with violating statute punishing one who carnally knows a female child under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by the prior statute, if jury is told that it cannot find defendant guilty of both counts and can find him guilty under the second count only if he is found not guilty under the first count. *Thompson v. United States* (1956, 228 F. 2d 463, 97 U. S. App. D. C. 116).

In prosecution for rape, action of trial court in submitting question of death penalty to jury where government had not asked for such penalty, was not error, where court advised jury that government did not ask that penalty and that they could take that fact into consideration, and where death penalty actually was not returned and defendant was not thereby prejudiced. *Hines v. United States* (1955, 220 F. 2d 381, 95 U. S. App. D. C. 118).

In prosecution for rape and sodomy, defendant's prayer for instruction requiring utmost resistance by complaining witness incorrect. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

In prosecution for rape and sodomy, defendant's prayers for instructions assuming as fact that complaining witness did not offer opposition should have been denied. *Id.*

In prosecution for rape and sodomy, defendant's prayer for instruction requiring that complaining witness' fear be not to negative her consent was properly denied, as fear of grave bodily harm was sufficient. *Id.*

In prosecution for rape and sodomy, court properly instructed jury that there must be absence of consent by complaining witness to warrant conviction, unless consent was induced by putting her in fear of grave bodily harm or death or by exercise of actual force against her person. *Id.*

Where evidence in prosecution for rape of nine-year-old girl raised defense of insanity, but no instructions thereon were given, and counsel for defendant stated in closing argument to jury that verdict of guilty was proper and trial court in its charge referred to such concession of guilt and omitted to instruct jury that notwithstanding concession, defendant was entitled to have jury alone determine his guilt or innocence, there was reversible error. *Tatum v. United States* (1951, 190 F. 2d 612, 88 U. S. App. D. C. 386).

In prosecution on two counts for assault with a dangerous weapon and on one count for rape, where court's charge did not discuss nor define offenses included within the indictment and jury were not told what assault with intent to rape was nor how it was distinguished from rape

and were not informed that a verdict of not guilty might be returned, there was prejudicial error. *Williams v. U.S.* (1942, 131 F. 2d 21, 76 U.S. App. D.C. 299).

In prosecution for rape and robbery, where pistol which victim stated assailant used, clothing which he said he had stolen and money which he had taken were not found in possession of defendant, neighbors testified to good character of defendant and to his having a night job at which he worked regularly, and thorough examination by police failed to shake statement of defendant that he had never seen the prosecuting witness before, such circumstances were important enough to be called to the attention of the jury to be weighed together with evidence in support of legal presumption of innocence. *McKenzie v. U.S.* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

In prosecution for rape and robbery, failure to instruct jury in precise terms that a not guilty verdict was necessary in event of failure by the government to prove each of the elements of the offenses charged beyond a reasonable doubt was error requiring reversal, notwithstanding the court instructed that defendant was presumed to be innocent and that the government was obliged to rebut the presumption by proof of guilt beyond a reasonable doubt. *Id.*

In prosecution for rape and robbery, where verity of identification of accused by prosecuting witness was point on which case turned, failure to instruct jury in plain words that if circumstances of identification were not convincing, jury should acquit accused was error. *Id.*

In prosecution for rape and robbery where court referring to conditions obtaining at time of prosecuting witness' identification of accused stated that the jury should take into consideration the attitude of the prosecuting witness upon coming in view of the accused and that they should search their reasoning power regarding what motivated the selection of the accused from among all others, in view of fact that verity of identification was the point on which the case turned, the court should have cautioned that if the motivation was not convincing beyond a reasonable doubt the jury should find the defendant not guilty. *Id.*

Nothing suggests that the jury did not understand and respect the action and instructions of the court for unless it appears to the contrary, jurors should be presumed to have understood and followed the court's instructions. *Hall v. United States* (1949, 171 F. 2d 347, 84 U.S. App. D.C. 209).

18. Intent

Specific intent to commit rape is not required to warrant conviction thereof. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U.S. App. D. C. 197).

19. Mental capacity

In prosecution for rape of nine-year-old girl, evidence as to alleged insanity of defendant, was sufficient to raise issue to jury under guidance of instructions. *Tatum v. United States* (1951, 190 F. 2d 612, 88 U.S. App. D. C. 386).

After conviction of rape, a sanity inquisition was denied when it did not occur to either his counsel or to the court that he was mentally irresponsible; and that during his examination and cross-examination, it did not "suggest, in the slightest degree, that defendant was not fully and entirely responsible from a mental standpoint." *Jackson v. United States* (1928, 25 F. 2d 549, 58 App. D.C. 125).

Evidence regarding insanity of defendant was insufficient to justify reversal of conviction for rape. *Holloway v. U.S.* (1945, 148 F. 2d 665, 80 U.S. App. D.C. 3, certiorari denied 68 S. Ct. 1507, 334 U.S. 852, 92 L. Ed. 1774).

20. Plea of guilty

This section authorizing jury to recommend death penalty in a rape case does not deprive court of inherent jurisdiction to accept plea of guilty, but defendant does not have absolute right to plead guilty. *U. S. v. Willis* (1948, 75 F. Supp. 628).

Plea of guilty of carnal knowledge, avoiding possibility of death sentence, was accepted in exercise of trial court's discretion, upon recommendation of United States Attorney and in view of facts of particular case. *Id.*

"In all cases (of rape) the court must have the verdict of the jury upon which to base its judgment," and there is, therefore no error in refusing to accept a plea of guilty. *Green v. United States* (40 App. D.C. 426).

21. Questions for jury

In prosecution for murder and rape, evidence regarding whether defendant's oral admissions against interest and his written confession were voluntary was sufficient to justify the submission of the issue of voluntariness to the jury. *Catoe v. U.S.* (1942, 131 F. 2d 16, 76 U.S. App. D.C. 292).

In rape cases and other cases of the nature of a sexual assault, delay in making complaint is a subject for consideration of jury and may seriously affect credibility of complaining witness. *Stittely v. U. S.* (D. C. Mun. App. 1948, 61 A. 2d 491).

22. Review

Defendant was not entitled to vacation of sentence on ground that he was denied effective assistance of counsel because he allegedly advised defendant to take no appeal, where record disclosed that defendant was adequately represented by able, experienced and conscientious counsel, and that defendant was fully apprised of his rights. *Watson, Jr. v. United States* (1960, 281 F. 2d 619, 108 U.S. App. D.C. 256).

Where accused was found not guilty by reason of insanity and was committed to hospital and some two months thereafter accused petitioned for writ of habeas corpus without prepayment of costs and District Court denied such petition without a hearing and without stating reasons for denial, case would be remanded and District Court, if it rejected allegation of poverty, would be required to state basis for such rejection, and if leave to file without costs was permitted or if accused should pay necessary filing fees, hospital superintendent would be directed to report as to accused's condition, and upon the return the District Court should conduct hearing to determine whether accused had recovered sanity and would not be dangerous to himself or others in reasonable future. *Tatem, Sr., v. United States* (1960, 275 F. 2d 894, 107 U.S. App. D.C. 230).

Statement of counsel for defendant in closing argument to jury in prosecution for rape of nine-year-old, that verdict of guilty was proper under the circumstances and evidence, was a defect affecting "substantial rights" within meaning of rule that plain errors or defects affecting "substantial rights" may be noticed on appeal though they were not brought to attention of the trial court. *Tatum v. United States* (1951, 190 F. 2d 612, 88 U.S. App. D. C. 386).

Where counsel for defendant in prosecution for rape of nine-year-old girl stated in closing argument to jury that a verdict of guilty was proper, reference by trial court in charge to the concession of guilt, and failure to caution jury that notwithstanding such concession, defendant was entitled to have the jury alone determine his guilt or innocence, constituted a defect affecting "substantial right" within meaning of rule that plain errors or defects affecting "substantial rights" may be noticed on appeal though they were not brought to attention of the trial court. *Id.*

Where record presented no reversible error and evidence supported conviction for rape, conviction was affirmed. *Clinton v. United States* (1945, 151 F. 2d 12, 80 U.S. App. D.C. 413).

That failure of the Government to call all of its witnesses whose names and addresses had been given to defendant took him by surprise could not be urged on appeal from conviction for rape, where defendant did not allege or show that witnesses were not available for him and made no proffer of proof that their testimony would have helped him. *Robinson v. United States* (1942, 128 F. 2d 322, 76 U.S. App. D.C. 29).

23. — Assignment of error

In prosecution for rape and sodomy, defendant's assignment of error in trial court's failure to declare mistrial because of prosecuting attorney's comment, in opening statement to jury, that only one woman survived defense challenge to jurors, was without foundation, in absence of motion by defendant for mistrial or exception to trial court's action in merely telling jury to disregard remark as improper after objection thereto. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U.S. App. D. C. 197).

24. Sentence

Defendant's motion, filed before expiration of minimum time of indeterminate sentence imposed by District

Court on his conviction of rape, to correct later indeterminate sentence on his subsequent unrelated conviction of assault with intent to rape, will not be dismissed by Court of Appeals as premature, thereby relegating defendant to refiling identical motion in District Court, in view of statute and criminal procedure rule authorizing motion attacking sentence and correction of illegal sentence at any time. *Holloway v. United States* (1951, 191 F. 2d 504, 89 U. S. App. D. C. 332).

25. Speedy trial

Where defendant was convicted of rape and assault with intent to kill, and death penalty was imposed, but convictions were reversed and new trial ordered, even though 16 months elapsed between date of order awarding new trial and date defendant was sentenced after government was willing to accept pleas of guilty to offenses not punishable by death, and defendant voluntarily entered pleas after alleged unlawful delay, defendant was not deprived of constitutional right to speedy trial. *United States v. Lindsey* (1959, 178 F. Supp. 598).

26. Trial procedure

Order of proof and conduct of trial in trial for rape is within court's discretion. *Mears v. United States* (1932, 55 F. 2d 745, 60 App. D.C. 387).

Contention of appellant's counsel that he should have been permitted to argue to the jury the so-called "sociological aspects of the case" is without merit because, for such a crime as rape, there can never be any extenuating circumstances. *Holmes v. United States* (1949, 171 F. 2d 1022, 84 U.S. App. D.C. 168).

In a prosecution for rape, the remarks of the prosecutor were improper where he asked defendant if he were a "sex fiend" since cross-examination is no place for argument or for vituperation; nor could a former offense be used for any other purpose than to reflect upon the credibility of appellant's testimony. *Hall v. United States* (1949, 171 F. 2d 347, 84 U.S. App. D.C. 209).

27. Under age of consent

When a child under the age of consent has been defiled, the law conclusively presumes force on the part of her seducer, and the question of consent is immaterial. *Yeager v. United States* (16 App. D. C. 356).

Carnal knowledge of child under age specified is rape. *Sanselo v. United States* (44 App. D. C. 508).

Chapter 29.—ROBBERY

Sec.

22-2901. Robbery.

22-2902. Attempt to commit robbery.

§ 22-2901. Robbery.

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 810.)

CROSS REFERENCES

Grave robbery, see § 22-3103.

Larceny, see § 22-2201 et seq.

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

Possession of firearm, additional penalty, see §§ 22-3201, 22-3202.

Train robbery, see U.S.C., title 18, § 1991.

NOTES TO DECISIONS

Admissibility of evidence 7
Assistance of counsel 1
Burden of proof 8
Conduct of prosecuting attorney 3
Constitutionality 2
Defense, requisites of 4
Double jeopardy 5
Elements of offense 6
Evidence 7—12
Admissibility 7
Burden of proof 8
Examination of witnesses 9

Production of evidence 10
Sufficiency 11
Suppression 12
Examination of witnesses 9
Force and violence 13
Habeas corpus 14
Immediate actual possession 15
Indictment 16
Instructions 17
Joinder of defendants 18
New trial 19
Preliminary hearing 20
Production of evidence 10
Purpose 21
Questions for jury 22
Record on appeal 24
Remand 25
Review 23—25
Record on appeal 24
Remand 25
Sentence 26
Sufficiency of evidence 11
Suppression of evidence 12
Trial procedure 27
Unnecessary delay 28
Verdict 29

1. Assistance of counsel

Where defendants, who allegedly entered plea of guilty at preliminary hearing to charge of robbery, were without counsel until arraignment but when counsel was assigned by court, defendants pleaded not guilty and adhered to the plea throughout trial and on appeal and denied that they had had hearing on robbery charge and claimed that they had pleaded guilty to misdemeanor charges only, in determining whether alleged plea of guilty at preliminary hearing was admissible, court was required to assume that defendants, who had not been asked whether they wanted counsel or informed regarding privilege against self-incrimination, did not know their rights and did not intend to waive them when they allegedly pleaded guilty. *Wood v. U.S.* (1942, 128 F. 2d 265, 75 U.S. App. D.C. 274, 141 A. L. R. 1318).

2. Constitutionality

This section is valid. *Pope v. Huff* (1944, 141 F. 2d 727, 79 U. S. App. D. C. 18).

3. Conduct of prosecuting attorney

In robbery prosecution, prosecutor's statements that the defendants did not make a statement that they struck the victim in self-defense and that the prosecutor did not intend to convey that to the jury and that it was only an inference that the prosecutor was trying to say could be drawn from the evidence but that he thought that testimony was that they struck the victim were not reversible error under the evidence. *Johnson v. United States* (1960, 275 F. 2d 898, 107 U.S. App. D.C. 234).

In robbery prosecution, language of prosecuting attorney to jury was not so extreme as to vitiate judgment and permit collateral attack. *Adams v. United States* (1955, 222 F. 2d 45, 95 U.S. App. D. C. 354).

4. Defense, requisites of

In prosecution for rape and robbery, the defendant did not have the obligation of making out a complete defense. *McKenzie v. U.S.* (1942, 126 F. 2d 533, 75 U.S. App. D. C. 270).

5. Double jeopardy

Where purpose and effect of proceeding in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgment that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States v. Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

6. Elements of offense

"Robbery", as used in this section, means robbery in the usual common-law sense as expanded to include sudden or stealthy seizure or snatching. *United States v. Mann et al.* (1954, 119 F. Supp. 406).

7. Evidence—Admissibility

Even though oral and written confessions of defendants made before preliminary hearing may have been

inadmissible for violation of rule requiring preliminary hearing without unnecessary delay, defendants' reaffirmation and enlargement of the formal written confession after preliminary hearing, including re-enactment of the crime, were not inadmissible as being the fruit of the original confessions, where the reaffirmation came within an hour after defendants had received both the judicial warning and their counsel's advice that they had right to remain silent and that any statements made by them could be used against them, and the defendants were not merely asked to mechanically state whether the terms of their earlier confession were true and their confessions were reread to them and were reaffirmed, and the defendants made highly incriminating admissions at scene of crime, and in their colloquy with the person who had been robbed and a witness who had been present at time of robbery. *Goldsmith & Carter v. United States* (1960, 277 F. 2d 355, 107 U.S. App. D.C. 305, certiorari denied 81 S. Ct. 106, 364 U.S. 863, 5 L. Ed. 2d 86).

The mere fact that a confession is made to the police, or while an accused is in custody, does not destroy its value as evidence, and once an accused has been legally charged and is in lawful detention, police interrogation is not forbidden. *Id.*

In prosecution for robbery and assault with a dangerous weapon, admission of police officer's testimony that before preliminary hearing the defendants had orally admitted the crimes in officer's presence was not prejudicial, where trial court gave careful instructions to jury to disregard officer's testimony and officer's testimony was cumulative and testimony could have had no measurable impact alongside the overwhelming evidence of guilt from other sources. *Id.*

Where certain challenged evidence, in a robbery prosecution, was not shown to have consisted of statements made during illegal detention and did not result from police interrogation, it could not be deemed inadmissible. *Rogers v. United States* (1959, 263 F. 2d 902, 105 U.S. App. D.C. 65, certiorari denied 79 S. Ct. 1127, 359 U.S. 994, 3 L. Ed. 2d 982).

Where defendant, after arrest but prior to arraignment, denied having any connection with robbery but admitted being in company of two other men, charged with same offense, shortly before and shortly after the robbery, admission of evidence of defendant's statement was not error where statement was not claimed to have been coerced. *Sykes v. U.S.* (1944, 143 F. 2d 140, 79 U.S. App. D.C. 97).

Housebreaking, robbery and burglary are merely aggravated forms of larceny and evidence competent in one case is competent, also, in the others. *Edwards v. U.S.* (1944, 139 F. 2d 365, 78 U.S. App. D.C. 226, certiorari denied 64 S. Ct. 523, 321 U.S. 769, 88 L. Ed. 1064).

In prosecution for robbery of a watch, a purse, a key, and \$37 in money, admission of a watch, purse, key, and a \$5 bill, without testimony either of prosecuting witness or officer who allegedly took the articles from defendant, constituted reversible error upon ground that identification of articles was insufficient. *Smith v. U.S.* (1946, 157 F. 2d 705, 81 U.S. App. D.C. 296).

Where testimony connecting defendant with another crime which had no connection with armed robbery for which he was being tried, was elicited by defendant's own counsel on cross-examination, admission of the testimony was no ground for reversal of conviction. *Felton v. U.S.* (1948, 170 F. 2d 153, 83 U.S. App. D.C. 277, certiorari denied 69 S. Ct. 18, 335 U.S. 831, 93 L. Ed. 385).

8. — Burden of proof

Where there is evidence that accused was of unsound mind when offenses occurred, prosecution is under necessity of establishing to satisfaction of jury beyond reasonable doubt that offenses were not result of accused's insanity. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

In order to justify conviction, where there is evidence that accused was of unsound mind when offenses occurred, proof, considered with presumption of sanity, must exclude beyond reasonable doubt the hypothesis that conduct indicted was product of a diseased mind or mental defect. *Id.*

9. — Examination of witnesses

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license,

requiring counsel for one defendant to ask a more precise question than question counsel asked a witness for prosecution as to whether such witness was convicted several times of prostitution during specified years was within discretion of trial court. *Bundy v. United States* (1952, 193 F. 2d 694, 90 U.S. App. D. C. 12, certiorari denied 72 S. Ct. 638, 343 U.S. 908, 96 L. Ed. 1326).

10. — Production of evidence

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, action of trial court in not requiring production under subpoena of arrest record of a witness for prosecution was not prejudicial to defendant where police officer testified he had no arrest record of witness by name contained in subpoena and did not know such witness used other names mentioned by him by counsel for defendant, and counsel for defendant did not during trial procure any further subpoena for arrest record of witness under any other name. *Bundy v. United States* (1952, 193 F. 2d 694, 90 U.S. App. D. C. 12, certiorari denied 72 S. Ct. 638, 343 U.S. 908, 96 L. Ed. 1326).

11. — Sufficiency

Evidence supported conviction of robbery. *Thompson v. United States* (1951, 188 F. 2d 652, 88 U.S. App. D. C. 235). See, also, *Bullock v. U. S.* (1946, 157 F. 2d 702, 81 U.S. App. D. C. 271, certiorari denied 67 S. Ct. 860, 330 U.S. 829, 91 L. Ed. 1278).

One could be convicted of robbery on uncorroborated testimony of complainant. *Thompson v. United States* (1951, 188 F. 2d 652, 88 U.S. App. D. C. 235).

In robbery prosecution, where defendant claimed that he acted under compulsion by another after having intended only an extortion, evidence justified conviction. *Vinci v. U.S.* (1947, 159 F. 2d 777, 81 U.S. App. D.C. 386).

12. — Suppression

In prosecution for robbery, defendant was not entitled to suppression of gun which was taken from defendant's automobile after his arrest by police upon a warrant. *Bennett v. United States* (1957, 249 F. 2d 505, 101 U.S. App. D. C. 413).

13. Force and violence

Intent of this section is to denounce pocket picking and the like, together with common-law robbery, under the single general name of "robbery" and though it is true that the provision for "sudden and stealthy seizure or snatching" is preceded by the phrase "by force and violence"; yet the requirement for force is satisfied within the sense of this section by an actual physical taking of the property from the person of another even without his knowledge and consent, and though the property be unattached to his person. *Turner v. United States* (1927, 16 F. 2d 535, 57 App. D.C. 39).

Under this section conviction for "robbery" may be had though victim did not have knowledge of the theft at the time, since "stealth" necessarily connotes lack of knowledge on part of victim. *Spencer v. U.S.* (1941, 116 F. 2d 801, 73 App. D. C. 98).

The force used to remove money from victim's pocket is sufficient "force or violence" within this section defining "robbery" as a taking by "force or violence," whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear. *Id.*

14. Habeas corpus

Where petitioners were arrested in Pennsylvania, charged with committing certain crimes in the District of Columbia, habeas corpus proceedings would be proper to raise jurisdictional questions respecting their removal to the District. *U.S. ex rel. Miller et al. v. Reing* (D.C. Pa. 1949, 81 F. Supp. 367).

15. Immediate actual possession

"Immediate actual possession," within this section defining robbery as a taking from the "immediate actual possession" of another, refers to an area within which victim could reasonably be expected to exercise some physical control over his property. *Spencer v. U.S.* (1941, 116 F. 2d 801, 73 App. D.C. 98).

The word "possession" in this section is not used in strict larcenous sense, but is used in a colloquial sense, meaning nothing more than custody or control. *Neufeld v. U.S.* (1941, 118 F. 2d 375, 73 App. D.C. 174, certiorari denied 62 S. Ct. 580, 315 U.S. 798, 86 L. Ed. 1199).

16. Indictment

Where indictment, containing a single count, charged, in part, the commission of the offense "by force and violence and against resistance, and by putting in fear, and by sudden and stealthy seizure and snatching," this was a proper and sufficient charge to support the conviction. *Tomlinson v. United States* (1938, 93 F. 2d 652, 68 App. D.C. 106, 114 A. L. R. 1315).

Where indictments charging rape and robbery were returned by a grand jury which did not have upon it any member of the negro race, the indictments could not be quashed on ground that systematic course of procedure had been adopted for purpose of excluding negroes from grand jury on account of their color, in absence of proof or offer of proof of intentional exclusion of negroes from service on grand jury. *McKenzie v. U.S.* (1942, 126 F. 2d 533, 75 U. S. App. D. C. 270).

Where this section did not itself express all of the elements of the crime of robbery at common law but Congress meant to make robbery a crime and by "robbery" meant robbery in the usual common-law sense of the term except as expanded by this section it was necessary and permissible for indictment to overlap this section in order to charge crime of robbery. *Neufield v. U.S.* (1941, 118 F. 2d 375, 73 App. D. C. 174, certiorari denied 62 S. Ct. 580, 315 U. S. 798, 86 L. Ed. 1199).

It was proper to charge in robbery indictment that money taken from named individual was property of bank and that money was stolen, notwithstanding fact that this section did not express the elements of common-law robbery that the property shall belong to some one other than the robber, and that it shall be stolen. *Id.*

Variance between indictment and proof, as to ownership of property in robbery, is not material, so long as offense is otherwise described with sufficient certainty to identify the act of robbery and to establish that the property was in the immediate actual possession of the person robbed. *United States v. Mann et al.* (1954, 119 F. Supp. 406).

Ownership of property, alleged to have been subject of robbery, need be alleged in indictment only to show that property was in some one else other than accused and to describe the property taken. *Id.*

17. Instructions

That court failed to instruct that jury must find circumstances of identification of accused as the criminal were convincing in order to convict would not be deemed erroneous where there had been no request for such instruction, court had fully instructed jury on all questions of law including burden of proof and weighing of evidence, and there was evidence from which jury could have reasonably concluded that defendant's identification was established beyond reasonable doubt. *Obery v. United States* (1955, 217 F. 2d 860, 95 U. S. App. D. C. 28, certiorari denied 75 S. Ct. 665, 349 U. S. 923, 99 L. Ed. 1255).

That trial court had failed to instruct that oral confession made by defendant to police should be regarded with caution did not constitute reversible error where there had been no request for such instruction and, under circumstances of case, omission did not affect defendant's substantial rights. *Id.*

In prosecution for rape and robbery, where pistol which victim stated assailant used, clothing which she said he had stolen and money which he had taken were not found in possession of defendant, neighbors testified to good character of defendant and to his having a night job at which he worked regularly, and thorough examination by police failed to shake statement of defendant that he had never seen the prosecuting witness before, such circumstances were important enough to be called to the attention of the jury to be weighed together with evidence in support of legal presumption of innocence. *McKenzie v. U.S.* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

In prosecution for rape and robbery, failure to instruct jury in precise terms that a not guilty verdict was necessary in event of failure by the government to prove each of the elements of the offenses charged beyond a reasonable doubt was error requiring reversal, notwithstanding the court instructed that defendant was presumed to be innocent and that the government was obliged to rebut the presumption by proof of guilt beyond a reasonable doubt. *Id.*

In prosecution for rape and robbery, where verity of identification of accused by prosecuting witness was point on which case turned, failure to instruct jury in plain words that if circumstances of identification were not convincing, jury should acquit accused was error. *Id.*

In prosecution for rape and robbery where court referring to conditions obtaining at time of prosecuting witness' identification of accused stated that the jury should take into consideration the attitude of the prosecuting witness upon coming in view of the accused and that they should search their reasoning power regarding what motivated the selection of the accused from among all others, in view of fact that verity of identification was the point on which the case turned, the court should have cautioned that if the motivation was not convincing beyond a reasonable doubt the jury should find the defendant not guilty. *Id.*

Where defendant's counsel had characterized person reporting alleged robbery as a "busybody," court's charge that it was duty of citizens to report felonies and that if there was a robbery persons reporting it could not be characterized as "busybodies" was proper. *Beck v. U.S.* (1944, 140 F. 2d 169, 78 U.S. App. D.C. 10).

In prosecution for robbery, where defendants had denied that they were present at robbery, charge that if jury found that defendants were present jury could consider whether denial of presence was due to consciousness of guilt or some other reason was not improper. *Id.*

The absence from the trial of an eyewitness to the robbery of which defendant was convicted was not prejudicial, where court instructed the jury in effect that they might infer from the witness' absence that his testimony would not be favorable to the government. *Furqueron v. U. S.* (1947, 158 F. 2d 193, 81 U.S. App. D.C. 329).

In robbery prosecution, where defendant's testimony was that a robbery occurred and that he participated in it, both before and after, with an interlude of nonparticipation, court's statement to jury that defendant claimed that he had repented and voluntarily withdrawn from robbery was not improper. *Vinci v. U.S.* (1947, 159 F. 2d 777, 81 U.S. App. D.C. 386).

18. Joinder of defendants

Where defendant, with two others, was charged with robbery in one count of indictment which included a separate count charging the other two persons with another robbery committed the day before and the two counts and the three defendants were tried at same time, there was no reversible error in joinder of defendants and counts or in joint trial, inasmuch as counsel for defendant quite deliberately, after mature consideration extending over a weekend which intervened during the trial, and after the trial judge had suggested severance, deemed it prudent from standpoint of his client to proceed with the trial and so advised the court. *Wynn v. United States* (1960, 275 F. 2d 648, 107 U.S. App. D.C. 190).

Defendant was not deprived of effective assistance of counsel because during the trial his counsel entered an appearance also for two other defendants who were charged with the same robbery and who were also charged with another robbery committed the day before, where no conflict of interests or detriment appeared and the added representation was assumed by counsel as a calculated move on his part to aid defendant in his defense. *Id.*

19. New trial

Denial of motion for new trial made after conviction for robbery and based on newly discovered evidence bearing only upon the credibility of a witness for prosecution was not abuse of discretion. *Wilkins, Jr., v. United States* (1956, 228 F. 2d 37, 97 U.S. App. D.C. 66).

Refusal of defendant's motion for new trial after conviction of robbery on basis of newly discovered evidence discrediting any prosecuting witness was not abuse of discretion, where it appeared that alleged newly discovered evidence consisting of police record of prosecuting witness could have been procured by defendant before trial, and further that such evidence was not of such a nature that new trial would properly produce an acquittal. *Thompson v. United States* (1951, 188 F. 2d 652, 88 U. S. App. D. C. 235).

20. Preliminary hearing

The hearing called for by the Federal Criminal Procedure Rule relating to appearance before commissioner is not an "arraignment" but a preliminary examination of the arrested person, and it is more accurate to refer to the proceeding as a "preliminary hearing"; such hearing is the occasion for judicial warnings as to such person's rights, and it is also a purpose of the hearing to have a judicial determination as to whether such person should be held. *Goldsmith & Carter v. United States* (1960, 277 F. 2d 335, 107 U.S. App. D.C. 305, certiorari denied 81 S. Ct. 106, 364 U.S. 863, 5 L. Ed. 2d 86).

Where a person was arrested and search of his person produced a newspaper clipping about a robbery, and his explanation for having the clipping was that he had been playing cards with a friend who had stated that the friend's brother and brother's companion had committed such robbery, there was sufficient ground for arresting the brother and brother's companion, and after arrest it was incumbent on police to investigate more thoroughly by verifying or testing the statements about brother and brother's companion before deciding whether brother and companion should have a preliminary hearing or be released, and if the friend was willing to repeat his "charges" in presence of brother and brother's companion and in a manner which convinced officers of the friend's reliability, the police had an adequate basis to take brother and brother's companion before the magistrate and ask that they be held for the grand jury. *Id.*

The questioning of a suspect prior to preliminary hearing cannot be for the purpose of eliciting damaging statements to support the arrest and there cannot be prolonged or intensive questioning easily gliding into the evils of the third degree, and if a suspect, arrested or not, denies knowledge of a crime, the police are entitled, if indeed not obliged, to confront him with those who have implicated him. *Id.*

21. Purpose

The purpose of Congress in enacting this section was to expand the common-law definition of robbery so that it would comprehend the taking by sudden or stealthy seizure or snatching. *Neufield v. U.S.* (1941, 118 F. 2d 375, 73 App. D. C. 174, certiorari denied 62 S. Ct. 580, 315 U. S. 798, 86 L. Ed. 1199).

22. Questions for jury

In prosecution for robbery and carrying a dangerous weapon wherein government's testimony on issue of insanity was offered by a number of lay witnesses and a qualified psychiatrist, and on part of defendant there was opposing testimony both lay and psychiatric, issue of insanity was for jury. *Niport v. United States* (1959, 263 F. 2d 901, 105 U.S. App. D.C. 64).

In robbery prosecution, issue of identity of defendant was one of fact which trial court properly submitted to jury. *Thompson v. United States* (1951, 188 F. 2d 652, 88 U. S. App. D. C. 235).

23. Review

Where there was no suggestion of coercion, with respect to defendant's oral admissions to the police or any factor making it appropriate for the appellate court to reach the question of admissibility despite the absence of objection, the matter was not reviewable. *Gilliam v. United States* (1958, 257 F. 2d 185, 103 U. S. App. D.C. 181, certiorari denied 79 S. Ct. 728, 359 U.S. 947, 3 L. Ed. 2d 680, rehearing denied 79 S. Ct. 899, 359 U.S. 981, 3 L. Ed. 2d 931, certiorari denied 79 S. Ct. 1129, 359 U.S. 995, 3 L. Ed. 2d 983).

24. — Record on appeal

Record upon appeal from conviction in Federal District Court for armed robbery showed no prejudicial error. *Thompson v. United States* (1955, 223 F. 2d 627, 96 U. S. App. D. C. 162, certiorari denied 76 S. Ct. 324, 350 U. S. 949, 100 L. Ed. 827).

25. — Remand

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for a new trial, where testimony of expert who had not

testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D. C. 232).

26. Sentence

District Court's denial of defendant's motion to vacate sentence of two to seven years imposed on defendant's plea of guilty to charges of robbery, on ground that plea was coerced, would not be disturbed by Court of Appeals, where testimony could be viewed to support thesis that court-appointed counsel of defendant merely brought his professional judgment and experience to bear, as he was bound to do, in advising defendant of high probability of conviction and of sentences some courts had imposed on pleas of guilty in such cases, and it was not shown that counsel's estimate of case was either erroneous or made to mislead defendant, and it did not appear that counsel's estimate of sentence was offered defendant as a promise rather than a hope. *Smith v. United States* (1959, 265 F. 2d 99, 105 U.S. App. D.C. 115).

Where defendant, who had been sentenced on first indictment from two to six years, on each of four counts in second indictment from one to three years, with such sentences to take effect consecutively with one another and with sentence on first indictment, and on third indictment from one to three years concurrently with the other sentences, had actually pleaded guilty only to one count in each of the three indictments, Court of Appeals would set aside sentence on second indictment except as to one sentence from one to three years, and, as to first indictment, district court could resentence defendant in view of fact that existing sentence was a general one covering two counts. *Campbell v. United States* (1958, 258 F. 2d 160, 103 U.S. App. D.C. 308).

Sentence of 3 to 12 years for robbery for which maximum sentence was 15 years was valid as conforming with statute relating to indeterminate sentences and providing for a maximum sentence not exceeding maximum fixed by law for crime committed, as against contention maximum sentence of entire term imposed by statute violated was required. *McDonald v. Johnston* (C.C.A. 9, 1937, 86 F. 2d 329).

Application for habeas corpus was premature when it challenged the validity of consecutive sentences as the first sentence of robbery had not expired. *Johnson v. Aderhold* (C. C. A. 5, 1934, 73 F. 2d 102).

27. Trial procedure

In prosecution for rape, and for robbery of cleaning establishment, where court warned defendant's counsel that if he asked question of witness regarding whether defendant had been identified as the man who robbed another cleaning establishment about a week prior to the commission of the offenses involved, he would do so at his peril, refusal to allow the contradiction of witness' answer was proper. *McKenzie v. U.S.* (1942, 126 F. 2d 533, 75 U. S. App. D. C. 270).

28. Unnecessary delay

A reasonable period of time elapsing between occurrence of oral confession and the time reasonably necessary to reduce it to writing for it to be signed is not "unnecessary delay" within Federal Criminal Procedure Rule governing appearance before commissioner. *Goldsmith & Carter v. United States* (1960, 277 F. 2d 335, 107 U.S. App. D.C. 305, certiorari denied 81 S. Ct. 106, 364 U.S. 863, 5 L. Ed. 2d 86).

Under Federal Rule of Criminal Procedure, preliminary hearing must be made promptly and without unnecessary delay and there is no requirement that preliminary hearing be immediate. *Id.*

Where there is a plea of unnecessary delay before preliminary hearing, the court must examine in detail all the surrounding circumstances, taking into consideration the manner in which the interrogation was conducted, the length of time involved, and particularly the purposes which the police had in conducting their inquiry, if the purposes can be discerned, and the court must not forget that interrogation is not an evil per se but an absolute necessity and that it often leads to releases, not charges. *Id.*

29. Verdict

In appropriate case there is duty to set aside verdict of guilty and to direct verdict of not guilty by reason of insanity; though this duty is to be performed with caution because of deference due jury in resolving factual issues. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U. S. App. D. C. 232).

§ 22-2902. Attempt to commit robbery.

Whoever attempts to commit robbery, as defined in section 22-2901, by an overt act, shall be imprisoned for not more than three years or be fined not more than five hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 811.)

CROSS REFERENCE

Possession of fire arm, additional penalty, see §§ 22-3201, 22-3202.

NOTES TO DECISIONS

Acquittal on one count, effect 1
Corroboration 2
Indictment 3
Infamous crime 4
Sentence 5

1. Acquittal on one count, effect

Under this section and § 22-2901, attempted robbery or actual robbery is possible without assault, and acquittal of assault with intent to rob does not require acquittal of attempted robbery. *Pope v. Huff* (1944, 141 F. 2d 727, 79 U. S. App. D. C. 18).

2. Corroboration

Evidence sustained conviction of attempt to commit robbery in violation of this section, notwithstanding fact that testimony of principal prosecution witness was uncorroborated and that intent to rob could only be inferred. *Accardo v. United States* (1957, 249 F. 2d 519, 102 U. S. App. D. C. 4, certiorari denied 78 S. Ct. 787, 356 U. S. 943, 2 L. Ed. 2d 817).

3. Indictment

Under section 22-2901 robbery includes taking by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, and to charge a taking "by force and violence, and by sudden and stealthy seizure, and against resistance, and by putting in fear" did not constitute a misjoinder of actions in a single count. *Turner v. United States* (1927, 16 F. 2d 535, 57 App. D. C. 39).

4. Infamous crime

Robbery is an infamous crime, and must be prosecuted by indictment. *United States v. Evans* (28 App. D. C. 264).

5. Sentence

Where defendant, who had been sentenced on first indictment from two to six years, on each of four counts in second indictment from one to three years, with such sentences to take effect consecutively with one another and with sentence on first indictment, and on third indictment from one to three years concurrently with other sentences, had actually pleaded guilty only to one count in each of the three indictments, Court of Appeals would set aside sentence on second indictment except as to one sentence from one to three years, and, as to first indictment, district court could resentence defendant in view of fact that existing sentence was a general one covering two counts. *Campbell v. United States* (1958, 258 F. 2d 160, 103 U.S. App. D.C. 308).

Sentence fixing a maximum of twelve years conformed with the act of July 15, 1932, as did the minimum period of three years, being for a minimum period "not exceeding one-fifth of the maximum period fixed by law." *McDonald v. Johnston* (C. C. A. 9, 1937, 86 F. 2d 329).

Chapter 30.—SEDUCTION

Sec.

22-3001. Seduction.

22-3002. Seduction by teacher.

§ 22-3001. Seduction.

If any person shall seduce and carnally know any female of previous chaste character, between the

ages of sixteen and twenty-one years, out of wedlock, such seduction and carnal knowledge shall be deemed a misdemeanor, and the offender, being convicted thereof, shall be punished by imprisonment for a term not exceeding three years, or fined not exceeding two hundred dollars or may be punished by both such fine and imprisonment. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 873.)

NOTES TO DECISIONS

Chastity 1
Evidence 2
Promise of marriage 3
Subsequent marriage 4

1. Chastity

Virginity is the test of chastity. *Bray v. United States* (39 App. D. C. 600)

2. Evidence

Subsequent misconduct of prosecutrix with others is inadmissible "unless, perhaps, when improper relations with others follow closely upon the commission of the offense by the accused, and are preceded by proof of circumstances tending to show that the prosecutrix had not been previously chaste." *Bray v. United States* (39 App. D. C. 600).

3. Promise of marriage

"The object of the statute is to protect the chaste virgin against betrayal from an honest belief in the betrayer's protestations of love and affection, or an existing promise of marriage, or a present unqualified promise of marriage as an inducement for the commission of the act," but does not cover a promise of marriage contingent upon pregnancy resulting from the intercourse. *Hamilton v. United States* (41 App. D.C. 359, 51 L.R.A., N.S. 809).

4. Subsequent marriage

Subsequent marriage of the parties is no bar to prosecution. *Bray v. United States* (39 App. D. C. 600)

§ 22-3002. Seduction by teacher.

Any male person, over twenty-one years of age, who is superintendent, tutor, or teacher in any public or private school, seminary, or other institution, or instructor of any female in any branch of instruction, who has sexual intercourse with any female under twenty-one years of age and not under sixteen years of age, with her consent, while under his instruction during the term of his engagement as superintendent, tutor, or teacher, shall be imprisoned for not less than one year nor more than ten. (Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 871; June 30, 1902, 32 Stat. 535, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted the words "and not under sixteen years of age."

Chapter 31.—TRESPASS—INJURIES TO PROPERTY
Sec.

- 22-3101. Forcibly entry and detainer.
- 22-3102. Unlawful entry on property.
- 22-3103. Grave robbery—Buying or selling dead bodies.
- 22-3104. Depredation of fixtures in houses.
- 22-3105. Placing explosives with intent to destroy or injure property.
- 22-3106. Stealing or injuring books, manuscripts, publications, works of art.
- 22-3107. Destroying or defacing public records.
- 22-3108. Cutting down or destroying things growing on the land of another.
- 22-3109. Destroying boundary trees.
- 22-3110. Destroying trees or protections thereto on public grounds—Fastening horses thereto.
- 22-3111. Disorderly conduct in public buildings or grounds—Injury to or destruction of United States property.
- 22 3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.

Sec.

- 22-3113. Destroying or defacing building material for streets.
 22-3114. Destroying cemetery railing or tomb.
 22-3115. Offenses against property of electric lighting, heating, or power companies.
 22-3116. Tapping gas pipes.
 22-3117. Tapping or injuring water-pipes—Tampering with water meters.
 22-3118. Maliciously making water impure
 22-3119. Placing obstructions on or displacement of railway tracks.
 22-3120. Obstructing public road—Removing milestones
 22-3121. Obstructing public highway.
 22-3122. Fines under section 22-3121 to be collected in name of United States.

§ 22-3101. Forcible entry and detainer.

Whoever shall forcibly enter upon any premises, or, having entered without force, shall unlawfully detain the same by force against any person previously in the peaceable possession of the same and claiming right thereto, shall be punished by imprisonment for not more than one year or a fine of not more than one hundred dollars, or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 851.)

CROSS REFERENCES

Jurisdiction of municipal court, see § 11-735.
 Trespassing for purpose of shooting or hunting, see § 22-1617.

§ 22-3102. Unlawful entry on property.

Any person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building or other property, or part of such dwelling, building or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$100 or imprisonment in the jail for not more than six months, or both, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 824; Mar. 4, 1935, 49 Stat. 37, ch. 23; July 17, 1952, 66 Stat. 766, ch. 941, § 1.)

AMENDMENTS

1952—Act of July 17, 1952, amended section generally, and among other changes, extended the coverage to public buildings and other property and to violators "thereon" as well as "therein" and increased the limitation on the fine from \$50 to \$100.

1935—Act Mar. 4, 1935, added the clause relating to unlawful entry of an unoccupied private dwelling.

NOTES TO DECISIONS

- Elements of offense 1
 Entry to secure divorce evidence 2
 Jurisdiction 3
 Questions for jury 4
 Reasonable cause for arrest 6
 Unlawful purpose of occupancy 5

1. Elements of offense

In a prosecution for unlawfully entering a private dwelling against the will and without consent or authority of lawful occupant, one of essential elements is whether entry was against will of one who was lawful occupant. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

2. Entry to secure divorce evidence

In prosecution for unlawful entry by a private detective and photographer, employed by husband to secure evidence against his wife in a divorce proceeding, alleged

right of husband to make what would otherwise be an illegal entry in order to prevent the debauchment of his wife would be personal to the husband and could not be invoked by the defendants. *Leon and McManaway v. United States* (D. C. Mun. App. 1957, 136 A. 2d 588).

3. Jurisdiction

Under former section 11-603, the police court had jurisdiction of information charging that accused unlawfully entered and unlawfully declined to leave dwelling house in District of Columbia. *Fletcher v. McMahon* (1941, 121 F. 2d 729, 73 App. D. C. 263, certiorari denied 62 S. Ct. 131, 314 U. S. 662, 86 L. Ed. 531).

Appellant having been convicted in police court under this section appealed the case and by so doing deprived lower court of jurisdiction, and they had no power to commit appellant to jail. *Prioleau v. Superintendent of Wash. Asylum and Jail* (1925, 2 F. 2d 317, 55 App. D.C. 99).

4. Questions for jury

In prosecution for unlawful attempt to enter a private building, evidence was sufficient to raise jury question as to defendant's guilt. *McFarland v. United State* (D.C. Mun. App. 1960, 163 F. 2d 627).

In prosecution for unlawfully entering a private dwelling against the will and without consent or authority of lawful occupant, wherein complaining witness presented evidence tending to show that she was tenant in possession of apartment and defense introduced testimony of rental agent that apartment was rented to a couple, whether complainant was a lawful occupant was a question for the jury. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

5. Unlawful purpose of occupancy

In prosecution for unlawfully entering a private dwelling against will and without consent or authority of lawful occupant, issues as to whether complaining party occupied apartment under an alias or occupied it for purpose of having adulterous relations with another had no bearing on question of whether she was a lawful occupant. *Moore v. United States* (D. C. Mun. App. 1957, 136 A. 2d 868).

6. Reasonable cause for arrest

Police officer who, while walking to rear of tavern more than one hour after closing time, saw a man who had been peering from rear of tavern, suddenly pull his head back, and who then observed two men walking away rapidly, one of whom, when stopped by officer, was holding hammer between his legs, had reasonable cause to believe that the two men were engaged in a felonious act, and, therefore, their arrest was proper and admission of hammer in evidence in subsequent criminal prosecution was proper. *McFarland v. United States* (D.C. Mun. App. 1960, 163 A. 2d 627).

§ 22-3103. Grave robbery—Buying or selling dead bodies.

Whoever, without legal authority or without the consent of the nearest surviving relative, shall disturb or remove any dead body from a grave for the purpose of dissecting, or of buying, selling, or in any way trafficking in the same, shall be imprisoned not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 891.)

CROSS REFERENCE

Unlawful traffic in dead bodies, see, also, § 2-206.

§ 22-3104. Depredation of fixtures in houses.

Whoever shall wilfully and without color of right enter into any occupied or unoccupied dwelling-house or other building, property of another, and shall cut, break, or tear from its place any gas-pipe, water-pipe, door-bell, or other fixture therein; or whoever shall in such dwelling-house or other building wilfully and without color of right cut, break, or tear down any wall or part of a wall, or door, with intent to cut, break, or tear from its place any

pipe or fixture therein, shall be fined not more than two hundred dollars, or be imprisoned not more than two years, or both. (Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 825.)

§ 22-3105. Placing explosives with intent to destroy or injure property.

Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding ten years. (Mar. 3, 1905, 33 Stat. 1033, ch. 1461.)

§ 22-3106. Stealing or injuring books, manuscripts, publications, works of art.

Any person who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia, whether the property of the United States or of the District of Columbia or of any individual or corporation in said District, or who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, print, engraving, medal, newspaper, or work of art, the property of the United States, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a fine of not less than ten dollars nor more than one thousand dollars, and by imprisonment for not less than one month nor more than one year, or both, for every such offense. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 849; June 30, 1902, 32 Stat. 535, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted after the words "United States" the words "or of the District of Columbia."

CROSS REFERENCES

Government property or contracts, malicious mischief, see U.S. Code, title 18, § 1361.

Public money, property or records, embezzlement and theft, see U.S. Code, title 18, § 641.

§ 22-3107. Destroying or defacing public records.

Whoever maliciously or with intent to injure or defraud any other person defaces, mutilates, destroys, abstracts, or conceals the whole or any part of any record authorized by law to be made, or pertaining to any court or public office in the District, or any paper duly filed in such court or office, shall be fined not more than three hundred dollars or imprisoned not more than two years or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 844.)

§ 22-3108. Cutting down or destroying things growing on the land of another.

Whoever maliciously cuts down or destroys by girdling or otherwise, any standing or growing vine, bush, shrub, sapling, or tree on the land of another, or severs from the land of another any product standing or growing thereon, or any other thing attached thereto, shall, if the value of the thing destroyed or the amount of damage done to any

such thing or to the land is fifty dollars or more, be imprisoned for not less than one year nor more than three years, or, if such value or amount is less than that sum, shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 847; Aug. 12, 1937, 50 Stat. 629, ch. 599.)

AMENDMENT

1937—Act Aug. 12, 1937, increased the value from \$35 to \$50.

§ 22-3109. Destroying boundary trees.

Whoever maliciously cuts down, destroys, or removes any boundary tree, stone, or other mark or monument, or maliciously effaces any inscription thereon, either of his own lands or of the lands of any other person whatsoever, even though such boundary or bounded trees should stand within the person's own land so cutting down and destroying the same, shall be fined not more than one thousand dollars and imprisoned not exceeding one year. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 880.)

§ 22-3110. Destroying trees or protections thereto on public grounds—Fastening horses thereto.

It shall not be lawful for any person or persons to girdle, break, wound, destroy, or in any manner injure any of the trees growing or planted and set, or which may hereafter be planted and set on any of the public grounds, open space, or squares or on any private lot, or on any of the streets, or avenues, roads or highways, in the District of Columbia, or any of the boxes, stakes, or any other protection thereof, under a penalty of not exceeding fifty dollars for each and every such offense; and if any person or persons shall tie or in any manner fasten a horse or horses to any of the trees, boxes, or other protection thereof on any streets or avenues, roads, or highways, on any of the public grounds belonging to the United States, or on any of the streets, avenues, or alleys, in the District of Columbia, each and every such offender shall forfeit and pay for each offense a sum not exceeding ten dollars. (July 29, 1892, 27 Stat. 324, ch. 320, § 13.)

CROSS REFERENCES

Cutting down or destroying things growing on land of another, see, also § 22-3108.

Prosecutions, see § 22-109.

§ 22-3111. Disorderly conduct in public buildings or grounds—Injury to or destruction of United States property.

Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds belonging to the United States within the District of Columbia, or who shall wilfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall, upon conviction thereof, be fined not more than fifty dollars. (July 29, 1892, 27 Stat. 325, ch. 320, § 15.)

CODIFICATION

This section contains the last part of act July 29, 1892. The first part of § 15 of the act appears herein as § 4-120. Section is also classified to U.S. Code, title 40, § 101.

CROSS REFERENCE

Prosecutions, see § 22-109.

§ 22-3112. Destroying or defacing buildings, statues, monuments, offices, dwellings, and structures.

It shall not be lawful for any person or persons to wilfully or wantonly destroy, injure, disfigure, cut, chip, break, deface, or cover or rub with or otherwise place filth or excrement of any kind upon any property, public or private, in the District of Columbia, or any public or private building, statue, monument, office, dwelling or structure of any kind, or which may be in course of erection, or the doors, windows, steps, railing, fencing, balconies, balustrades, stairs, porches, or halls, or the walls or sides, or the walls of any inclosure thereof; or to write, mark, or paint obscene or indecent words or language thereon, or to draw, paint, mark, or write obscene or indecent figures representing obscene or indecent objects; or to write, mark or draw, or paint any other word, sign, or figure thereon, without the consent of the owner or proprietor thereof, or, in case of public property, of the person having charge, custody, or control thereof, under penalty of a fine not to exceed one hundred dollars, or imprisonment not to exceed six months, or both such fine and imprisonment. (July 29, 1892, 27 Stat. 322, ch. 320, § 1; July 8, 1898, 30 Stat. 723, ch. 638; Apr. 21, 1906, 34 Stat. 126, ch. 1647.)

AMENDMENT

1906—Act Apr. 21, 1906, inserted the words “wilfully or wantonly”, increased the fine limits from \$50 to \$100 and provided for imprisonment or fine and imprisonment.

CROSS REFERENCE

Prosecution, see § 22-109.

NOTES TO DECISIONS

Application of section 1
Evidence 2
Indictment or information 3
Questions for jury 4

1. Application of section

This section does not apply to the destruction of movable property (see § 22-403). *Nation v. District of Columbia* (34 App. D.C. 453, 26 L.R.A., N.S., 996).

2. Evidence

In prosecution for destroying private property, where complainant purchased premises at foreclosure and sent a letter to defendant alleging ownership, and successfully prosecuted a suit for eviction, while deed was admissible evidence of ownership, it was not the only admissible evidence and complainant's testimony relating thereto, was equally admissible. *Sims v. United States* (D. C. Mun. App. 1956, 120 A. 2d 69).

Evidence supported conviction of destroying private property. *Id.*

3. Indictment of information

The value of the injured property need not be alleged or proved in prosecutions under this section. *Nation v. District of Columbia* (34 App. D.C. 453, 26 L.R.A., N.S., 996).

4. Questions for jury

In prosecution for destroying private property, evidence upon the question as to whether complainant was holder of legal title or had right of possession when the offense was committed was sufficient for the jury. *Sims v. United States* (D. C. Mun. App. 1956, 120 A. 2d 69).

§ 22-3113. Destroying or defacing building material for streets.

It shall not be lawful for any person or persons to destroy, break, cut, disfigure, deface, burn, or otherwise injure any building materials, or materials intended for the improvement of any street, avenue, alley, foot pavement, roads, highways, or inclosure, whether public or private property, or remove the same (except in pursuance of law or by consent of the owner) from the place where the same may be collected for purposes of building or improvement as aforesaid; or to remove, cut, destroy, or injure any scaffolding, ladder, or other thing used in or about such building or improvement, under a penalty of not more than twenty-five dollars for each and every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 2.)

CROSS REFERENCE

Prosecutions, see § 22-109.

§ 22-3114. Destroying cemetery railing or tomb.

If any person shall maliciously cut down, demolish, or otherwise injure any railing, fence, or inclosure around or upon any cemetery, or shall injure or deface any tomb or inscription thereon, he shall be fined not more than one hundred dollars. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 850.)

§ 22-3115. Offenses against property of electric lighting, heating, or power companies.

Whoever shall knowingly connect or disconnect any electrical conductor belonging to any company using or engaged in the manufacture and supply of electric current for purposes of light, heat, and power, or either of them, or makes any connection with any such electrical conductor for the purpose of using or wasting the electric current, or who in any wise tampers with any meter used to register current consumed, or who interferes with the operating of any dynamo or other electrical appliance of such company, or tampers with or interferes with the poles, wires, conduits, or other apparatus used by such companies, unless such person or persons shall be duly authorized by or be in the employ of such company, shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both. (June 30, 1902, 32 Stat. 534, ch. 1329, § 826a.)

§ 22-3116. Tapping gas pipes.

Any person who, with intent to injure or defraud any gas company in the District of Columbia, shall make or cause to be made any pipe, tube, or other instrument or contrivance, or connect the same, or cause it to be connected with any main service pipe or other pipe for conducting or supplying illuminating gas in such manner as to connect with and be calculated to supply illuminating gas to any burner or orifice by which illuminating gas is consumed, around or without passing through the meter provided for the measuring and registering of the quantity of gas there consumed, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment not exceeding six months or by fine not exceeding two hundred and fifty dollars. (June 23, 1874, 18 Stat. 280, ch. 480, § 15.)

§ 22-3117. Tapping or injuring water-pipes—Tampering with water meters.

Any person who, with intent to injure or defraud the District of Columbia, shall make or cause to be made any pipe, tube, or other instrument or contrivance, or connect the same or cause it to be connected with any water main or service pipe or other pipe for conducting or supplying Potomac water, in such manner as to pass or carry the water, or any portion thereof, around or without passing through the meter provided for the measuring and registering of the Potomac water supplied to any premises, or who shall, without permission from the commissioners of the District of Columbia, tamper with or break any water meter or break the seal thereof, or in any manner change the reading of the dial thereof, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment not exceeding six months, or by fine not exceeding two hundred and fifty dollars. (Apr. 5, 1892, 27 Stat. 14, ch. 34.)

§ 22-3118. Maliciously making water impure.

Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the city of Washington, becomes impure, filthy, or unfit for use, shall be fined not less than \$500 nor more than \$1,000, or imprisoned at hard labor not more than three years nor less than one year. (R. S., § 1806; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

§ 22-3119. Placing obstructions on or displacement of railway tracks.

Whoever maliciously places an obstruction on or near the track of any steam or street railway, or displaces or injures anything appertaining to such track, with intent to endanger the passage of any locomotive or car, shall be imprisoned for not more than ten years. (Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 846.)

§ 22-3120. Obstructing public road—Removing milestones.

If any person shall alter or in any manner obstruct or encroach on a public road, or cut, destroy, deface, or remove any milestones set up on such road, or place any rubbish, dirt, logs, or make any pit or hole therein, such person may be indicted, and, upon conviction thereof before the proper court, shall be fined or imprisoned, in the discretion of the court, according to the nature of the offense. (R. S., D. C., § 268.)

§ 22-3121. Obstructing public highway.

Any person who, without lawful authority, shall obstruct the free use of any of the public highways, which had been used and recognized as public county roads for twenty-five years prior to May 3, 1862, and which were thereafter duly surveyed, recorded, and declared public highways according to law, shall be subject to a fine for each offense of not less than one hundred nor more than two hundred and fifty dollars and be imprisoned till the fine and the costs of suit and collection of the same are paid. (R. S., D. C., § 269.)

§ 22-3122. Fines under section 22-3121 to be collected in name of United States.

The fines provided for in section 22-3121 shall be collected in the name of the United States. (R. S., D. C., §§ 1, 2, 96, 270; June 11, 1878, 20 Stat. 102, ch. 180.)

NOTE TO DECISION

1. Negligence of municipal officers

District of Columbia is a municipal corporation and is responsible for the negligence of its officers having the care of streets, avenues, and sidewalks, as resulted in personal injuries to individuals. *District of Columbia v Woodbury* (1890, 10 S. Ct. 990, 136 U.S. 450, 34 L. Ed. 472).

Chapter 32.—WEAPONS

Sec.

- 22-3201. Possession, sale, transfer, and use of dangerous weapons—Definition.
- 22-3202. Committing crime when armed—Added punishment.
- 22-3203. Unlawful possession of a pistol.
- 22-3204. Carrying concealed weapons.
- 22-3205. Exceptions to section 22-3204.
- 22-3206. Issue of licenses to carry pistol.
- 22-3207. Selling pistol to minors and others.
- 22-3208. Transfers of firearms regulated.
- 22-3209. Dealers of weapons to be licensed.
- 22-3210. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.
- 22-3211. False information forbidden in sale of weapons.
- 22-3212. Alteration of identifying marks of weapons prohibited.
- 22-3213. Exceptions.
- 22-3214. Possession of certain dangerous weapons prohibited—Exceptions.
- 22-3215. Penalties.
- 22-3216. Separability of provisions.
- 22-3217. Dangerous articles—Definitions—Taking and destruction—Procedure.

§ 22-3201. Possession, sale, transfer, and use of dangerous weapons—Definition.

"Pistol," as used in this chapter, means any firearm with a barrel less than twelve inches in length.

"Sawed-off shotgun," as used in this chapter, means any shotgun with a barrel less than twenty inches in length.

"Machine gun," as used in this chapter, means any firearm which shoots automatically or semi-automatically more than twelve shots without reloading.

"Person," as used in this chapter, includes individual, firm, association, or corporation.

"Sell" and "purchase" and the various derivatives of such words, as used in this chapter, shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

"Crime of violence," as used in this chapter, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, housebreaking, larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary. (July 8, 1932, 47 Stat. 650, ch. 465, § 1.)

REPEALS

Section 17 of act July 8, 1932, provided that: "The following sections of the Code of Law for the District of Columbia, 1919, namely, sections 855, 856, and 857 [erroneously declared to be D.C. Code 1919, probably

intended to read D.C. Code 1901; codified in D.C. Code 1929, title 6, §§114—116; now incorporated in §§ 22-3204 to 22-3210], and all other Acts or parts of Acts inconsistent herewith [act July 8, 1932], are hereby repealed."

CROSS REFERENCES

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

Other provisions concerning regulations of firearms. see § 1-227 and notes.

§ 22-3202. Committing crime when armed—Added punishment.

If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than five years; upon a second conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than ten years; upon a third conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than fifteen years; upon a fourth or subsequent conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for an additional period of not more than thirty years. (July 8, 1932, 47 Stat. 650, ch. 465, § 2.)

CROSS REFERENCE

Minimum sentence when previously convicted of a crime of violence, see § 24-203.

NOTES TO DECISIONS

1. Indictment

The words "said defendants being then and there armed with a certain pistol" were considered as mere surplusage to an indictment for robbery and not to charge a separate offense for the purpose of increasing the punishment. *Tomlinson v. United States* (1938, 93 F. 2d 652, 68 App. D.C. 106, 114 A.L.R. 1315, certiorari denied 58 S. Ct. 645, 303 U.S. 646, 82 L. Ed. 1102).

§ 22-3203 Unlawful possession of a pistol.

No person shall own or keep a pistol, or have a pistol in his possession or under his control, within the District of Columbia, if—

(1) he is a drug addict;

(2) he has been convicted in the District of Columbia or elsewhere of a felony;

(3) he has been convicted of violating section 22-2701, section 22-2722, or sections 22-3302 to 22-3306; or

(4) he is not licensed under section 22-3210 to sell weapons, and he has been convicted of violating sections 22-3201 to 22-3216.

No person shall keep a pistol for, or intentionally make a pistol available to, such a person, knowing that he has been so convicted or that he is a drug addict. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted of a violation of this section, in which case he shall be imprisoned for not more than ten years. (July 8, 1932, 47 Stat. 651, ch. 465, § 3; June 29, 1953, 67 Stat. 93, ch. 159, § 204(b).)

AMENDMENT

1953—Act June 29, 1953, amended section by substituting the provisions of the text for former language

which had provided that no one who had been convicted of a crime of violence should own or possess a pistol in the District of Columbia.

DEFINITION

Section 204(a) of act June 29, 1953, provided that: "For the purposes of this section [amending this section and sections 22-3204, 22-3207, 22-3208, 22-3210, and 22-3214], the term 'Dangerous Weapons Act' means the Act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

NOTES TO DECISIONS

Defenses 1 Sentences 2

1. Defenses

Even though defendant, who was charged with making threats in a menacing manner and with unlawfully possessing an automatic pistol, had been discharged from hospital as having recovered from a mental disorder less than two months before date of alleged crimes, usual presumption of defendant's sanity, under District of Columbia law, existed at the time of trial. *Williams v. United States* (D. C. Mun. App. 1954, 104 A. 2d 828).

2. Sentences

Municipal court could impose a sentence to commence at termination of that imposed for another distinct offense, irrespective of whether initial sentence was imposed by the municipal court or by the district court. *Williams v. United States* (D. C. Mun. App. 1957, 133 A. 2d 112).

§ 22-3204. Carrying concealed weapons.

No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than ten years. (July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c).)

AMENDMENTS

1953—Act June 29, 1953, amended section by striking out proviso authorizing arrests without a warrant and searches and seizures pursuant thereto for violation of the section which is now covered by section 23-306 and to provide for a maximum penalty of ten years for a conviction of violating the section after having previously been convicted of such offense, or of a felony.

1947—Act Aug. 4, 1947, added proviso authorizing arrests without a warrant and searches and seizures pursuant thereto for violation of the section.

1943—Act Nov. 4, 1943, amended section by inserting word "either openly or" preceding "concealed on or about", and by adding "capable of being so concealed" following "deadly or dangerous weapon."

NOTES TO DECISIONS

Burden of proof 8
Concealed about his person 1
Constitutionality 2
Construction 3
With other laws 4
Double jeopardy 5
Election of offenses 6
Evidence 7—12
In general 7
Burden of proof 8
Examination of witnesses 9
Prior conviction, proof of 10
Production 11
Sufficiency 12
Examination of witnesses 9

Indictment 13
 Instructions 14
 Place of business 15
 Possession of firearms 16
 Prior conviction 17
 Proof of 10
 Probable cause for arrest 22
 Production, evidence 11
 Purpose 18
 Questions for jury 19
 Self-defense 20
 Sentences 21
 Sufficiency of evidence 12

1. Concealed about his person

"The words 'concealed about his person,' as used in the statute, were intended to mean and do mean concealed in such proximity to the person as to be convenient of access and within reach." *Brown v. United States* (1929, 30 F. 2d 474, 58 App. D.C. 311).

2. Constitutionality

This section denouncing offense of carrying a pistol without a license to do so is not unconstitutional in permitting imposition of greater penalty when accused has been previously convicted of that offense in District or of felony in District or anywhere. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

3. Construction

The statute being criminal, penal, prohibitive and in derogation of the common law it must be given a strict rather than liberal construction. *Brown v. United States* (D. C. Mun. App. 1949, 66 A. 2d 491).

The qualifying phrase "without a license" is not to be treated as an exception to the statute but rather as a descriptive part of the offense, an "adjectival" and descriptive negative defining the corpus delicti and the phrase is incorporated in the definition forming an integral element of the crime. *Id.*

4. Construction with other laws

Section 22-3214 (b) specifically prohibiting possession of knife with intent to use unlawfully against another was not intended to cover the whole subject matter of knives in District of Columbia, in the sense of repealing deadly weapon statute which required no proof of unlawful intent, and hence information alleging violation of the older statute was sufficient though it specified knife as the deadly weapon and did not allege intent to use knife unlawfully against another. *United States v. W. E. Shannon* (D. C. Mun. App. 1958, 144 A. 2d 267).

5. Double jeopardy

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim, was not put twice in jeopardy for same offense by prosecution upon two counts, for assault with deadly weapon, and also for carrying concealed unlicensed weapon, since element of proof in second count, that gun was unlicensed, was not necessary in proof of assault charge. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

6. Election of offenses

Government is not required to bring all knife cases under code section prohibiting possession of knife with blade longer than three inches; and defendant who carried openly or concealed on or about his person a "pocket knife" which had a black outer case and a blade three-eighths of an inch wide and four and one-quarter inches from shank to tip was properly prosecuted under code section forbidding any person to carry either openly or concealed on or about his person a deadly or dangerous weapon capable of being so concealed. *Degree v. United States* (D.C. Mun. App. 1958, 144 A. 2d 547).

7. Evidence—In general

In prosecution for carrying a pistol without a license, prosecution need not prove that pistol was carried openly or was concealed, in view that it is an offense under this section to carry a pistol without a license irrespective of whether pistol was carried openly or concealed. *U. S. v. Waters* (1947, 73 F. Supp. 72, appeal dismissed 69 S. Ct. 168, 335 U.S. 869, 93 L. Ed. 413, cause certified 175 F. 2d 340, 84 U.S. App. D.C. 127).

Evidence that defendant taxicab driver did not need to move from front seat of his taxicab to obtain his pistol established that he had pistol "about his person" within

this section prohibiting a party from carrying about his person a pistol without license. *Id.*

In prosecution for carrying gun without license, testimony of lieutenant of Metropolitan Police Department that he had searched records of all persons who held licenses to carry pistols in District of Columbia and that there was no record that defendant had a license was primary evidence of state of facts and not hearsay. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

8. — Burden of proof

In prosecution for carrying gun without license, prosecution was required only to prove that accused carried gun and had no license to carry it, and was not required to prove all contents of original record of all licenses for carrying guns issued by superintendent of police. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

The elements of the crime being the carrying of a pistol, without a license, the burden of proceeding does not shift to the defendant once the prima facie case of carrying the weapon has been established but remains with the prosecution. *Brown v. United States* (D.C. Mun. App. 1949, 66 A. 2d 491).

9. — Examination of witnesses

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, requiring counsel for one defendant to ask a more precise question than question counsel asked a witness for prosecution as to whether such witness was convicted several times of prostitution during specified years was within discretion of trial court. *Bundy v. United States* (1952, 193 F. 2d 694, 90 U.S. App. D.C. 12, certiorari denied 72 S. Ct. 638, 343 U.S. 908, 96 L. Ed. 1326).

10. — Prior conviction, proof of

Where defendant was charged with carrying unlicensed pistol after felony conviction, and, on defendant's motion, allegations in indictment concerning prior conviction of felony were stricken, and defendant's counsel, out of defendant's hearing, stipulated that defendant had previously been convicted of a felony and waived later proof thereof, but concession of counsel was made without defendant's knowledge or consent, there was no waiver by defendant of necessity of proof of felony conviction, and imposition of enhanced sentence, on ground of prior felony conviction, was error. *Jackson v. United States* (1955, 221 F. 2d 883, 95 U.S. App. D.C. 328).

11. — Production

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, action of trial court in not requiring production under subpoena of arrest record of a witness for prosecution was not prejudicial to defendant where police officer testified he had no arrest record of witness by name contained in subpoena and did not know such witness used other names mentioned by him by counsel for defendant, and counsel for defendant did not during trial procure any further subpoena for arrest record of witness under any other name. *Bundy v. United States* (1952, 193 F. 2d 694, 90 U.S. App. D.C. 12, certiorari denied 72 S. Ct. 638, 343 U.S. 908, 96 L. Ed. 1326).

In prosecution for carrying gun without license, best procedure to prove that defendant had no license would be to produce official custodian of police records. *Bussie v. United States* (D.C. Mun. App. 1951, 81 A. 2d 247).

12. — Sufficiency

Conviction for carrying concealed weapons would not be reversed, on ground that trial judge, in finding defendant guilty, erroneously considered stipulation, made in connection with motion to suppress evidence, to effect that defendant had a possessory interest in two pistols sought to be suppressed where no formal written stipulation was presented to judge who heard motion to suppress, and it was merely a verbal statement by counsel, and a different judge presided at the trial, and he certified that his decision was based solely on testimony adduced at trial, and in stenographic transcript there appeared no testimony or offer of testimony as to stipulation, and it did not appear to have affected decision in any way, and testimony of police officer supplied essentials on which to predicate a conviction. *Emburgh v. United States* (D.C. Mun. App. 1960, 164 A. 2d 342).

In absence of objection to testimony of police lieutenant who stated that he had searched pistol license records, and in absence of attempt to cross-examine him as to extent of his knowledge and familiarity with records or contention that he was not in a position to make a complete search and render accurate report, testimony was of sufficient probative force to show that accused had no license even though official custodian was not produced. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

13. Indictment

Failure of pistol-carrying count of indictment to allege or proof to show that defendant had been previously convicted of felony, did not preclude imposition of greater penalty applicable to defendant who has previously been convicted of felony, where defendant had on cross-examination admitted prior felonies, and defendant was not denied right of allocution, nor was he prepared to show that he had not been previously convicted, and Government after conviction and before sentence filed information alleging prior convictions. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

Pistol-carrying count of indictment was not defective in using conjunctive "and," instead of statutory disjunctive "or," in charging that defendant "did carry openly and concealed a dangerous weapon", where proof tended to show that weapon was concealed when defendant approached scene of shooting and was then produced and carried openly. *Id.*

Indictment charging defendant with carrying a pistol but failing to charge, as required by this section, that pistol was carried by defendant without a license failed to charge an offense. *U.S. v. Waters* (1947, 73 F. Supp. 72, appeal dismissed 69 S. Ct. 168, 335 U.S. 869, 93 L. Ed. 413, cause certified 175 F. 2d 340, 84 U.S. App. D.C. 127).

14. Instructions

In prosecution for unlawfully carrying a pistol, failure to instruct jury on "criminal intent" on ground that such intent was an essential ingredient in the crime derived from the common law was not error since carrying a dangerous weapon without a license was not an offense at common law and all that was needed was an intent to commit the proscribed act. *Cooke v. United States* (1960, 275 F. 2d 887, 107 U.S. App. D.C. 223).

Where, although trial judge did not charge jury that it must find that the defendant intended to carry an unlicensed gun in a public place, defendant's trial counsel made no objection, but defendant testified that he intentionally put the gun in his pocket before leaving his shop, omission from the charge was not plain error which could be noticed on appeal in absence of exception in court below. *Id.*

15. Place of business

D.C. 1929, title 6, § 114, permitted the carrying of a dangerous or deadly weapon from the place of purchase to the purchaser's dwelling or place of business, especially when person was conducting himself in a quiet, peaceable, and orderly manner. *Bolt v. United States* (1925, 2 F. 2d 922, 55 App. D.C. 120).

Provision of this section prohibiting a person from carrying a pistol without a license "except in his dwelling house or place of business or on other land possessed by him" manifests the intent that the "place of business" referred to is land, and would not apply so as to exempt a taxicab driver who carried a pistol without a license while in his taxicab, since the cab would not be the driver's "place of business". *U.S. v. Waters* (1947, 73 F. Supp. 72, appeal dismissed 69 S. Ct. 168, 335 U.S. 869, 93 L. Ed. 413, cause certified 175 F. 2d 340, 84 U.S. App. D.C. 127).

16. Possession of firearms

This section clearly establishes that possession of a firearm in one's home is not a crime. *Morton v. United States* (1950, 183 F. 2d 844, 87 U.S. App. D.C. 135).

17. Prior conviction

A state legislature does not violate equal protection provision of Fourteenth Amendment of United States Constitution, in enacting statutes which impose heavier penalty for second or subsequent offenses, since fact of prior conviction in such cases is considered as affording reasonable basis for classification. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

Where defendant had been convicted of carrying a dangerous weapon and for housebreaking and larceny, and sentence for first offense was not to take effect under judgment until expiration of sentences on other offenses, but judgment of conviction on other offenses was reversed on appeal, appropriate procedure would be to vacate judgment of conviction on first offense and remand case for entry of judgment thereon with direction for new trial as to other offenses. *Payton v. United States* (1955, 222 F. 2d 794, 96 U.S. App. D.C. 1).

18. Purpose

Acquittal by defendant of assault with a dangerous weapon, did not require his acquittal on companion charge of carrying a pistol which he used to defend himself on ground that such acquittal demonstrated conclusively that defendant was carrying pistol for a lawful purpose notwithstanding defendant was exposed to a serious current threat by victim, that he did not have time to get a license and that he made a serious attempt to secure police protection, in light of the history of antiweapon legislation evidencing the clearest intent to drastically tighten ban on carrying dangerous weapons. *Cooke v. United States* (1960, 275 F. 2d 887, 107 U.S. App. D.C. 223).

19. Questions for jury

In prosecution for robbery and carrying a dangerous weapon wherein government's testimony on issue of insanity was offered by a number of lay witnesses and a qualified psychiatrist, and on part of defendant there was opposing testimony both lay and psychiatric, issue of insanity was for jury. *Niport v. United States* (1959, 263 F. 2d 901, 105 U.S. App. D.C. 64).

In prosecution for violation of this section defining the offense a person commits in carrying a pistol without license except in his dwelling house or place of business or on other land possessed by him, jury question was presented as to whether place at which defendant was carrying weapons was his place of business. *Alexander v. United States* (1954, 210 F. 2d 727, 93 U.S. App. D.C. 240).

In prosecution for violation of statute forbidding carrying of pistol on or about one's person without a license question whether, in having loaded pistol under hinged front seat of automobile so that he could get it by alighting from automobile and tilting driver's seat upward and forward, defendant had the weapon in such proximity to his person as to be convenient of access and within reach was one for jury. *Wilson v. United States* (1952, 198 F. 2d 299, 91 U.S. App. D.C. 135).

"The defendant had a right to carry the revolver, loaded or unloaded, from the place of purchase to his home; and whether he had it on his person at the time of his arrest, for that purpose only, or for some unlawful purpose as well, was a question of fact, which should have been submitted to the jury." *Bell v. United States* (1920, 265 F. 1007, 49 App. D.C. 367).

In prosecution for carrying gun without license, whether defendant had license was a question for the jury. *Bussie v. United States* (D.C. Mun. App. 1951, 81 A. 2d 247).

20. Self-defense

Where defendant, who was seated on right front fender of his automobile was attacked by disorderly group of men and women, retreated to driver's side of automobile, obtained pistol on floor of automobile under driver's seat and fired on his pursuers while backing away, defendant was justified in using weapon in self-defense, and fact that he had it in his hands did not constitute violation of statute forbidding carrying of pistol on or about one's person without a license. *Wilson v. United States* (1952, 198 F. 2d 299, 91 U.S. App. D.C. 135).

21. Sentences

Defendant simultaneously carrying two pistols, each of which was unlicensed, committed but a single offense and could not be given consecutive sentences by reason of being separately charged with carrying of unlicensed pistol in two separate informations. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

22. Probable cause for arrest

Where police officers about 1:30 a.m. observed defendant and his companion seated in parked automobile on dark street, and, as officers approached automobile, defendant and his companion "appeared to duck down,"

and one of the officers shined his flashlight into rear of automobile where defendant was sitting and noticed a shiny object which appeared to be a gun falling to floor near defendant's feet, and that officer drew his revolver and ordered defendant and his companion out of automobile, and shiny object on floor of automobile was in fact a fully loaded pistol, and on back seat officers found another loaded pistol in a bag, there was probable cause to justify arrest of defendant, and, in prosecution for carrying concealed weapons, trial court properly denied defendant's motion to suppress evidence, on ground that there was no probable cause for arrest and that search incidental thereto was unlawful. *Emburch v. United States* (D.C. Mun. App. 1960, 164 A. 2d 342).

§ 22-3205. Exceptions to section 22-3204.

The provisions of section 22-3204 shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law-enforcement officers, or to members of the Army, Navy, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving goods from one place of abode or business to another. (July 8, 1932, 47 Stat. 651, ch. 465, § 5.)

NOTES TO DECISIONS

Business of repairing firearms 1
Special policeman 2

1. Business of repairing firearms

Defendant charged with carrying pistol for which he had no license, was not within District of Columbia statute providing that licensing provisions did not apply to persons engaged in business of repairing firearms when pistol is carried unloaded in a secure wrapper from place of business to home, where defendant claimed that repairing guns was only his hobby and that he had volunteered to work on gun which he claimed belonged to another. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

2. Special policeman

A defendant was neither a "policeman" nor a "law enforcement officer" so as to be exempt from section 22-3205 against carrying a pistol without a license, where defendant was a special policeman appointed by the Commissioners and he was not "on actual duty in the area" of the place where he was arrested nor was he "traveling without deviation immediately before and immediately after the period of actual duty between such places and his residence" within the Commissioner's regulation authorizing the carrying of firearms by special policemen under such circumstances. *McKenzie v. U.S.* (D.C. Mun. App. 1960, 158 A. 2d 912).

§ 22-3206. Issue of licenses to carry pistol.

The superintendent of police of the District of Columbia may, upon the application of any person having a bona fide residence or place of business within the District of Columbia or of any person having a bona fide residence or place of business

within the United States and a license to carry a pistol concealed upon his person issued by the lawful authorities of any State or subdivision of the United States, issue a license to such person to carry a pistol within the District of Columbia for not more than one year from date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed. The license shall be in duplicate, in form to be prescribed by the commissioners of the District of Columbia and shall bear the name, address, description, photograph, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, and the duplicate shall be retained by the superintendent of police of the District of Columbia and preserved in his office for six years. (July 8, 1932, 47 Stat. 651, ch. 465, § 6.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

§ 22-3207. Selling pistol to minors and others.

No person shall within the District of Columbia sell any pistol to a person who he has reasonable cause to believe is not of sound mind, or is forbidden by section 22-3203 to possess a pistol, or, except when the relation of parent and child or guardian and ward exists, is under the age of twenty-one years. (July 8, 1932, 47 Stat. 652, ch. 465, § 7; June 29, 1953, 67 Stat. 94, ch. 159, § 204(d).)

AMENDMENT

1953—Act June 29, 1953, substituted "forbidden by section 22-3203 to possess a pistol" for a "a drug addict, or is a person who has been convicted in the District of Columbia or elsewhere of a crime of violence" and increased the age requirement from eighteen to twenty-one.

§ 22-3208. Transfers of firearms regulated.

No seller shall within the District of Columbia deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law-enforcement officers, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, make, model, and manufacturer's number of the pistol to be purchased and a statement that he is not forbidden by section 22-3203 to possess a pistol. The seller shall, within six hours after such application, sign and attach his address and deliver one copy to such person or persons as the superintendent of police of the District of Columbia may designate, and shall retain the other copy for six years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers. (July

8, 1932, 47 Stat. 652, ch. 465, § 8; June 29, 1953, 67 Stat. 94, ch. 159, § 204(e).)

AMENDMENT

1953—Act June 29, 1953, substituted "a statement that he is not forbidden by section 22-3203 to possess a pistol" for "a statement that he has never been convicted in the District of Columbia or elsewhere of a crime of violence."

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

§ 22-3209. Dealers of weapons to be licensed.

No retail dealer shall within the District of Columbia sell or expose for sale or have in his possession with intent to sell, any pistol, machine gun, sawed-off shotgun, or blackjack without being licensed as provided in section 22-3210. No wholesale dealer shall, within the District of Columbia, sell, or have in his possession with intent to sell, to any person other than a licensed dealer, any pistol, machine gun, sawed-off shotgun, or blackjack. (July 8, 1932, 47 Stat. 652, ch. 465, § 9.)

§ 22-3210. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.

The commissioners of the District of Columbia may, in their discretion, grant licenses and may prescribe the form thereof, effective for not more than one year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in section 22-3209, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this chapter.

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

3. No pistol shall be sold (a) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by section 22-3203 to possess a pistol or is under the age of twenty-one years, and (b) unless the purchaser is personally known to the seller or shall present clear evidence of his identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia.

4. A true record shall be made in a book kept for the purpose, the form of which may be prescribed by the commissioners, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale.

5. A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the commissioners of the District of Columbia and

shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model, and manufacturer's number of the weapon, and a statement by the purchaser that he is not forbidden by section 22-3203 to possess a pistol. One copy of said record shall, within seven days, be forwarded by mail to the superintendent of police of the District of Columbia and the other copy retained by the seller for six years.

6. No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section. (July 8, 1932, 47 Stat. 652, ch. 465, § 10; June 29, 1953, 67 Stat. 94, ch. 159, § 204 (f), (g).)

AMENDMENT

1953—Par. 3(a) amended by act June 29, 1953, § 204(f), which substituted "is forbidden by section 22-3203 to possess a pistol or is under the age of twenty-one" for "is a drug addict or has been convicted in the District of Columbia or elsewhere of a crime of violence or is under the age of eighteen."

Par. 5, first sentence, amended by act June 29, 1953, § 204(g), which substituted "a statement by the purchaser that he is not forbidden by section 22-3203 to possess a pistol" for "a statement signed by the purchaser that he has never been convicted in the District of Columbia or elsewhere of a crime of violence."

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

§ 22-3211. False information forbidden in sale of weapons.

No person shall, in purchasing a pistol or in applying for a license to carry the same, or in purchasing a machine gun, sawed-off shotgun, or blackjack within the District of Columbia, give false information or offer false evidence of his identity. (July 8, 1932, 47 Stat. 653, ch. 465, § 11.)

§ 22-3212. Alteration of identifying marks of weapons prohibited.

No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia: *Provided, however*, That nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work. (July 8, 1932, 47 Stat. 653, ch. 465, § 12.)

§ 22-3213. Exceptions.

This chapter shall not apply to toy or antique pistols unsuitable for use as firearms. (July 8, 1932, 47 Stat. 653, ch. 465, § 13.)

§ 22-3214. Possession of certain dangerous weapons prohibited—Exceptions.

(a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, sand club, sand-bag, switch-blade knife, or metal knuckles, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms: *Provided, however*, That machine guns, or sawed-off shotguns, and blackjacks may be possessed by the members of the Army, Navy, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law-enforcement officers, officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under section 22-3210.

(b) No person shall within the District of Columbia possess, with intent to use unlawfully against another, an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than three inches, or other dangerous weapon.

(c) Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be imprisoned for not more than ten years. (July 8, 1932, 47 Stat. 654, ch. 465, § 14; June 29, 1953, 67 Stat. 94, ch. 159, § 204(h).)

AMENDMENT

1953—Act June 29, 1953, designated existing provisions as subsec. (a), included switch-blade knives in the list of weapons forbidden to be possessed and added subsecs. (b) and (c).

NOTES TO DECISIONS

Construction with other laws 1
Election of offenses 2
Insanity 3
Purpose 4

1. Construction with other laws

The 1953 act specifically prohibiting possession of knife with intent to use unlawfully against another was not intended to cover the whole subject matter of knives in District of Columbia, in the sense of repealing deadly weapon statute which required no proof of unlawful intent, and hence information alleging violation of the older statute was sufficient though it specified knife as the deadly weapon and did not allege intent to use knife unlawfully against another. *United States v. W. E. Shannon* (D. C. Mun. App. 1958, 144 A. 2d 267).

2. Election of offenses

Government is not required to bring all knife cases under code section prohibiting possession of knife with blade longer than three inches; and defendant who carried openly or concealed on or about his person a "pocket knife" which had a black outer case and a blade three-eighths of an inch wide and four and one-quarter inches from shank to tip was properly prosecuted under code section forbidding any person to carry either openly or concealed on or about his person a deadly or dangerous weapon capable of being so concealed. *Degree v. United States* (D.C. Mun. App. 1958, 144 A. 2d 547).

3. Insanity

A general verdict of not guilty by reason of insanity carried with it a finding that, except for the question as to his sanity, defendant was guilty as charged. *Rucker v. United States* (1960, 280 F. 2d 623, 108 U.S. App. D.C. 75).

In prosecution for assault with intent to kill and possession of a rifle with intent to use it unlawfully against another, where the court found the defendant not guilty by reason of insanity and it did not appear that defendant actually understood and acquiesced that the question of his guilt was being tried in that it did not appear that he understood and acquiesced in what was being accomplished without witnesses or evidence and he protested promptly a few day after the verdict, the defendant was entitled to a new trial. *Id.*

4. Purpose

Acquittal by defendant of assault with a dangerous weapon did not require his acquittal on companion charge of carrying a pistol which he used to defend himself on ground that such acquittal demonstrated conclusively that defendant was carrying pistol for a lawful purpose notwithstanding defendant was exposed to a serious current threat by victim, that he did not have time to get a license and that he made a serious attempt to secure police protection, in light of the history of antiweapon legislation evidencing the clearest intent to drastically tighten ban on carrying dangerous weapons. *Cooke v. United States* (1960, 275 F. 2d 887, 107 U.S. App. D.C. 223).

§ 22-3215. Penalties.

Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or both. (July 8, 1932, 47 Stat. 654, ch. 465, § 15.)

NOTES TO DECISIONS

Double jeopardy 1
Indictment 2
Prior conviction 3

1. Double jeopardy

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim, was not put twice in jeopardy for same offense by prosecution upon two counts, for assault with deadly weapon, and also for carrying concealed unlicensed weapon, since element of proof in second count, that gun was unlicensed, was not necessary in proof of assault charge. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

2. Indictment

Failure of pistol-carrying count of indictment to allege or proof to show that defendant had been previously convicted of felony, did not preclude imposition of greater penalty applicable to defendant who has previously been convicted of felony, where defendant had on cross-examination admitted prior felonies, and defendant was not denied right of allocution, nor was he prepared to show that he had not been previously convicted, and Government after conviction and before sentence filed information alleging prior conviction. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

Pistol-carrying count of indictment was not defective in using conjunctive "and", instead of statutory disjunctive "or," in charging that defendant "did carry openly and concealed a dangerous weapon", where proof tended to show that weapon was concealed when defendant approached scene of shooting and was then produced and carried openly. *Id.*

3. Prior conviction

A State legislature does not violate equal protection provision of Fourteenth Amendment of United States Constitution, in enacting statutes which impose heavier penalty for second or subsequent offenses, since fact of prior conviction in such cases is considered as affording reasonable basis for classification. *Kendrick v. United States* (1956, 238 F. 2d 34, 99 U.S. App. D.C. 173).

Where defendant was charged with carrying unlicensed pistol after felony conviction, and, on defendant's motion,

allegations in indictment concerning prior conviction of felony were stricken, and defendant's counsel, out of defendant's hearing, stipulated that defendant had previously been convicted of a felony and waived later proof thereof, but concession of counsel was made without defendant's knowledge or consent, there was no waiver by defendant of necessity of proof of felony conviction, and imposition of enhanced sentence, on ground of prior felony conviction, was error. *Jackson v. United States* (1955, 221 F. 2d 883, 95 U.S. App. D.C. 328).

§ 22-3216. Separability of provisions.

If any part of this chapter is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this chapter. (July 8, 1932, 47 Stat. 654, ch. 465, § 16.)

§ 22-3217. Dangerous articles—Definition—Taking and destruction—Procedure.

(a) As used in this section, the term "dangerous article" means (1) any weapon such as a pistol, machine gun, sawed-off shotgun, blackjack, slingshot, sandbag, or metal knuckles, or (2) any instrument, attachment, or appliance for causing the firing of any firearms to be silent or intended to lessen or muffle the noise of the firing of any firearms.

(b) A dangerous article unlawfully owned, possessed, or carried is hereby declared to be a nuisance.

(c) When a police officer, in the course of a lawful arrest or lawful search, discovers a dangerous article which he reasonably believes is a nuisance under subsection (b) he shall take it into his possession and surrender it to the property clerk of the Metropolitan Police Department.

(d) (1) Within thirty days after the date of such surrender, any person may file in the office of the property clerk of the Metropolitan Police Department a written claim for possession of such dangerous article. Upon the expiration of such period, the property clerk shall notify each such claimant, by registered mail addressed to the address shown on the claim, of the time and place of a hearing to determine which claimant, if any, is entitled to possession of such dangerous article. Such hearing shall be held within sixty days after the date of such surrender.

(2) At the hearing the property clerk shall hear and receive evidence with respect to the claims filed under paragraph (1). Thereafter he shall determine which claimant, if any, is entitled to possession of such dangerous article and shall reduce his decision to writing. The property clerk shall send a true copy of such written decision to each claimant by registered mail addressed to the last known address of such claimant.

(3) Any claimant may, within thirty days after the day on which the copy of such decision was mailed to such claimant, file an appeal in the municipal court for the District of Columbia. If the claimant files an appeal, he shall at the same time give written notice thereof to the property clerk. If the decision of the property clerk is so appealed, the property clerk shall not dispose of the dangerous article while such appeal is pending and, if the final judgment is entered by such court, he shall dispose of such dangerous article in accordance with the judgment of such court. The municipal court for the District of Columbia is authorized to determine which claimant, if any, is entitled to pos-

session of the dangerous article and to enter a judgment ordering a disposition of such dangerous article consistent with subsection (f).

(4) If there is no such appeal, or if such appeal is dismissed or withdrawn, the property clerk shall dispose of such dangerous article in accordance with subsection (f).

(5) The property clerk shall make no disposition of a dangerous article under this section, whether in accordance with his own decision or in accordance with the judgment of the municipal court for the District of Columbia, until the United States attorney for the District of Columbia certifies to him that such dangerous article will not be needed as evidence.

(e) A person claiming a dangerous article shall be entitled to its possession only if (1) he shows on satisfactory evidence that he is the owner of the dangerous article or is the accredited representative of the owner, and that the ownership is lawful; and (2) he shows on satisfactory evidence that at the time the dangerous article was taken into possession by a police officer it was not unlawfully owned and was not unlawfully possessed or carried by the claimant or with his knowledge or consent; and (3) the receipt of possession by him will not cause the article to be a nuisance. A representative is accredited if he has a power of attorney from the owner.

(f) If a person claiming a dangerous article is entitled to its possession as determined under subsections (d) and (e), possession of such dangerous article shall be given to such person. If no person so claiming is entitled to its possession as determined under subsections (d) and (e), or if there be no claimant, such dangerous article shall be destroyed. In lieu of such destruction, any such serviceable dangerous article may, upon order of the Commissioners of the District of Columbia, be transferred to and used by any Federal or District Government law-enforcing agency, and the agency receiving same shall establish property responsibility and records of these dangerous articles.

(g) The property clerk shall not be liable in damages for any action performed in good faith under this section. (July 8, 1932, ch. 465, § 18, as added Feb. 20, 1952, 66 Stat. 8, ch. 47, § 1.)

NOTE TO DECISION

1. Arrest, search and seizure

Where police officers searched accused's premises under valid search warrant and arrested persons in accused's absence, pistols which were found and which accused had allegedly received as stolen property and which might have affected escape of those lawfully arrested were validly seized, and hence subsequent arrest of accused for receiving stolen property was not invalid as fruit of unlawful search, and narcotics taken from accused's person were admissible in subsequent narcotics prosecution. *Palmer v. United States* (1953, 203 F. 2d 66, 92 U.S. App. D.C. 103).

Chapter 33.—VAGRANCY

Sec.

22-3301. Repealed.

22-3302. "Vagrants" defined.

22-3303. Prosecutions—Burden of proof to show lawful employment.

22-3304. Penalty—Conditions imposed by court.

22-3305. Prosecutions.

22-3306. Right to strike or picket not abrogated.

§ 22-3301. Repealed. Dec. 17, 1941, 55 Stat. 810, ch. 589, § 5.

Section, acts July 29, 1892, 27 Stat. 323, ch. 320, § 8; July 8, 1898, 30 Stat. 723, ch. 638; Mar. 3, 1909, 35 Stat. 711, ch. 250, defined vagrancy, provided for prosecution and the giving of security and is now covered by section 22-3302 et seq.

§ 22-3302. "Vagrants" defined.

The following classes of persons shall be deemed vagrants in the District of Columbia:

(1) Any person known to be a pickpocket, thief, burgler, confidence operator, or felon, either by his own confession or by his having been convicted in the District of Columbia or elsewhere of any one of such offenses or of any felony, and having no lawful employment and having no lawful means of support realized from a lawful occupation or source, and not giving a good account of himself when found loitering around in any park, highway, public building, or other public place, store, shop, or reservation, or at any public gathering or assembly.

(2) Repealed. June 29, 1953, 67 Stat. 97, ch. 159, § 209.

(3) Any person leading an immoral or profligate life who has no lawful employment and who has no lawful means of support realized from a lawful occupation or source.

(4) Any person who keeps, operates, frequents, lives in, or is employed in any house or other establishment of ill fame, or who (whether married or single) engages in or commits acts of fornication or perversion for hire.

(5) Any person who frequents or loafs, loiters, or idles in or around or is the occupant of or is employed in any gambling establishment or establishment where intoxicating liquor is sold without a license.

(6) Any person wandering abroad and lodging in any grocery or provision establishment, vacant house, or other vacant building, outhouse, market place, shed, barn, garage, gasoline station, parking lot or in the open air, and not giving a good account of himself.

(7) Any person wandering abroad and begging, or who goes about from door to door or places himself in or on any highway, passage, or other public place to beg or receive alms.

(8) Any person who wanders about the streets at late or unusual hours of the night without any visible or lawful business and not giving a good account of himself.

(9) And all persons who by the common law are vagrants, whether embraced in any of the foregoing classifications or not.

(Dec. 17, 1941, 55 Stat. 803, ch. 589, § 1; June 29, 1953, 67 Stat. 97, ch. 159, § 209 (b).)

AMENDMENT

1953—Act June 29, 1953, repealed par. (2) relating to possession of implements of crime which is now covered by section 22-3601.

NOTES TO DECISIONS

Admissibility of evidence 8
 Authority of police officer 1
 Confession 9
 Construction 2
 Continuance 3
 Defenses 4

Degree of proof 5
 Double jeopardy 6
 Evidence 7—11
 Generally 7
 Admissibility 8
 Confession 9
 Examination of witnesses 10
 Sufficiency 11
 Examination of witnesses 10
 Jury trial 12
 Lawful means of support 13
 Nature of vagrancy 14
 Prosecutions for continuing offense 15
 Purpose 16
 Sufficiency of evidence 11
 Thief 17
 Waiver 18

1. Authority of police officer

Where police officer observed defendant walking along street shortly after noon hour carrying a paper bag and recognized him as a convicted thief and pursued him because officer assumed that defendant was carrying stolen goods, even though he had no information that an offense had been committed, arrest for vagrancy was invalid for lack of any evidence of loitering. *Jones v. District of Columbia* (D.C. Mun. App. 1960, 158 A. 2d 771).

Officers of the law have no right to compel one to account for his actions merely because that person is on street at an unusual hour. *Beal v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

Where female defendant was seen wandering around streets time after time in early morning hours, often alone but sometimes in company of a known prostitute, and engaging in conversations with men, with no indication that such course of conduct had any legitimate purpose, arresting officer had reasonable grounds for believing that her use of streets was not for any legitimate purpose and could ask that she account for her actions. *Id.*

Police officer who saw defendant loitering around bus terminal and mingling with the crowd and recognized him as a professional pickpocket was authorized, under par. (1) of this section, to question defendant, and, upon defendant's failure to give a good account of himself, to place defendant under arrest. *Clark v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

2. Construction

The vagrancy statute must be construed narrowly in favor of defendant. *Harris v. District of Columbia* (1958, 251 F. 2d 913, 102 U.S. App. D.C. 202).

Under this section providing that anyone who wanders about streets at late or unusual hours of the night without visible and lawful business and "not giving a good account of himself" is deemed a vagrant, quoted words mean not giving a good account upon order or demand to explain presence in the street, rather than just in response to casual or bantering questions. *Beal v. District of Columbia* (1953, 201 F. 2d 176, 91 U.S. App. D.C. 110).

Under statute defining vagrant as person who wanders about streets at late and unusual hours of night "without any visible and lawful business" and not giving a good account of himself, quoted phrase does not refer to ordinary vocation of person, but has reference to purpose of being on street, and "business" as specified therein is not to be limited to pursuit of monetary gain. *Beal v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

Vagrant statute is not to be construed as a curfew law, forbidding persons to be on streets after certain hour of night. *Id.*

Vagrancy statutes are designed to prevent crime and if officer must wait until crime is committed, preventive purposes of statute wholly fails. *Id.*

One standing on a platform for the primary purpose of picking a pocket is loitering within the meaning of the statute. *Williams v. District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 924).

This section is in nature of a police regulation to prevent crime, and was enacted for the enforcement of good order and public safety, and must be construed in view of that purpose. *Clark v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

This section should not be so construed as to bar from society or intercourse with other human beings, persons who have been convicted of crime and have served the sentence imposed. *Id.*

3. Continuance

In prosecution for vagrancy, the continuance of defendant's trial for three days at request of prosecution was a matter in discretion of trial court which was not unreasonably exercised. *Burns v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

4. Defenses

The mere irregularity of trying accused on vagrancy charge after he was validly arrested on a warrant charging disorderly conduct was no defense to the vagrancy charge. *Davenport v. District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

5. Degree of proof

In vagrancy prosecution against defendant charged with frequenting houses of ill fame, government was not required to prove that occupants of house previously arrested were duly convicted in court. *Fields v. District of Columbia* (D.C. Mun. App. 1951, 77 A. 2d 563).

To convict under this section, it must be shown that defendant was found prowling around one of the public places mentioned in this section, and that he was doing so while having no visible and lawful means of support, and that he was a person known to be pickpocket, thief or burglar. *Clark v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

Where vagrancy information charged that each defendant was a person who frequented and was employed in a house of ill fame and who engaged in and who committed acts of fornication for hire, statement of intermediate appellate court that government was required to prove that each individual frequented the house and that each engaged in acts of fornication for hire was erroneous. *District of Columbia v. Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

Appellant's own admission, not only to the officers but at the trial that she was "living" at the premises which were shown to be a house of ill fame, was sufficient to establish her guilt of "frequenting" such an establishment. *Wilson v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

6. Double jeopardy

Fact that defendant, who allegedly sold liquor in railroad station without a license, was previously prosecuted for disorderly conduct, indecent exposure, solicitation to prostitution, violation of the A. B. C. Laws, and drinking in public, and was convicted of some of such offenses, did not preclude subsequent prosecution for vagrancy, on ground that such prosecution constituted double jeopardy, though testimony and witnesses employed in prior prosecutions were the same as those used in the vagrancy prosecution. *Davenport v. District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

7. Evidence—Generally

In prosecution for vagrancy, where defendant was not confronted with an order or demand to explain her presence in the street, her conviction was reversed. *Beail v. District of Columbia* (1953, 201 F. 2d 176, 91 U.S. App. D.C. 110).

On defendant's motion, at conclusion of government's case, for judgment of acquittal, government's evidence was construed in light most favorable to government and was accepted as true, together with all reasonable inferences to be drawn therefrom. *Mitchell v. District of Columbia* (D.C. Mun. App. 1955, 113 A. 2d 566).

Contention that trial court erred in basing conviction for act of fornication for hire, when there had been no direct proof, is without merit under the rule of *District of Columbia v. Hunt* (82 U.S. App. D.C. 159, 163 F. 2d 833), since government's failure to prove expressly that she engaged in acts of fornication or perversion for hire is not fatal to prosecution so long as proof of the other violation is sufficient to sustain the conviction. *Wilson v. District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 214).

8. — Admissibility

In vagrancy prosecution, testimony of arresting officer regarding character of certain women with whom defendant had been seen was admissible. *Rogers v. District of Columbia* (1943, 31 A. 2d 649).

Where defendant was arrested for vagrancy on Sunday, July 4, but criminal division of the Municipal Court was in session Monday notwithstanding that Monday was a legal holiday and defendant was not taken into court until Tuesday, defendant's detention was unlawful and testimony of arresting officer in vagrancy prosecution as to admissions made to him by defendant after arrest was improperly admitted. *Burns v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, where elements of offense required by this chapter to be established by prosecution were prima facie proven by record of defendant's convictions, and evidence of loitering and circumstantial incidents of defendant's conduct immediately before arrest and any possible deficiency was supplied by defendant's oral testimony, error in admitting testimony of arresting officer as to admissions made to him by defendant after arrest, by reason of defendant's unlawful detention, did not require reversal. *Id.*

Where defendant was arrested without warrant Friday evening and could have been taken to court for arraignment on Saturday but was not taken into court until Tuesday, the detention was unlawful, and, in prosecution for vagrancy which followed, admission of statements made by defendant to arresting officer was error notwithstanding statements were made at time of arrest and while detention was still lawful. *Hayes v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 709).

In vagrancy prosecution based on defendant's acts in railroad station, employees at station were properly permitted to testify for the government, over objection that they were biased. *Davenport v. District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

Statements made by the operator of house of ill fame, in appellant's presence while they were both under arrest, to the effect that appellant was visiting her and that she was operating a house of ill fame, were hearsay, but since such statements were received without objection, the trial judge had a right to consider them along with defendant's silence. *Wilson v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

9. — Confession

In prosecution for vagrancy, defendant's admission at trial of accuracy of his criminal record produced by prosecution satisfied burden of prosecution of proving by confession or conviction defendants criminal record. *Burns v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, where arresting officer, who was sole witness, testified that defendant was loitering at bus terminal and mingling with the crowd and that officer recognized defendant as a professional pickpocket and that defendant, after his arrest, admitted that federal bureau of investigation record showing prior convictions was correct, conviction did not depend solely upon an uncorroborated "confession." *Clark v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 711).

In vagrancy prosecution, on conflicting evidence regarding whether statement voluntarily given by defendant immediately after her arrest was intended for health department only, trial judge was justified in admitting the statement as a "confession." *Rogers v. District of Columbia* (1943, 31 A. 2d 649).

10. — Examination of witnesses

In vagrancy prosecution where defendant's witness testified that defendant had been working for witness, question whether witness carried a number of girls on his pay roll for purpose of showing that they worked for him when in fact they were nothing more than prostitutes constituted proper cross-examination. *Rogers v. District of Columbia* (1943, 31 A. 2d 649).

11. — Sufficiency

In prosecution for vagrancy under information which charged that defendant was by confession or conviction known to be a pickpocket, thief, burglar, confidence operator or felon, evidence that defendant was a known thief because she had once been convicted of taking and carrying away property of another without right was not sufficient to establish that she was known to be a thief within meaning of this section. *Harris v. District of Columbia* (1958, 251 F. 2d 913, 102 U.S. App. D.C. 202).

Evidence was sufficient to sustain conviction for being a vagrant. *Mitchell v. District of Columbia* (D.C. Mun. App. 1955, 113 A. 2d 566).

Evidence sustained defendant's conviction of vagrancy. *Beail v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 765).

Facts produced at the trial and all reasonable inferences therefrom do not support a conviction for vagrancy. *Hainsworth v. District of Columbia* (D.C. Mun. App. 1950, 72 A. 2d 776).

Evidence that defendant had offered girls in railroad station money to commit an immoral act, that he had looked into a window of a girls' dormitory, that he had entered women's restroom, and that he sold liquor in railroad station without a license, was sufficient to establish that he led an "immoral or profligate life" within meaning of par. (3) of this section. *Davenport v. District of Columbia* (D.C. Mun. App. 1948, 61 A. 2d 486).

In prosecution for vagrancy, evidence that defendant was moving about after midnight in a crowd on a loading platform at bus terminal, and that defendant was observed mingling with crowds on loading platform at a second bus terminal on two other occasions on same night, established that defendant was "loitering" and failed to give a good account of himself within this section. *Burns v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 714).

In prosecution for vagrancy, in absence of any proof on behalf of defendant of lawful employment or means of support, evidence which was adequate to prove other elements of the offense justified conviction. *Clark v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 711).

Evidence was sufficient to sustain conviction on charge of vagrancy. *Roger v. District of Columbia* (1943, 31 A. 2d 649).

12. Jury trial

In vagrancy prosecution, the defendant was not entitled to a jury trial. *Rogers v. District of Columbia* (1943, 31 A. 2d 649).

13. Lawful means of support

Woman living together with man "common law" has no "lawful" means of support, realized from a "lawful" occupation or source, for purposes of vagrancy statute. *Harris v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 152).

14. Nature of vagrancy

Where defendant was charged and convicted of being a vagrant under this section defining vagrant as person who wanders about streets at late and unusual hours at night without any visible and lawful business and not giving a good account of herself, defendant could be guilty of vagrancy under this section, notwithstanding fact that she might be a person of fixed abode having lawful means of support. *Beail v. District of Columbia* (D.C. Mun. App. 1951, 82 A. 2d 765).

"Vagrancy" is a status or condition and this section punishes one for being a certain kind of person, not for doing of an overt act, and crime is personal and individual and cannot be committed jointly or in concert, since in essence it is a personal condition arrived at not instantaneously but by a mode of living. *Hunt v. District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 783).

This section denounces and makes punishable being in a state of vagrancy rather than the particular conduct enumerated in this section as evidencing or characterizing such condition. *District of Columbia v. Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

Statute prescribes as an element of the offense of vagrancy (a) defendant's notoriety as a pickpocket, etc., either by his own confession or by earlier conviction, and (b) his not giving a good account of himself when found loitering and apprehended and when these elements have been established, the statute says that defendant shall have the burden of showing that he has lawful employment or lawful means of support realized from a lawful occupation or source. *Williams v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 924).

15. Prosecutions for continuing offense

The prosecution of a defendant charged with violation of a continuing offense is a bar to a subsequent prosecution for same offense charged to have been committed

at any time before institution of first prosecution, but is not a bar to a subsequent prosecution for continuing the offense thereafter, as this is a new violation of the law. *Thomas v. District of Columbia* (D.C. Mun. App. 1960, 161 A. 2d 52).

Where defendant was charged with vagrancy in three consecutive informations and each information charged vagrancy during a separate period, each information charged a separate crime, not one single continuing one, and trial court could correctly impose consecutive sentences. *Id.*

16. Purpose

The purpose of this chapter is to prevent crimes which may likely flow from vagrants mode of life. *District of Columbia v. Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

It was not purpose of this section to deprive persons of use of public sidewalks, so long as they are used either for legitimate purpose of pleasure or business; but when course of conduct indicates reasonable belief that use of street is not for legitimate purposes, officer may ask one to account for his actions. *Harris v. District of Columbia* (D.C. Mun. App. 1957, 132 A. 2d 152).

17. Thief

The word "thief" as used in this section does not cover a person who has been guilty only of unauthorized borrowing. *Harris v. District of Columbia* (1958, 251 F. 2d 913, 102 U.S. App. D.C. 202).

Thief is used generically in this section and may be defined as one who takes property of another without knowledge or consent of latter, and a conviction under this section making it a misdemeanor to take and carry away property of another without right to do so rendered convict a "known thief" for purposes of this section. *Harris v. District of Columbia* (D.C. Mun. App. 1957, 132 A. 2d 152).

18. Waiver

In vagrancy prosecution, motion of defendant for dismissal, made at conclusion of Government's case, was "waived" when defendant offered testimony in her own behalf. *Rogers v. District of Columbia* (1943, 31 A. 2d 649).

In vagrancy prosecution, motion of defendant for a finding of not guilty at conclusion of government's case, apparently denied by trial court, was not error where the record did not show that such a motion was made; and even if made, it was waived when defendant offered testimony in her own behalf. *Wilson v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 214).

§ 22-3303. Prosecutions—Burden of proof to show lawful employment.

In all prosecutions under paragraphs 1 or 3 of section 22-3302 the burden of proof shall be upon the defendant to show that he has lawful employment or has lawful means of support realized from a lawful occupation or source. (Dec. 17, 1941, 55 Stat. 809, ch. 589, § 2.)

NOTES TO DECISIONS

Generally 1
Constitutionality 2
Evidence 3
Government's burden 4

1. Generally

Vagrancy statute places burden of proof upon a defendant charged with its violation to show that he had lawful employment or lawful means of support. *Barnard v. District of Columbia* (D. C. Mun. App. 1956, 125 A. 2d 514).

In vagrancy prosecutions, the burden was on defendant to establish, and not on the Government to disprove, legitimacy of defendant's employment. *Rogers v. District of Columbia* (D. C. 1943, 31 A. 2d 649).

2. Constitutionality

Provision of this section placing on defendant the burden of proving lawful employment or lawful means of support realized from a lawful occupation or source, after prosecution has first proved, or offered evidence tending to prove, the other elements of the offense, is constitutional. *Rogers v. District of Columbia* (D. C. 1943, 31 A. 2d 649).

3. Evidence

In prosecution for vagrancy where government established a prima facie case, defendant's uncontradicted and uncorroborated statement that he had been doing light work on his father-in-law's farm, in absence of testimony as to details of work or compensation or as to when work ceased was insufficient to discharge defendant's burden of proving that he had lawful means of support realized from a lawful occupation or source. *Burns v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

Where appellant says he was entitled to an acquittal because he offered evidence to show "lawful employment," when taken with the government's testimony, presented a question of fact, and we cannot say the trial judge decided incorrectly. *Williams v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 924).

4. Government's burden

In prosecution against three defendants for vagrancy for frequenting and being employed in a house of ill-fame, government had burden of proving that each defendant frequented the house and that each engaged in acts of fornication for hire. *Hunt v. District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 783).

In vagrancy prosecution, wherein evidence was introduced that defendant sold liquor in railroad station without a license, burden was shifted to defendant to establish, and was not on the government to disprove, legitimacy of employment. *Davenport v. District of Columbia* (D. C. Mun. App. 1948, 61 A. 2d 486).

In prosecution for vagrancy, defendant has no burden to prove lawful employment or means of support until government has first proved other elements of offense. *Clark v. District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 711).

§ 22-3304. Penalty—Conditions imposed by court.

Any person convicted of vagrancy under the provisions of sections 22-3302 to 22-3306 shall be punished by a fine of not more than \$300 or imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. The court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The director of public health of the District of Columbia, the Women's Bureau of the Police Department, the Board of Public Welfare, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Dec. 17, 1941, 55 Stat. 809, ch. 589, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

TRANSFER OF FUNCTIONS

The Commissioners of the District of Columbia and the Director of the Department of Corrections as successors to the powers and duties of the Board of Public

Welfare and the Director of Public Welfare over penal institutions, establishment of a Department of Corrections headed by a Director as successor to former Department of Corrections and abolition of Board of Public Welfare and transfer of specified functions thereof to Department of Public Health and Department of Public Welfare, see section 24-443 and Reorg. Orders No. 34, dated May 28, 1953, as amended, and No. 58, dated June 30, 1953, as amended, set out in the Appendix to title 1, Administration.

§ 22-3305. Prosecutions.

All prosecutions under sections 22-3302 to 22-3306 shall be in the Municipal Court for the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. (Dec. 17, 1941, 55 Stat. 810, ch. 589, § 4; Apr. 1, 1942, 55 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

NOTES TO DECISIONS**1. Consolidation of trials**

Where information charged accused with vagrancy in being employed in house of ill fame, and informations charging other two defendants were similar except that period of time over which alleged vagrancy had continued differed in each case, and only common ground between the acts of all defendants was that they took place at designated address and "divers other places in the District of Columbia," and there was no conspiracy or joint commission of crime alleged, granting consolidation of trials against all defendants was error. *Hunt v. District of Columbia* (D. C. Mun. App. 1946, 47 A. 2d 783).

Where information charged accused with vagrancy in being a person leading an immoral and profligate life and in being employed in house of ill fame, and vagrancy informations against two other defendants charged some similar acts, granting consolidations of trials against all defendants was error. *District of Columbia v. Hunt* (1947, 163 F. 2d 838, 82 U.S. App. D.C. 159).

§ 22-3306. Right to strike or picket not abrogated.

Nothing in sections 22-3302 to 22-3306 shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right to picket. (Dec. 17, 1941, 55 Stat. 810, ch. 589, § 6.)

Chapter 34.—MISCELLANEOUS**Sec.**

- 22-3401. "Gift enterprise" defined.
- 22-3402. Gift enterprise—Prohibited.
- 22-3403. Gift enterprise—Penalty.
- 22-3404. Kosher meat—Sale—Labeling—Signs displayed where kosher and nonkosher meats are sold.
- 22-3405. Kosher meat—"Meat"—"Person"—Definition
- 22-3406. Kosher meat—Penalties.
- 22-3407. Limitation of hours of daily service for laborers and mechanics on public works.
- 22-3408. Penalty for violation of section 22-3407.
- 22-3409. Mislabelling potatoes.
- 22-3410. Mislabelling potatoes—Sign to show grade.
- 22-3411. Mislabelling potatoes—Law not applicable to seed potatoes.
- 22-3412. Mislabelling potatoes—Penalties.
- 22-3413. Procuring enlistment of criminals.
- 22-3414. Use of flag for advertising purposes—Mutilation of flag.
- 22-3415. Discrimination by proprietors of theaters against persons wearing uniform of Army, Navy, Coast Guard, or Marine Corps.
- 22-3416. Sale of unwholesome food prohibited.
- 22-3417. "Food" defined.
- 22-3418. Duty of director of public health.

Sec.

- 22-3419. Commissioners to make rules and regulations.
 22-3420. Prosecutions for violations.
 22-3421. Penalty for violation.
 22-3422. Sections 22-3416 to 22-3422 supplemental to Federal Food, Drug, and Cosmetic Act.

§ 22-3401. "Gift enterprise" defined.

Every person who shall sell or offer for sale any real estate or article of merchandise of any description whatever, or any ticket of admission to any exhibition or performance, or other place of amusement, with a promise, expressed or implied, to give or bestow, or in any manner hold out the promise of gift or bestowal, of any article or thing, for and in consideration of the purchase by any person of any other article or thing, whether the object shall be for individual gain or for the benefit of any institution of whatever character, or for any purpose whatever, shall be regarded as a gift enterprise. (Leg. Assem., Aug. 23, 1871, p. 96, ch. 69, § 21.)

§ 22-3402. Gift enterprise—Prohibited.

It shall be unlawful for any person or persons to engage in said gift enterprise business in any manner as defined in section 22-3401 or otherwise. (R.S., D.C., § 1176.)

§ 22-3403. Gift enterprise—Penalty.

Every person who shall in any manner engage in any gift-enterprise business in the District shall, on conviction thereof in the municipal court, on information filed for and on behalf of the District, pay a fine not exceeding one thousand dollars, or be imprisoned in the District jail not less than one nor more than six months, or both, in the discretion of the court. (R.S., D.C., § 1177; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 22-3404. Kosher meat—Sale—Labeling—Signs displayed where kosher and nonkosher meats are sold.

It shall be unlawful for any person—

- (a) To sell or offer for sale within the District of Columbia as kosher, any meat which is not kosher;
- (b) To label or brand as kosher any meat, or the package containing any meat, sold or offered for sale or prepared within the District of Columbia, which is not kosher; or
- (c) To sell or offer for sale within the District of Columbia in the same place of business both kosher and nonkosher meats, (1) without displaying conspicuously in said place of business a sign in block letters at least four inches in height containing the words "kosher and nonkosher meat sold here," and (2) without displaying over such kosher meat the words "kosher meat" and over such nonkosher meat the words "nonkosher meat," in block letters at least four inches in height. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 1.)

§ 22-3405. Kosher meat—"Meat"—"Person"—Definition.

As used in sections 22-3404 to 22-3406—

- (a) The term "meat" includes raw meat and meat

prepared for human consumption, whether alone or in combination with other products;

- (b) The term "person" means individual, partnership, corporation, or association. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 2.)

§ 22-3406. Kosher meat—Penalties.

Any person who violates any provision of sections 22-3404 to 22-3406 shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment; but no person shall be convicted of any such violation in respect of any meat which was not kosher at the time he acquired such meat, if he acquired it in good faith as kosher from a person duly authorized in accordance with the orthodox Hebrew ritual to prepare kosher. (Apr. 15, 1926, 44 Stat. 253, ch. 145, § 3.)

§ 22-3407. Limitation of hours of daily service for laborers and mechanics on public works.

The service and employment of all laborers and mechanics who were on March 3, 1901, or may thereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day; and it shall be unlawful for any officer of the United States Government or of the District of Columbia, or any such contractor or subcontractor, whose duty it shall be to employ, direct, or control the service of such laborers or mechanics, to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency. (Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 892.)

CROSS REFERENCE

Hours of labor on public works, see U.S. Code, title 40, § 321 et seq.

NOTES TO DECISIONS

Constitutionality 1 Extraordinary emergency 2

1. Constitutionality

Act March 3, 1901, similar to this act, was constitutional. *Penn Bridge Co. v. United States* (29 App. D. C. 452).

2. Extraordinary emergency

"In this statute the term 'extraordinary emergency' imports a sudden and unexpected happening; an unforeseen occurrence or condition calling for immediate action to avert imminent danger to health, or life, or property; an unusual peril, actual and not imaginary, suddenly creating a situation so different from the usual or ordinary course in the prosecution of the public work that the court may and must conclude that Congress contemplated excepting from the operation of this law such an occurrence, so sudden, rare, and unforeseen." *Penn Bridge Co. v. United States* (29 App. D. C. 452).

Whether the evidence offered tends to prove the existence of such an emergency is a question of law for the court. *Id.*

§ 22-3408. Penalty for violation of section 22-3407.

Any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor, whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of

the United States or of the District of Columbia who shall intentionally violate any provision of section 22-3407 for each and every such offense shall be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or both. (Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 893.)

CROSS REFERENCE

Hours of labor on public works, see U.S. Code, title 40, § 3221 et seq.

§ 22-3409. Mislabelling potatoes.

No person, firm, or corporation shall sell, offer for sale, keep, or expose for sale in the District of Columbia potatoes in any package which is not plainly marked or labeled with the name of the United States grade which represents a standard no higher than the actual grade of potatoes contained therein: *Provided, however*, That the term "unclassified" or "ungraded" may be used. The director of weights, measures, and markets shall administer sections 22-3409 to 22-3412 and the commissioners of the District of Columbia are authorized to establish necessary rules and regulations therefor. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 1; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "superintendent of weights, measures, and markets" was changed to "director of weights, measures, and markets" by act Apr. 11, 1946. See section 10-101a.

TRANSFER OF FUNCTIONS

Status of department of weights, measures, and markets and director thereof, see notes under section 10-101.

CROSS REFERENCE

Rules and regulations, publication and effect, see §§ 4-177, 4-178.

§ 22-3410. Mislabelling potatoes—Sign to show grade.

No person, firm, or corporation shall sell, offer for sale, keep or expose for sale in the District of Columbia any potatoes otherwise than in packages as provided in section 22-3409 without having plainly and conspicuously displayed in proximity to said potatoes a printed sign where it may readily be seen and in letters of not less than one-half inch high printed in Gothic type clearly and distinctly stating the United States grade of said potatoes. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 2.)

§ 22-3411. Mislabelling potatoes—Law not applicable to seed potatoes.

The provisions of sections 22-3409 to 22-3412 shall not apply to officially certified seed potatoes which meet the grade or certification requirements as labeled and which are sold exclusively for seed purposes, provided they are sold in original packages and bear the official seal and certification of the department of agriculture of the State or country where the potatoes were grown. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 3.)

§ 22-3412. Mislabelling potatoes—Penalties.

Any person, firm, or corporation which shall violate any provisions of sections 22-3409 to 22-3412 shall be fined not more than \$50 for the first offense and not more than \$200 for each subsequent offense. (Aug. 12, 1937, 50 Stat. 626, ch. 597, § 4.)

§ 22-3413. Procuring enlistment of criminals.

It shall be unlawful for any person, with knowledge of the fact, to present or offer to any recruiting agent or officer, or any muster-in officer in the United States military or naval service, either as a volunteer or as a substitute for any person, any person charged with the commission of any criminal offense, and confined or held on bail for the trial of such offense within the District; and it shall in like manner be unlawful for any person, in any way or manner, to abet, aid, or assist in procuring the offer or acceptance of any person so charged or held for trial, or released on bail and awaiting trial, either as a volunteer or as a substitute for any person drafted, or liable to draft, in the military or naval service of the United States, whether the person so drafted, or liable to draft, shall be a resident of the District, or shall reside elsewhere. And any person who shall knowingly offend against any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than two hundred and fifty dollars and not more than one thousand dollars, and by imprisonment in the District jail for a term not less than six months nor more than one year. (R. S., D. C., § 1179.)

§ 22-3414. Use of flag for advertising purposes—Mutilation of flag.

Any person who, within the District of Columbia, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, colors or ensign of the United States of America; or shall expose or cause to be exposed to public view any such flag, standard, colors or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature; or who, within the District of Columbia, shall manufacture, sell, expose for sale or to public view or give away or have in possession for sale or to be given away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed; or who, within the District of Columbia, shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by word or act, upon any such flag, standard, colors or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$100 or by imprisonment for not more than thirty days, or both, in the discretion of the court. The words "flag, standard, colors, or ensign," as used herein, shall include any flag, standard, colors, ensign or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors or ensign of the United States of America or a picture or a represen-

tation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. (Feb. 8, 1917, 39 Stat. 900, ch. 34.)

§ 22-3415. Discrimination by proprietors of theaters against persons wearing uniform of Army, Navy, Coast Guard, or Marine Corps.

No proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia shall make, or cause to be made, any discrimination against any person lawfully wearing the uniform of the Army, Navy, Coast Guard, or Marine Corps of the United States because of that uniform, and any person making, or causing to be made, such discrimination shall be guilty of a misdemeanor, punishable by a fine not exceeding \$500. (Mar. 1, 1911, 36 Stat. 963, ch. 187; Jan. 28, 1915, 38 Stat. 800, ch. 20.)

AMENDMENT

1915—Act Jan. 28, 1915, created the Coast Guard Service by combining the existing Life-Saving Service and the Revenue-Cutter Service.

§ 22-3416. Sale of unwholesome food prohibited.

No person shall sell, or cause to be sold, or offer for sale any food which is unwholesome or unfit for use. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 1.)

NOTES TO DECISIONS

1. Construction with other laws

This section prohibiting the sale of unwholesome food in the District of Columbia does not, as does the Federal Food, Drug, and Cosmetic Act, 21 U.S. Code § 331 (a, g), cover manufacture as well as sale, and it does not, as does 21 U.S. Code § 342 (a) (3, 4), cover food which is adulterated without being unwholesome or unfit for use. *Rubenstein v. U.S.* (1948 153 F.2d 127, 80 U.S. App. D.C.

§ 22-3417. "Food" defined.

For the purposes of sections 22-3416 to 22-3422 the term "food" means any article used for consumption by a human being or an animal. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 2.)

§ 22-3418. Duty of director of public health.

It shall be the duty of the director of public health of the District of Columbia, and he or his duly appointed agent is hereby authorized, to inspect all food possessed or offered for sale, and condemn, denature, destroy, seize or remove such food as may be unfit for consumption. (Dec. 16, 1941, 55 Stat. 807, ch. 587, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 22-3419. Commissioners to make rules and regulations.

The Commissioners of the District of Columbia are authorized to make such rules and regulations as may be necessary to carry out the provisions of sections 22-3416 to 22-3422. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 4.)

§ 22-3420. Prosecutions for violations.

Prosecutions for violations of any of the provisions of sections 22-3416 to 22-3422 or of any regulations promulgated thereunder shall be on information in the municipal court for the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 22-3421. Penalty for violation.

Any person violating any of the provisions of sections 22-3416 to 22-3422 or any of the regulations promulgated thereunder shall, upon conviction, be fined not more than \$300 or imprisoned for not more than ninety days. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 6.)

§ 22-3422. Sections 22-3416 to 22-3422 supplemental to Federal Food, Drug, and Cosmetic Act.

Sections 22-3416 to 22-3422 shall in no respect be considered as a repeal of any of the provisions of the Federal Food, Drug, and Cosmetic Act, but shall be construed as supplemental thereto. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 7.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in the text, is classified to U.S. Code, title 21, chapter 9.

Chapter 35—SEXUAL PSYCHOPATHS

Sec.

- 22-3501. Indecent acts—Children.
- 22-3502. Sodomy.
- 22-3503. Definitions.
- 22-3504. Filing of statement.
- 22-3505. Right to counsel.
- 22-3506. Examination by psychiatrists.
- 22-3507. When hearing is required.
- 22-3508. Hearing—Commitment to Saint Elizabeths Hospital.
- 22-3509. Parole—Discharge.
- 22-3510. Stay of criminal proceedings.
- 22-3511. Criminal law unchanged.

§ 22-3501. Indecent acts—Children.

(a) Any person who shall take, or attempt to take any immoral, improper, or indecent liberties with any child of either sex, under the age of sixteen years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, or who shall commit, or attempt to commit, any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child shall be imprisoned in a penitentiary, not more than ten years.

(b) Any such person who shall, in the District of Columbia, take any such child or shall entice, allure, or persuade any such child, to any place whatever for the purpose either of taking any such immoral, improper, or indecent liberties with such child, with

said intent or of committing any such lewd, or lascivious act upon or with the body, or any part or member thereof, of such child with said intent, shall be imprisoned in the penitentiary not more than five years.

(c) Consent by a child to any act or conduct prescribed by subsection (a) or (b) shall not be a defense, nor shall lack of knowledge of the child's age be a defense.

(d) The provisions of this section shall not apply to the offenses covered by section 22-2801. (June 9, 1948, 62 Stat. 347, ch. 428, title I, § 103.)

NOTES TO DECISIONS

Admissibility of evidence	6
Arrest, search and seizure	1
Assistance of counsel	3
Conduct of counsel	4
Corpus delicti	2
Counsel	
Assistance of	3
Conduct of	4
Elements of offense	5
Evidence	
Admissibility	6
Sufficiency	7
Indecent liberties	8
Indictment	9
Insanity	10
Instructions	11
New trial	12
Review	13
Sufficiency of evidence	7

1. Arrest, search and seizure

Even though police officers may have had probable cause to believe that defendant had committed, in his home, a perverted act on a 10- or 11-year-old boy and that defendant was in his home about two hours later when the officers arrived there, their entry, without a warrant, into his unlocked home, after their repeated knocking, to which there was no response, to make a search as a necessary prerequisite to possible arrest was illegal, in absence of any urgency for an arrest. *Morrison v. United States* (1959, 262 F. 2d 449, 104 U.S. App. D.C. 352).

Where police officers admitted themselves to defendant's unlocked private home and searched for defendant whom officers wished to arrest for having allegedly committed a perverted act on a 10- or 11-year-old boy earlier in the day, and boy showed officers the room in which alleged offense had occurred and pointed out handkerchief which boy said had been used by defendant and which allegedly bore some tangible evidence of the offense, handkerchief was merely evidentiary material and was not instrument or means by which alleged crime was committed, the fruits of a crime, a weapon by which escape might be effected or property the possession of which is a crime, and consequently handkerchief could not be seized legally without any warrant whatsoever and without any arrest of defendant, who was not at home. *Id.*

2. Corpus delicti

In prosecution for taking indecent liberties with 11-year-old girl, corpus delicti could not be established by child's uncorroborated testimony on witness stand. *Wilson v. United States* (1959, 271 F. 2d 492, 106 U.S. App. D.C. 226).

A requisite element of evidence in prosecution for taking indecent liberties with minor child is establishment of corpus delicti. *Jones v. United States* (1956, 231 F. 2d 244, 97 U.S. App. D.C. 291).

3. Counsel—Assistance of

Where trial counsel, in prosecution for taking indecent liberties with a child, did not utilize defense of insanity because counsel thought the evidence did not warrant it and because he felt that, in good conscience, he could not urge it upon the court, defendant was not denied the effective assistance of counsel because of failure to raise defense of insanity, and hence his motion to vacate judgment for such reason would be denied. *United States v. Plummer, Jr.* (1959, 171 F. Supp. 1).

4. — Conduct of

Reversal of conviction under this section would not be justified where defendant received a fair trial and conduct of his trial counsel could hardly have affected the result in view of overwhelming evidence of defendant's guilt and trial judge gave careful instructions to jury. *Holley v. United States* (1959, 267 F. 2d 628, 105 U.S. App. D.C. 351).

5. Elements of offense

Words "force" and "assault" are not a necessary element to commission of crime of taking of improper and indecent liberties. *Younger, Jr. v. United States* (1959, 263 F. 2d 735, 105 U.S. App. D.C. 51, certiorari denied 79 S. Ct. 1299, 360 U.S. 905, 3 L. Ed. 2d 1257).

6. Evidence—Admissibility

In prosecution for asserted taking of indecent liberties with child and asserted carnal knowledge, where examining physician was out of jurisdiction and unavailable, report of his medical examination was not admissible. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

In prosecution for taking indecent liberties with a female child under 16 years of age, testimony of officer investigating the crime as to what someone told him the child said was prejudicial where there was no other testimony that the child identified the person who molested her. *Pinkard v. United States* (1957, 240 F. 2d 632, 99 U.S. App. D.C. 394).

In prosecution for taking indecent liberties with a female child under 16 years of age, hearsay statement of officer investigating the incident that witness told officer that two boys, each of whom took the stand, told her that two men had molested the girl was prejudicial notwithstanding it was contradicted by later testimony. *Id.*

In prosecution for taking indecent liberties with five-year-old girl, incompetent to testify, her mother's testimony as to girl's statement of what defendant did to her was admissible as evidence of spontaneous declaration under exception to hearsay rule. *Jones v. United States* (1956, 231 F. 2d 244, 97 U.S. App. D.C. 291).

Where alleged offense of taking indecent liberties with female child occurred on a Monday night, and child had earlier opportunity to complain, testimony concerning statement child made on following Thursday morning and in answer to her mother's inquiries, was hearsay, and its admission in prosecution for the alleged offense was, under the circumstances, prejudicial error. *Smith v. United States* (1954, 215 F. 2d 682, 94 U.S. App. D.C. 320).

7. — Sufficiency

In prosecution for taking indecent liberties with five-year-old girl, incompetent to testify, her mother's testimony as to child's statement of what defendant did to her was insufficient to support verdict of conviction because of failure to establish corpus delicti, in absence of evidence of injury to child. *Jones v. United States* (1956, 231 F. 2d 244, 97 U.S. App. D.C. 291).

Evidence was insufficient to sustain conviction for taking immoral, improper and indecent liberties with minor children. *Hinton v. United States* (1952, 196 F. 2d 605, 91 U.S. App. D.C. 13).

8. Indecent liberties

An assault with intent to commit carnal knowledge on a child is certainly the taking of indecent liberties with a child, but with intent of going beyond the liberties referred to in statute, and intent to commit carnal knowledge is to take indecent liberties plus an intent much more vicious, violent or aggravated. *Younger Jr. v. United States* (1959, 263 F. 2d 735, U.S. App. D.C. 51, certiorari denied 79 S. Ct. 1299, 360 U.S. 905, 3 L. Ed. 2d 1257).

9. Indictment

Count of indictment charging defendant with violating statute punishing one who carnally knows a female child under 16 years of age can be joined with count charging defendant with violation of statute punishing any person who takes, or attempts to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years to arouse or gratify sexual desires, though latter statute provides that it shall not apply to the offenses covered by the prior statute, if jury is told that it cannot find defendant guilty of both counts and

can find him guilty under the second count only if he is found not guilty under the first count. *Thompson v. United States* (1956, 228 F. 2d 463, 97 U.S. App. D.C. 116).

10. Insanity

Where significant evidence was introduced on trial of defendant for taking immoral liberties with female child that defendant might have been of unsound mind at time of alleged crime including evidence of delusions and hearing of voices, prosecution had burden of proving sanity beyond a reasonable doubt. *Goforth v. United States* (1959, 269 F. 2d 778, 106 U.S. App. D.C. 111).

11. Instructions

In prosecution on two-count indictment for taking indecent liberties with child and for carnal knowledge, court acted properly at close of government's case when it granted partial judgment of not guilty under second count, stating that there was no evidence to support carnal knowledge charge but submitting to jury lesser included offense of assault with intent to commit carnal knowledge, but court erred in failing to instruct that jury was first to consider included charge of assault with intent to commit carnal knowledge and was only to consider alleged taking of indecent liberties with child if it found defendant not guilty of the former crime. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

In prosecution for taking immoral liberties with female child under 16 years of age wherein significant evidence was introduced that defendant might have been of unsound mind at time of alleged crime including evidence of delusions and hearing of voices, court should have instructed jury on issue of sanity and failure of court to do so required new trial. *Goforth v. United States* (1959, 269 F. 2d 778, 106 U.S. App. D.C. 111).

Where defendant was charged with offense of assault upon female child with intent to commit carnal knowledge, trial court properly instructed jury that if it found defendant not guilty on count as charged, jury should then consider lesser included offense of taking improper and indecent liberties with a child. *Younger, Jr. v. United States* (1959, 263 F. 2d 735, 105 U.S. App. D.C. 51, certiorari denied 79 S. Ct. 1299, 360 U.S. 905, 3 L. Ed. 2d 1257).

12. New trial

Where conviction for taking indecent liberties with child under age of 16 years, rested almost entirely on testimony of 12-year-old girl, and four days after guilty verdict defendant introduced in support of motion for new trial on ground that interest of justice required granting of new trial, affidavit of girl's mother, who had not testified at trial, and who had seen and talked with girl shortly after alleged offense, contradicting testimony of girl in two respects and giving mother's opinion that nothing happened to girl, trial court erred in denying motion. *Benton v. United States* (1951, 188 F. 2d 625, 88 U.S. App. D.C. 158).

13. Review

Where defense announced that defenses would be, first, that no crime had been committed by defendant, and, secondly, that if he had committed crime, he was not guilty by reason of insanity, court, in stating that defense would have to take one position or other, as defenses were inconsistent, committed error which reviewing court, under rule, would notice on appeal and for which it would reverse judgment, as there was no inconsistency and as inconsistent defenses could be interposed. *Whittaker v. United States* (1960, 281 F. 2d 631, 108 U.S. App. D.C. 268).

§ 22-3502. Sodomy.

(a) Every person who shall be convicted of taking into his or her mouth or anus the sexual organ of any other person or animal, or who shall be convicted of placing his or her sexual organ in the mouth or anus of any other person or animal, or who shall be convicted of having carnal copulation in an opening of the body except sexual parts with another person, shall be fined not more than \$1,000 or be imprisoned for a period not exceeding ten years. Any person

convicted under this section of committing such act with a person under the age of sixteen years shall be fined not more than \$1,000 or be imprisoned for a period not exceeding twenty years. And in any indictment for the commission of any of the acts, hereby declared to be offenses, it shall not be necessary to set forth the particular unnatural or perverted sexual practice with the commission of which the defendant may be charged, nor to set forth the particular manner in which said unnatural or perverted sexual practice was committed, but it shall be sufficient if the indictment set forth that the defendant committed a certain unnatural and perverted sexual practice with a person or animal, as the case may be: *Provided*, That the accused, on motion, shall be entitled to be furnished with a bill of particulars, setting forth the particular acts which constitute the offense charged.

(b) Any penetration, however slight, is sufficient to complete the crime specified in this section. Proof of emission shall not be necessary. (June 9, 1948, 62 Stat. 347, ch. 428, title I, § 104.)

NOTES TO DECISIONS

Admissibility of evidence 3
Arrest, search and seizure 1
Assignment of error 2
Evidence
Admissibility 3
Sufficiency 4
Instructions 5
Sufficiency of evidence 4

1. Arrest, search and seizure

Even though police officers may have had probable cause to believe that defendant had committed, in his home, a perverted act on a 10- or 11-year-old boy and that defendant was in his home about two hours later when the officers arrived there, their entry, without a warrant, into his unlocked home, after their repeated knocking, to which there was no response, to make a search as a necessary prerequisite to possible arrest was illegal, in absence of any urgency for arrest. *Morrison v. United States* (1959, 262 F. 2d 449, 104 U.S. App. D.C. 352).

Where police officers admitted themselves to defendant's unlocked private home and searched for defendant whom the officers wished to arrest for having allegedly committed a perverted act on a 10- or 11-year-old boy earlier in the day, and boy showed officers the room in which alleged offense had occurred and pointed out handkerchief which boy said had been used by defendant and which allegedly bore some tangible evidence of the offense, handkerchief was merely evidentiary material and was not instrument or means by which alleged crime was committed, the fruits of a crime, a weapon by which escape might be effected or property the possession of which is a crime, and consequently handkerchief could not be seized legally without any warrant whatsoever and without any arrest of defendant, who was at home. *Id.*

2. Assignment of error

In prosecution for rape and sodomy, defendant's assignment of error in trial court's failure to declare mistrial because of prosecuting attorney's comment, in opening statement to jury, that only one woman survived defense challenge to jurors, was without foundation, in absence of motion by defendant for mistrial or exception to trial court's action in merely telling jury to disregard remark as improper after objection thereto. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

3. Evidence—Admissibility

In prosecution of two men for sodomy, admission of one defendant's confession of prior acts of sodomy between defendants was proper under exception that evidence of other offenses than that charged is admissible in cases involving sex offenses to show defendants' mental disposition or passion. *United States v. Kelly et al.* (1954, 119 F. Supp. 217).

4. — Sufficiency

Where evidence in prosecution for sodomy is equally susceptible of construction as showing only attempt to commit sodomy as completion of such crime, conviction of sodomy cannot stand and to sustain conviction of sodomy, there must be substantial evidence of facts consistent with accused's guilt and inconsistent with every reasonable hypothesis of innocence. *United States v. Kelly et al.* (1954, 119 F. Supp. 217).

5. Instructions

In prosecution for rape and sodomy, court properly instructed jury that there must be absence of consent by complaining witness to warrant conviction, unless consent was induced by putting her in fear of grave bodily harm or death or by exercise of actual force against her person. *McGuinn v. United States* (1951, 191 F. 2d 477, 89 U. S. App. D. C. 197).

In prosecution for rape and sodomy, defendant's prayers for instructions assuming as fact that complaining witness did not offer opposition should have been denied. *Id.*

In prosecution for rape and sodomy, defendant's prayers for instruction requiring utmost resistance by complaining witness incorrect. *Id.*

In prosecution for rape and sodomy, defendant's prayer for instruction requiring that complaining witness' fear be mortal to negative her consent was properly denied, as fear of grave bodily harm was sufficient. *Id.*

§ 22-3503. Definitions.

For the purposes of sections 22-3503 to 22-3511—

(1) The term "sexual psychopath" means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons because he is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his desire.

(2) The term "court" means the United States District Court for the District of Columbia, the criminal branch of the municipal court for the District of Columbia, or the juvenile court of the District of Columbia as the case may be.

(3) The term "patient" means a person with respect to whom there has been filed with the clerk of any court a statement in writing setting forth facts tending to show that such person is a sexual psychopath.

(4) The term "criminal proceeding" means a proceeding in any court against a person for a criminal offense, and includes all stages of such a proceeding from (A) the time the person is indicted, charged by an information, or charged with an offense in the juvenile court of the District of Columbia, to (B) the entry of judgment, or, if the person is granted probation, the completion of the period of probation.

(June 9, 1948, 62 Stat. 347, ch. 428, title II, § 201; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Constitutionality 1
Nature of proceeding 2

1. Constitutionality

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. *Malone v. Overholser* (1950, 93 F. Supp. 647).

2. Nature of proceeding

Proceedings under statute, to determine whether defendant in pending criminal action is sexual psychopath, is a civil one. *Miller v. Overholser* (1953, 206 F. 2d 415, 92 U.S. App. D.C. 110).

Statute providing for commitment of sexual psychopaths to hospital for the insane is not a criminal statute but merely extends the law relating to commitment of persons who are mentally incompetent so as to include persons who are sexual psychopaths as defined in the statute. *Malone v. Overholser* (1950, 93 F. Supp. 647).

§ 22-3504. Filing of statement.

(a) Whenever it shall appear to the United States attorney for the District of Columbia that any person within the District of Columbia, other than a defendant in a criminal proceeding, is a sexual psychopath, such attorney may file with the clerk of the United States District Court for the District of Columbia a statement in writing setting forth the facts tending to show that such a person is a sexual psychopath.

(b) Whenever it shall appear to the United States attorney for the District of Columbia that any defendant in any criminal proceeding prosecuted by such attorney or any of his assistants is a sexual psychopath, such attorney may file with the clerk of the court in which such proceeding is pending a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(c) Whenever it shall appear to any court that any defendant in any criminal proceeding pending in such court is a sexual psychopath, the court may, if it deems such procedure advisable, direct the officer prosecuting the defendant to file with the clerk of such court a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(d) Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) may be filed only (1) before trial, (2) after conviction or plea of guilty but before sentencing, or (3) after conviction or plea of guilty but before the completion of probation.

(e) This section shall not apply to an individual in a criminal proceeding who is charged with rape or assault with intent to rape. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 202; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 22-3505. Right to counsel.

A patient shall have the right to have the assistance of counsel at every stage of the proceeding under sections 22-3503 to 22-3511. Before the court appoints psychiatrists pursuant to section 22-3506 it shall advise the patient of his right to counsel and shall assign counsel to represent him unless the patient is able to obtain counsel or elects to proceed without counsel. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 203.)

§ 22-3506. Examination by psychiatrists.

(a) When a statement has been filed with the clerk of any court pursuant to section 22-3504, such court shall appoint two qualified psychiatrists to

make a personal examination of the patient. The patient shall be required to answer questions asked by the psychiatrists under penalty of contempt of court. Each psychiatrist shall file a written report of the examination, which shall include a statement of his conclusion as to whether the patient is a sexual psychopath.

(b) The counsel for the patient shall have the right to inspect the reports of the examination of the patient. No such report and no evidence resulting from the personal examination of the patient shall be admissible against him in any judicial proceeding except a proceeding under sections 22-3503 to 22-3511 to determine whether the patient is a sexual psychopath. (June 9, 1948, 62 Stat. 348, ch. 428, title II, § 204.)

NOTES TO DECISIONS

1. In general

Nature of crime of sodomy, with which accused was charged, was not sufficient alone, to require the District Court, before accepting guilty plea, to order a mental examination of accused, although court could properly consider nature of crime in that connection, and where there was no indication by prosecuting attorney that accused might be a sexual psychopath, and no request for a mental examination was made by prosecution or accused, convictions could not be set aside in collateral proceeding, such as *coram nobis*, because of court's failure to order examination on its own motion. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

§ 22-3507. When hearing is required.

If, in their reports filed pursuant to section 22-3506, both psychiatrists state that the patient is a sexual psychopath, or if both state that they are unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, or if one states that the patient is a sexual psychopath and the other states that he is unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, then the court shall conduct a hearing in the manner provided in section 22-3508 to determine whether the patient is a sexual psychopath. If, on the basis of the reports filed, the court is not required to conduct such a hearing, the court shall enter an order dismissing the proceeding under sections 22-3503 to 22-3511 to determine whether the patient is a sexual psychopath. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 205.)

§ 22-3508. Hearing—Commitment to Saint Elizabeths Hospital.

Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexual psychopath. Such hearing shall be conducted without a jury unless, before such hearing and within fifteen days after the date on which the second report is filed pursuant to section 22-3506, a jury is demanded by the patient or by the officer filing the statement. The rules of evidence applicable in judicial proceedings in the court shall be applicable to hearings pursuant to this section; but, notwithstanding any such rule, evidence of conviction of any number of crimes the commission of which tends to show that the patient is a sexual psychopath and of the punishment inflicted therefor shall be admissible at any such hearing. The patient shall be entitled to an appeal as in

other cases. If the patient is determined to be a sexual psychopath, the court shall commit him to Saint Elizabeths Hospital to be confined there until released in accordance with section 22-3509. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 206.)

NOTES TO DECISIONS

Generally 1
Confinement 2
Constitutionality 3
Nature of proceeding 4

1. Generally

Under statute providing for commitment of sexual psychopaths to hospital for the insane, alleged psychopath is entitled to a hearing before the court at which he is entitled to representation by counsel and he may be committed only upon a finding by the court or upon the verdict of a jury. *Malone v. Overholser* (1950, 93 F. Supp. 647).

2. Confinement

Intent of Sexual Psychopath Act is commitment for remedial treatment, and incarceration of sexual psychopath in place maintained for confinement of violent, criminal, hopeless insane, instead of in place designed and operated for mentally ill who are not insane, is not authorized by statute. *Miller v. Overholser* (1953, 206 F. 2d 415, 92 U.S. App. D.C. 110).

3. Constitutionality

The statute defining sexual psychopaths and providing for their commitment to hospital for the insane after a judicial hearing and upon a finding by the court or verdict of a jury, if demanded, is not unconstitutional. *Malone v. Overholser* (1950, 93 F. Supp. 647).

4. Nature of proceeding

Statute providing for commitment of sexual psychopaths to hospital for the insane is not a criminal statute but merely extends the law relating to commitment of persons who are mentally incompetent so as to include persons who are sexual psychopaths as defined in the statute. *Malone v. Overholser* (1950, 93 F. Supp. 647).

§ 22-3509. Parole—Discharge.

Any person committed under sections 22-3503 to 22-3511 may be released from confinement when the Superintendent of Saint Elizabeths Hospital finds that he has sufficiently recovered so as to not be dangerous to other persons, provided if the person to be released be one charged with crime or undergoing sentence therefor, the Superintendent of the hospital shall give notice thereof to the judge of the criminal court and deliver him to the court in obedience to proper precept. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 207.)

NOTES TO DECISIONS

Habeas corpus 1
Standards for release 2

1. Habeas corpus

One committed as a sexual psychopath to hospital for the insane may at any time after commitment test by habeas corpus proceeding the question of whether he has recovered. *Malone v. Overholser* (1950, 93 F. Supp. 647).

2. Standards for release

Standards provided for release of sexual psychopath from hospital are not so vague as to invalidate Sexual Psychopath Act. *Miller v. Overholser* (1953, 206 F. 2d 415, 92 U.S. App. D.C. 110).

§ 22-3510. Stay of criminal proceedings.

Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of section 22-3504 shall stay such criminal proceeding until whichever of the following first occurs:

(1) The proceeding under sections 22-3503 to 22-3511 to determine whether the patient is a sexual psychopath is dismissed pursuant to section 22-3507 or withdrawn;

(2) It is determined pursuant to section 22-3508 that the patient is not a sexual psychopath; or

(3) The patient is discharged from Saint Elizabeths Hospital pursuant to section 22-3509. (June 9, 1948, 62 Stat. 349, ch. 428, title II, § 208.)

§ 22-3511. Criminal law unchanged.

Nothing in sections 22-3503 to 22-3511 shall alter in any respect the tests of mental capacity applied in criminal prosecutions under the laws of the District of Columbia. (June 9, 1948, 62 Stat. 350, ch. 428, title II, § 209.)

Chapter 36.—IMPLEMENTS OF CRIME

Sec.

22-3601. Possession of implements of crime—Penalty.

§ 22-3601. Possession of implements of crime—Penalty.

No person shall have in his possession in the District any instrument, tool, or other implement for picking locks or pockets, or that is usually employed, or reasonably may be employed in the commission of any crime, if he is unable satisfactorily to account for the possession of the implement. Whoever violates this section shall be imprisoned for not more than one year and may be fined not more than \$1,000, unless the violation occurs after he has been convicted in the District of a violation of this section or of a felony, either in the District or in another jurisdiction, in which case he shall be imprisoned for not less than one nor more than ten years. (June 29, 1953, 67 Stat. 97, ch. 159, § 209(a).)

CROSS REFERENCES

Arrests without a warrant and searches of the person and seizures pursuant thereto by officers upon probable cause that person possesses implements of crime in violation of this section, see § 23-306.

Definition of District, see note under § 22-109.

NOTES TO DECISIONS

Arrest 1
Constitutionality 2
Evidence 3
Intent 4
Presumption 5
Remand 6

1. Arrest

A small crowbar, three pairs of pliers and two screwdrivers, found in automobile at time of its owner's arrest, were not such tools as are usually employed or reasonably may be employed in commission of crime within former provision of section 22-3302 defining as a vagrant one found in possession of such tools without satisfactorily accounting therefor, so that his possession thereof was not a misdemeanor committed in arresting officer's presence, as required to justify arrest without warrant. *Green v. District of Columbia* (D.C. Mun. App. 1952, 91 A. 2d 712).

2. Constitutionality

This section prohibiting possession of implements of crime is unconstitutional in its application to crowbars. *Washington v. United States* (1956, 232 F. 2d 357, 98 U.S. App. D.C. 100).

This section providing that no person shall have in his possession any instrument, tool or other equipment or other implement which reasonably may be employed in commission of any crime if he is unable satisfactorily to account for possession of the implement places burden of proof of intent upon defendant and is unconstitutional as applied to implements which do not in themselves give rise to sinister implications. *Benton v. United States* (1956, 232 F. 2d 341, 98 U.S. App. D.C. 84).

3. Evidence

Under this section providing that no person shall have in his possession any instrument, tool, or other implement for picking locks or pockets, or that is usually employed or reasonably may be employed in commission of any crime, if he is unable satisfactorily to account for possession of implement, if order or demand was necessary, requirement was satisfied by evidence in prosecution thereunder. *Benton v. United States* (1956, 232 F. 2d 341, 98 U.S. App. D.C. 84).

On stating that he kept small crowbar, found on front seat of his automobile, to get starter out of jam and used pliers and screwdrivers, found on floor of automobile, to work on it, in answer to questions asked by police officer before arresting him without warrant on charge of vagrancy in possessing tools usually employed or reasonably employable in commission of crime without satisfactorily accounting therefor, gave legitimate reasons for possession of such tools, in view of evidence that he was a mechanic, so that tools were improperly received in evidence against him in prosecution for such offense. *Green v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 712).

4. Intent

No rational inference of criminal intent can be drawn from mere possession of tools which reasonably may be employed in crime. *Benton v. United States* (1956, 232 F. 2d 341, 98 U.S. App. D.C. 84).

Under this section providing that no person shall have in his possession any instrument, tool, or other implement for picking locks or pockets, or that is usually employed or reasonably may be employed in commission of any crime, if he is unable satisfactorily to account for possession of the implement, proof of intent is essential element of government's case. *Id.*

5. Presumption

Validity of presumption created by statute depends on presence of rational connection between facts proved and ultimate fact presumed and presumption cannot be sustained if inference of one from proof of the other is arbitrary because of lack of connection between the two in common experience. *Benton v. United States* (1956, 232 F. 2d 341, 98 U.S. App. D.C. 84).

6. Remand

Where defendant was convicted under first count of unlawful entry and his conviction under second count of possession of implements of crime consisting of crowbars was under statute which is unconstitutional in its application to crowbars, case was remanded with directions either to modify judgment by setting aside verdict on second count and dismissing that count or in the alternative to vacate judgment entirely, set aside verdict on second count, dismiss that count and resentence defendant for unlawful entry, notwithstanding that general sentence was for period less than maximum for unlawful entry. *Washington v. United States* (1956, 232 F. 2d 357, 98 U.S. App. D.C. 100).

21

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23

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26

TITLE 23.—CRIMINAL PROCEDURE

Chap.	Sec.	
1. General Provisions.....	23-101	
2. Indictments.....	23-201	
3. Search Warrants and Arrest.....	23-301	
4. Fugitives from Justice.....	23-401	
5. Uniform Act on Fresh Pursuit.....	23-501	
6. Professional Bondsmen.....	23-601	
7. Death Penalty.....	23-701	
8. Out-of-State Witnesses.....	23-801	

Chapter 1.—GENERAL PROVISIONS

Sec.	
23-101.	Conduct of prosecutions—Party plaintiff.
23-102.	Conduct of prosecutions—Certification to Court of Appeals.
23-103.	Conduct of prosecutions—Jurisdiction.
23-104.	Abandonment of prosecution—Enlargement of time for taking action.
23-105.	Appeals by United States and District of Columbia.
23-106.	Ball—Deposit—Forfeiture
23-107.	Peremptory challenges.
23-108.	Cause of challenge not available to set aside verdict—Exception.
23-109.	Witnesses for defense—Fees.
23-110.	Discharging joint defendant during trial in order to be witness—Bar to another prosecution.
23-111.	Depositions.
23-112.	Commission to take depositions—Issuance and return.
23-113.	Sentence—Postponement for appeal
23-114.	Time of execution of sentence of death
23-115.	Powers of investigators assigned to United States attorney.

§ 23-101. Conduct of prosecutions—Party plaintiff.

The attorney for the District of Columbia shall be known as the corporation counsel.

Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia and by the corporation counsel or his assistants. All other criminal prosecutions shall be conducted in the name of the United States and by the attorney of the United States for the District of Columbia or his assistants. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, changed "attorney for the United States" to "attorney of the United States," and changed "city solicitor" to "corporation counsel."

CROSS REFERENCES

Duties of corporation counsel, see § 1-301.
Provisions in civil cases relating to amendment of proceedings and harmless error do not apply to criminal cases, see §§ 13-312 to 13-319.

NOTES TO DECISIONS

Evidence 1
Indictment 2
Prosecution by
Corporation Counsel 3
United States Attorney 4

1. Evidence

A person cannot be convicted of one offense by proof that he committed another. *Posey v. U.S.* (D.C. Mun. App. 1945, 41 A. 2d 300).

Evidence of a separate offense other than one for which accused is on trial is admissible as an exception to the general rule, when the several offenses are so closely connected in time and locality as to be but parts of a single continuing transaction. *Id.*

2. Indictment

Indictment was not vitiated by presence of assistant to Attorney-General in grand jury room in oil lease case. *United States v. Fall* (1940, 10 F. 2d 648, 56 App. D.C. 83). See, also, *United States v. Doheny* (1940, 10 F. 2d 651, 56 App. D.C. 86).

3. Prosecution by Corporation Counsel

The making of false statement of lien under oath in application for certificate or duplicate certificate of title for motor vehicle in District of Columbia must be prosecuted by corporation counsel, under Motor Vehicle Lien Law, § 40-714. *Shelton v. U.S.* (1948, 165 F. 2d 241, 83 U.S. App. D.C. 32).

All traffic violations should be prosecuted by information filed by corporation counsel. *Persham v. United States* (1939, 104 F. 2d 249, 70 App. D.C. 116).

Under this section Congress intended that all prosecutions for violations of § 40-608, should be at instance of corporation counsel and in name of District of Columbia. *District of Columbia v. Moyer* (1938, 93 F. 2d 527, 68 App. D.C. 98).

Prosecutions of street railways under section 16 of the Act of May 23, 1908 (35 Stat. 246) (see §§ 44-202, 44-203, 44-206, 44-207) should be conducted by the corporation counsel in the name of the District of Columbia. *United States v. Capital Trac. Co.* (38 App. D.C. 469).

4. Prosecution by United States Attorney

Prosecution for violation of § 22-2701 rendering it unlawful to invite, entice or persuade any person fifteen years of age or over for purposes of prostitution or any other immoral or lewd purpose, should be conducted by United States attorney in name of and for benefit of United States, since offense is punishable by both fine and imprisonment. *United States v. Paul Strothers* (1956, 228 F. 2d 34, 97 U.S. App. D.C. 63).

Prosecution in District of Columbia for second-degree murder was properly conducted in name of the United States rather than in name of District of Columbia. *Morton v. Welch* (C.C.A. Va. 1947, 162 F. 2d 840, certiorari denied 68 S. Ct. 44, 332 U.S. 779, 92 L. Ed. 363, certiorari denied 68 S. Ct. 1498, 334 U.S. 848, 92 L. Ed. 1771).

Prosecutions for refilling registered containers under 1901 Code § 878c (§ 48-303), should be conducted by the district attorney in the name of the United States. *District of Columbia v. Simpson* (40 App. D.C. 498).

Corporation counsel "has no authority to prosecute offenses where the maximum punishment may be both a fine and imprisonment." *Id.*

Prosecutions of bucket-shops under D.C. Code of 1901 § 869a (§ 22-1509) et seq. should be in the name of the United States. *United States v. Cella* (37 App. D.C. 423, certiorari denied 32 S. Ct. 526, 223 U.S. 728, 56 L. Ed. 633).

§ 23-102. Conduct of prosecutions—Certification to Court of Appeals.

If in any case any question shall arise as to whether under section 23-101 the prosecution should be conducted by the corporation counsel or by the attorney of the United States for the District of

Columbia, the presiding justice shall forthwith, either of his own motion or upon suggestion of the corporation counsel or the attorney of the United States, certify the case to the United States Court of Appeals for the District of Columbia, which court shall hear and determine the question in a summary way. In every such case the defendant or defendants shall have the right to be heard in the United States Court of Appeals for the District of Columbia. The decision of such court shall be final. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 933; June 30, 1902, 32 Stat. 537, ch. 1329; June 7, 1934, 48 Stat. 926, ch. 426.)

AMENDMENT

1902—Act June 30, 1902, substituted "corporation counsel" for "city solicitor."

CHANGE OF NAME

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "court of appeals of the District of Columbia."

NOTES TO DECISIONS

1. Certification by judge

Defendant cannot compel certification to court of appeals. "We think the language used means that whenever the judge or either of the officials named shall entertain a doubt as to who should conduct the prosecution, the question shall be certified to this court, and not otherwise. * * * If it is not so certified it becomes part of his regular defense." *Mullowny v. Mowatt* (43 App D. C. 49)

§ 23-103. Conduct of prosecutions—Jurisdiction.

Except as otherwise provided in sections 11-901 to 11-939, when the punishment of an offense may be imprisonment for more than one year the prosecution shall be in the United States District Court for the District of Columbia; when the maximum punishment is a fine only or imprisonment for one year or less the prosecution may be in the Municipal Court for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934; June 30, 1902, 32 Stat. 537, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

Section comprises the last two sentences of act Mar. 3, 1901, § 934. Section 934 is also classified to § 24-401.

The words "Except as otherwise provided in §§ 11-901 to 11-919" at the beginning of this section were inserted by the compilers.

AMENDMENT

1902—Act June 30, 1902, inserted after "is" the words "a fine only or."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court of the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 23-104. Abandonment of prosecution—Enlargement of time for taking action.

If any person charged with a criminal offense shall have been committed or held to bail to await the

action of the grand jury, and within nine months thereafter the grand jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment into the proper court, the prosecution of such charge shall be deemed to have been abandoned and the accused shall be set free or his bail discharged, as the case may be: *Provided, however*, That the United States District Court for the District of Columbia holding a special term as a criminal court, or, in vacation, any judge of said court, upon good cause shown in writing, and, when practicable, upon due notice to the accused, may from time to time enlarge the time for the taking action in such case by the grand jury. (Mar. 3, 1901, 31 Stat. 1342, ch. 854, § 939; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia," and "judge" for "justice."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

Indictment after 9-month period 1
Release of prisoners 2

1. Indictment after 9-month period

By this section prosecution of the offense is not finally barred so that accused may not be held to answer upon an indictment found after the 9-month period within which the grand jury may act has elapsed. *United States v. Cadarr* (1905, 25 S. Ct. 487, 197 U.S. 475, 49 L. Ed. 842). See, also, *Arnstein v. United States* (1924, 296 F. 946, 54 App. D.C. 199, certiorari denied 44 S. Ct. 454, 264 U.S. 595, 68 L. Ed. 867).

2. Release of prisoners

This is not a statute of limitations. "The result of the failure to prosecute has reference solely to the right in the pending prosecution to be freed, if imprisoned, or released from bail, if under bond." *United States v. Cadarr* (1905, 25 S. Ct. 487, 197 U.S. 475, 49 L. Ed. 842).

§ 23-105. Appeals by United States and District of Columbia.

In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided*, That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 935.)

NOTES TO DECISIONS

Appeal by United States 1
Appeal to circuit court 2
Arrest of judgment of conviction 3
Double jeopardy 4
Finality of decisions 5
Judgment of acquittal 6
Jurisdiction of court of appeals 7
Order quashing indictment 8
Warrant of arrest 9
Order sustaining demurrer 10
Quashed information 11
Verdicts 12

1. Appeal by United States

In District of Columbia criminal appeals, the government is restricted as is the defendant, though this does not mean that United States cannot appeal from final

decision unless opposite decision would also have been final; and government may appeal only from an order against it which terminates a prosecution or makes a decision whose distinct or plenary character meets the standards of precedents applicable to finality problems in all federal courts. *Carroll v. United States* (1957, 77 S. Ct. 1332, 354 U.S. 394, 1 L. Ed. 2d 1442).

In view of this section giving government same right of appeal in criminal prosecution as is given to defendant, government's right of appeal is determined by U.S. Code, title 18, § 3731 giving Courts of Appeals jurisdiction of appeals from all "final" decisions of district courts of United States. *United States v. Cefaratti* (1953, 202 F. 2d 13, 91 U.S. App. D.C. 297, certiorari denied 73 S. Ct. 646, 345 U.S. 907, 97 L. Ed. 1343).

An order that does not terminate an action but is, on the contrary, made in the course of an action, has the finality that is required for appeal under U.S. Code, title 28, § 1291 governing appellate jurisdiction of Courts of Appeals, if (1) it has a final and irreparable effect on the rights of the parties, being a final disposition of a claimed right; (2) it is too important to be denied review; and (3) claimed right is not an ingredient of cause of action and does not require consideration with it. *Id.*

United States may appeal cases and it need not be taken directly to the Supreme Court. *United States v. Burroughs* (1933, 65 F. 2d 796, 62 App. D.C. 163, affirmed in part 54 S. Ct. 287, 290 U.S. 534, 78 L. Ed. 484).

2. Appeal to circuit court

Where the trial court's decision is one arresting a judgment of conviction in a criminal case, it is not appealable unless such decision is for insufficiency of the indictment and based upon the invalidity or construction of the statutes, in which event, the appeal is taken directly to the Supreme Court. Accordingly, the Government should have appealed this case to the Supreme Court and we must certify the case to that court. *United States v. Waters* (1949, 175 F. 2d 340, 84 U.S. App. D.C. 127).

3. Arrest of judgment of conviction

Where the trial court's decision was one arresting a judgment of conviction in a criminal case, it is not appealable unless such decision was for insufficiency of the indictment and based upon the invalidity or construction of the statutes, in which event, the appeal is taken directly to the Supreme Court. Accordingly, the Government should have appealed this case to the Supreme Court and the case must be certified to that court. *United States v. Waters* (1949, 175 F. 2d 340, 84 U.S. App. D.C. 127).

4. Double jeopardy

Where guilt of defendant, as a matter of law and fact, is submitted to Municipal Court of the District of Columbia, an appeal by the United States is not permitted, since defendant cannot be retried for the same offense, and therefore, even if the ruling of the trial court were found to be erroneous, the judgment could not be vacated and a new trial ordered. *United States v. Martin* (D. C. Mun. App. 1951, 81 A. 2d 651).

5. Finality of decisions

The underlying concepts of finality of decisions as prerequisite to appeal are the same under section 1291 of title 28, U.S. Code, defining appellate jurisdiction of Courts of Appeals, as the successor to applicable provision of 1901 District of Columbia Code, as to such section as successor to the nationally applicable appeal provisions of the Judicial Code. *Carroll v. United States* (1957, 77 S. Ct. 1332, 354 U.S. 394, 1 L. Ed. 2d 1442).

In District of Columbia criminal cases, the government is not permitted to appeal where decision against it may have some characteristics of finality, yet does not either terminate the prosecution or pertaining to an independent peripheral matter such as would be appealable in other federal courts. *Id.*

An order entered after indictment and before trial, granting motion to suppress the only substantial evidence in support of counts charging purchase and concealment of narcotics, was an appealable "final decision". *United States v. Cefaratti* (1953, 202 F. 2d 13, 91 U.S. App. D.C. 297, certiorari denied 73 S. Ct. 646, 345 U.S. 907, 97 L. Ed. 1343).

6. Judgment of acquittal

Where it was clear from repeated statements of trial judge in prosecution for having possession of a dangerous weapon, that the trial judge was not ruling on the information as such but on the ultimate guilt of the defendant under agreed statement of facts, and trial judge made an entry granting motion of defendant to dismiss and discharging defendant, such action was equivalent to the granting of a motion for judgment of acquittal, and therefore the United States had no right of appeal to Municipal Court of Appeals of the District of Columbia. *United States v. Martin* (D. C. Mun. App. 1951, 81 A. 2d 651).

7. Jurisdiction of court of appeals

The appellate jurisdiction of the United States Court of Appeals for the District of Columbia in criminal cases is not affected by the act of 1907. *United States v. Burroughs* (1933, 53 S. Ct. 574, 289 U.S. 159, 77 L. Ed. 1096).

8. Order quashing indictment

Government may appeal from order quashing indictment and discharging defendant without day. *Cadarr v. United States* (24 App. D. C. 143 reversed on other grounds 197 U. S. 475, 49 L. Ed. 842).

9. Order quashing warrant of arrest

Under § 11-772 providing that any party aggrieved by any final order or judgment of the Municipal Court for the District of Columbia may appeal to the Municipal Court of Appeals, such court has jurisdiction of government's appeal from an order of the municipal court for such district quashing a warrant of arrest in a disorderly house case, in view of this section entitling the government to appeal in criminal prosecutions. *U. S. v. Basiliko* (D. C. Mun. App. 1944, 35 A. 2d 185).

An order quashing a warrant of arrest in a disorderly house case was appealable. *Id.*

10. Order sustaining demurrer

Government may appeal from order sustaining demurrer to indictment for violation of 1901 code, § 869a et seq. (§ 22-1509). *United States v. Cella* (37 App. D. C. 423, certiorari denied 32 S. Ct. 526, 233 U. S. 728, 56 L. Ed. 633).

11. Quashed information

The United States may appeal from an order of the Municipal Court for the District of Columbia quashing an information for failure to state a crime, and discharging the defendant. *United States v. Martin* (D.C. Mun. App. 1951, 81 A. 2d 651).

12. Verdicts

This section does not authorize an appeal by the government from a verdict of not guilty in a criminal case, because only the determination of a moot question is involved, which is not a judicial function and cannot be required by Congress of a federal court. *United States v. Evans* (30 App. D. C. 58, certiorari quashed 29 S. Ct. 58, 213 U. S. 297, 53 L. Ed. 803).

Court of appeals has no power to review, by writ of error, a judgment of not guilty rendered by the police court. *District of Columbia v. Burns* (32 App D. C. 203)

This section provided that in criminal prosecutions the United States or the District should have the same right of appeal as the defendant had, including a bill of exceptions, but provided that if there was error in the rulings of the court during the trial, a verdict for defendant should not be set aside. *District of Columbia v. Kendall* (1927, 20 F. 2d 287, 57 App. D. C. 271).

§ 23-106. Bail—Deposit—Forfeiture.

Whenever a person charged with crime is held to bail the court shall have power to allow a deposit with the clerk of such court of money in the amount of the bail instead of requiring a bond or recognizance, and in case of default to declare such deposit forfeited to the United States or the District of Columbia as the case may be. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 938.)

NOTES TO DECISIONS

1. Appeal from conviction for contempt

Pending an appeal from an order refusing to discharge defendant on habeas corpus from conviction for contempt, defendant is entitled to bail. *In re Moss* (23 App. D. C. 474).

§ 23-107. Peremptory challenges.

In all trials for capital offenses the accused and the United States shall each be entitled to twenty peremptory challenges. In trials for offenses punishable by imprisonment in the penitentiary the accused and the United States shall each be entitled to ten peremptory challenges. In all other cases, civil as well as criminal, in which the plaintiff is the United States or the District of Columbia, each party shall be entitled to three peremptory challenges; and if there are several defendants, they shall be treated as one person in the allowance of such challenges. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 918; June 30, 1902, 32 Stat. 536, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added "or the District of Columbia."

NOTES TO DECISIONS

Action by defendant 7
Cases consolidated for trial 1
Constitutional law 2
Exclusion of Negroes 3
Joint defendants 4
Purpose 5
Right to new panel 6

1. Cases consolidated for trial

When cases are consolidated for trial under U. S. R. S. § 1024, defendant is entitled, in cases of felony, to 10 peremptory challenges only. *Miller v. United States* (38 App. D.C. 361, 40 L.R.A., N.S., 973). See, also, *Nestlerode v. U.S.* (1941, 122 F. 2d 56, 74 App. D.C. 276).

2. Constitutional law

There is nothing in the Constitution which requires the Congress to grant peremptory challenges to defendants in criminal cases, and regulations are left to common law or enactments of Congress. *United States v. Wood* (1936, 57 S. Ct. 177, 299 U.S. 123, 81 L. Ed. 78, rehearing denied 57 S. Ct. 319, 299 U.S. 624, 81 L. Ed. 459).

While accused has a constitutional right to a speedy trial by an impartial jury, it does not follow that the rejection of qualified persons for insufficient cause would deprive appellant of that right. It is significant in this respect that although appellant was entitled to ten peremptory challenges he had not used any of them. *Shettel v. United States* (1940, 113 F. 2d 34, 72 App. D.C. 250).

3. Exclusion of Negroes

Fact that 19 members of jury panel selected in prosecution of three Negroes jointly indicted on charge of murder in perpetration of robbery were members of Negro race indicated that Negroes had not been systematically excluded from panel in violation of Fifth Amendment, and defendants could not complain that thereafter Government peremptorily challenged every Negro juror who had been called to sit in the panel. *Hall v. U.S.* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

4. Joint defendants

Five defendants jointly indicted for conspiracy are entitled to only 10 peremptory challenges to be shared between them. *Lorenz v. United States* (24 App. D. C. 337, certiorari denied 25 S. Ct. 796, 196 U.S. 640, 49 L. Ed. 631).

5. Purpose

"Peremptory challenges" are exercised by party in rejection, and not in selection of jurors, and is not aimed at disqualification but is exercised upon qualified jurors as a matter of favor to challenger. *Hall v. U.S.* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

6. Right to new panel

Defendant charged with adultery is entitled to a new jury panel when it appears that 12 members of the current panel acted as jurors in another case involving the keeping of a disorderly house, in which case it was shown that the defendant frequented that house for immoral purposes. *Kleindienst v. United States* (48 App. D. C. 190).

A failure to exhaust the peremptory challenges and to examine the jurors on the voir dire is no waiver of defendant's right to a new panel when such right exists *Id.*

7. Action by defendant

Action required to be taken by a "defendant" under provisions of District of Columbia Code relating to criminal procedure, where an accused has counsel, is to be taken by the counsel rather than by the accused personally. *Hensley v. United States* (C.A.D.C. 1960, 281 F. 2d 605).

§ 23-108. Cause of challenge not available to set aside verdict—Exception.

No verdict shall be set aside for any cause which might be alleged as ground for challenge of a juror before the jury are sworn, except when the objection to the juror is that he had a bias against the defendant such as would have disqualified him, and such disqualification was not known to or suspected by the defendant or his counsel before the juror was sworn. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 919.)

CROSS REFERENCES

Provisions in civil cases relating to amendment of proceedings and harmless error do not apply to criminal cases, see §§ 13-312 to 13-319.

Qualifications of jurors, see § 11-1417.

NOTES TO DECISIONS

1. New trial

This section "gives no new right to the defendant, and adds nothing to the discretionary powers which the courts have always exercised in such cases. If not declaratory merely of a long-existing rule of practice, it would seem rather a limitation, than otherwise, of the ordinary discretionary power of the courts to grant new trials." *Paolucci v. United States* (30 App. D.C. 217, 12 Ann. Cas. 920, certiorari denied 28 S. Ct. 568, 208 U.S. 617, 52 L. Ed. 646).

A challenge to the jury panel because it contains names of women, made for first time on motion for new trial, will not be reviewed. *Nelson v. United States* (1932, 53 F. 2d 935, 60 App. D.C. 323).

§ 23-109. Witnesses for defense—Fees.

In any criminal trial the justice trying the case may allow such number of witnesses on behalf of the defendant as may appear to be necessary, the fees of such witnesses to be paid in the same manner as the fees of the witnesses for the government: *Provided*, That the defendant makes application under oath before the trial, or, in cases of manifest necessity, during the trial, setting forth that he is not possessed of sufficient means and is actually unable to pay the fees of such witnesses, and setting forth also the names of such witnesses and what he expects to prove by them, in order that the court may be advised whether or not the testimony be material to the issue. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 920.)

CROSS REFERENCES

Competency and credibility of witnesses who have been convicted of crime, see § 14-305.

Immunity of witnesses in cases against prostitution, see § 22-2721.

§ 23-110. Discharging joint defendant during trial in order to be witness—Bar to another prosecution.

When two or more persons are jointly indicted the court may, before a defendant has gone into his defense, direct any such defendant to be discharged, that he may be a witness for the United States. An accused party may also, when there is not sufficient evidence to put him upon his defense, be discharged by the court, or, if not discharged by the court, shall be entitled to the immediate verdict of the jury for the purpose of giving evidence for the other parties accused with him; and such order of discharge in either case, equally with the verdict of acquittal, shall be a bar to another prosecution for the same offense. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 921.)

NOTES TO DECISIONS**1. Construction**

This section, authorizing court to discharge defendant desiring to become witness for government, is not source of trial judge's authority to dismiss defendant so that he may be witness against his former codefendants, but is an immunity statute enacted for benefit and protection of defendant who is discharged for that purpose before he has been in jeopardy. *Carrado v. United States* (1954, 210 F. 2d 712, 93 U.S. App. D.C. 183, certiorari denied 74 S. Ct. 874, 347 U.S. 1018, 98 L. Ed. 1140)

As used in this section granting immunity to defendant discharged, before he has "gone into his defense", for purpose of becoming government witness, quoted words mean "before he has been put in jeopardy", and statute's draftsman intended it to provide immunity from second prosecution for defendant who would not otherwise be entitled to it because he had not been in jeopardy. *Id.*

§ 23-111. Depositions.

If a material witness for the defendant resides beyond the District of Columbia, or is sick or infirm, or about to leave the District, the defendant may apply in writing to the court for a commission to examine such witness upon interrogatories thereto annexed when the deposition is to be taken beyond the District of Columbia, and orally in other cases, and the court may grant the same and pass an order stating for what length of time notice shall be given to the United States attorney before said witness shall be examined. At or before the time fixed in said notice, when the examination is upon written interrogatories, the United States attorney may file cross-interrogatories, but if he fail to do so the clerk shall file the following:

First. Are all your statements in the foregoing answers made from your own personal knowledge? And if not, show what is stated upon information and give its source.

Second. State everything you know in addition to what is stated in your above answers concerning this case favorable to either the United States or the defendant.

For good cause shown the court may order in any case that the examination be conducted orally. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 922; June 30, 1902, 32 Stat. 537, ch. 1329; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

AMENDMENT

1902—Act June 30, 1902, substituted "beyond the District of Columbia" for "more than a hundred miles from the city of Washington."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U.S. Code, title 28, § 501.

CROSS REFERENCE

Depositions in civil cases, see § 14-201 et seq.

NOTE TO DECISION**1. In general**

Action required to be taken by a "defendant" under provisions of District of Columbia Code relating to criminal procedure, where an accused has counsel, is to be taken by the counsel rather than by the accused personally. *Hensley v. United States* (C.A.D.C. 1960, 281 F. 2d 605).

§ 23-112. Commission to take depositions—Issuance and return.

The commission shall issue from the clerk's office, the examination of the witnesses shall be made and certified, and the return thereof made in the same manner as in civil cases, and unimportant irregularities or errors in the proceedings under said commission shall not cause the deposition to be excluded where no substantial prejudice can be wrought to the government by such irregularities or errors. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 923.)

§ 23-113. Sentence—Postponement for appeal.

If a new trial be not granted nor the judgment arrested the court may pronounce sentence upon the party convicted; but the execution of such sentence shall be postponed for a sufficient time to enable the defendant to prosecute an appeal, on the application of the defendant, if he shall give notice of his intention to appeal from the judgment to the court of appeals. (Mar. 3, 1901, 31 Stat. 1339, ch. 854, § 924.)

§ 23-114. Time of execution of sentence of death.

In case of a sentence of death, the time fixed for the execution of the sentence shall not be considered an essential part of the sentence, and if it be not executed at the time therein appointed, by reason of the pendency of an appeal or for other cause, the court may appoint another day for carrying the same into execution. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 926.)

NOTES TO DECISIONS**1. Construction**

Section 23-703 must be read in connection with § 23-114 and with their legislative history. When this is done, it is clear that § 23-703 is intended not for the benefit of defendants upon whom death sentences are to be imposed but as an aid to the prison authorities charged with execution of such sentences. *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

§ 23-115. Powers of investigators assigned to United States attorney.

Any special investigator appointed by the Attorney General and assigned to the United States attorney for the District shall have authority to execute all lawful writs, process, and orders issued under authority of the United States, and command all necessary assistance to execute his duties, and shall have the same powers to make arrests as are possessed by members of the Metropolitan Police force of the District. (June 29, 1953, 67 Stat. 102, ch. 159 § 402.)

Chapter 2.—INDICTMENTS

Sec.

- 23-201. Offenses that may be joined.
 23-202. Description of money—Sufficiency of proof.
 23-203. Indictment for intent to defraud—Sufficiency—Proof.
 23-204. Indictment for perjury—Sufficiency.
 23-205. Indictment for subornation of perjury—Sufficiency.

§ 23-201. Offenses that may be joined.

An indictment for larceny may contain a count for obtaining the same property by false pretenses, a count for embezzlement thereof, and a count for receiving or concealing the same property, knowing it to be stolen or embezzled, or any of such counts, and the jury may convict of any of such offenses, and may find any or all of the persons indicted guilty of any of said offenses. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 915.)

CROSS REFERENCES

All pleading, orders, process or other instruments must be written legibly and in English, see § 13-203.

Pleading over demurrer, see § 13-209.

Provisions in civil cases relating to amendment of proceedings and harmless error do not apply to criminal cases. see § § 13-312 to 13-319.

NOTES TO DECISIONS

False pretenses and embezzlement 1
 Larceny and embezzlement 2

1. False pretenses and embezzlement

A general verdict of guilty on an indictment containing counts for false pretenses and embezzlement is inconsistent, and the rule "to the effect that in a criminal case a general judgment * * * of guilty on each count, cannot be reversed on error if any count is good and is sufficient to support the judgment does not apply." *Davis v. United States* (37 App. D.C. 126). See, also, *Fulton v. United States* (45 App. D.C. 27).

2. Larceny and embezzlement

It is not error to refuse to require the government to elect between larceny and embezzlement counts where the same evidence is relied on to support both counts. *Means v. United States* (1933, 65 F. 2d 206, 62 App. D.C. 118).

§ 23-202. Description of money—Sufficiency of proof.

In every indictment, except for forgery, in which it is necessary to make an averment as to any money or bank bill or notes, United States Treasury notes, postal and fractional currency, or other bills, bonds, or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money, bills, notes, currency, or bonds simply as money, without specifying any particular coin, note, bill, or bond; and such allegation shall be sustained by proof that the accused has stolen or embezzled any amount of coin, or any such note, bill, currency, or bond, although the particular amount or species of such coin, note, bill, currency, or bond be not proved. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 916.)

NOTES TO DECISIONS

1. Purpose

The purpose of this section was to relieve the Government from the necessity of detailed particularization in either allegations or proof of money taken. *Neufeld v. U.S.* (1941, 118 F. 2d 375, 73 App. D.C. 174, certiorari denied 62 S. Ct. 580, 315 U. S. 798, 86 L. Ed. 1199).

§ 23-203. Indictment for intent to defraud—Sufficiency—Proof.

In an indictment in which it is necessary to allege an intent to defraud, it shall be sufficient to allege that the party accused did the act complained of

with intent to defraud, without alleging an intent to defraud any particular person or body corporate; and on the trial of such an indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove a general intent to defraud. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 917.)

NOTES TO DECISIONS

1. Forgery

Forgery of checks was done with intent to defraud. *Easterday v. United States* (1923, 292 F. 664, 53 App. D.C. 387, certiorari denied 44 S. Ct. 181, U.S. 719, 68 L. Ed. 523).

§ 23-204. Indictment for perjury—Sufficiency.

In every information or indictment to be prosecuted against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath was taken (averring such court, or person or persons, to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed; any law, usage or custom to the contrary notwithstanding. (23 Geo. II, ch. 11, § 1; Kilty's Rept. p. 252; Alex. Brit. Stat. 766.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

NOTES TO DECISIONS

Constitutional guarantees 1
 Federal rules of criminal procedure 2
 Materiality 3
 Oath 4

1. Constitutional guarantees

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count charging that witness perjured himself when he stated that he, while editor of magazine, had not published articles by persons, other than Russians, whom he knew to be Communists violated the First Amendment to the Federal Constitution providing that Congress shall make no law abridging freedom of speech or of the press, and the Sixth Amendment protecting an accused in the right to be informed of nature and cause of the accusation against him. *United States v. Lattimore* (1953, 112 F. Supp. 507).

2. Federal rules of criminal procedure

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of communism or Communist interests, was fatally defective because it did not meet requirements of Federal Rule of Criminal Procedure 7, U.S. Code, title 18, Appendix, requiring that indictment shall be plain, concise and definite written statement of essential acts constituting offense charged. *United States v. Lattimore* (1953, 112 F. Supp. 507).

Under Federal Rule of Criminal Procedure 7, U.S. Code, title 18, Appendix, a general allegation of materiality is sufficient in an indictment for perjury or subornation of perjury without setting forth in detail how and why the particular question addressed to the witness was material. *U.S. v. Meyers* (1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U.S. App. D.C. 101, 11

A.L.R. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

3. Materiality

Indictment charging witness with perjury allegedly committed before Senate Internal Security Subcommittee was not invalid in its entirety because it failed to plead the particulars of materiality of testimony given by witness before committee. *United States v. Lattimore* (1953, 112 F. Supp. 507).

Perjury indictment setting out in each count a statement allegedly made by defendant in course of testimony before congressional subcommittee, alleging that such statement was false and setting forth what the true facts were and alleging generally that testimony sought to be elicited from defendant was material to the inquiry, was sufficient as against motion to dismiss. *U.S. v. Meyers* (1948, 75 F. Supp. 486, affirmed 171 F. 2d 800, 84 U.S. App. D.C. 101, 11 A.L.R. 2d 1, certiorari denied 69 S. Ct. 602, 336 U.S. 912, 93 L. Ed. 1076).

4. Oath

Failure to set forth person before whom oath was taken together with his authority to administer same was not fatal to perjury indictment, especially in view of rule requiring merely that indictment be plain, concise, and definite written statement of essential facts constituting offense charged and providing that it need not contain any other matter not necessary to such statement. *United States v. Young* (1953, 113 F. Supp. 20).

Indictment charging alleged perjury by witness before Senate Internal Security Subcommittee was not invalid because it failed to allege name of Senator administering oath to witness. *United States v. Lattimore* (1953, 112 F. Supp. 507).

§ 23-205. Indictment for subornation of perjury—Sufficiency.

In every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed; any law, usage or custom to the contrary notwithstanding. (23 Geo. II, ch. 11, § 2; Kilty's Report 252; Alex. Brit. Stat. 766; Comp. Stat. D. C., p. 472, § 145.)

CODIFICATION

This section sets forth a British statute continued in force by virtue of act Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.

Chapter 3.—SEARCH WARRANTS AND ARREST

Sec.

- 23-301. Issuance upon complaint under oath—Contents—Warrant—Affidavit—Form.
- 23-302. Disposition of property seized.
- 23-303. Commitment of defendant—Retention of things seized.
- 23-304. Return or destruction of property seized.
- 23-305. Separability of provisions.
- 23-306. Arrests without warrant for unlawful possession of implements of crime—Burglar tools—Weapons—Lottery tickets—Stolen property.

§ 23-301. Issuance upon complaint under oath—Contents—Warrant—Affidavit—Form.

Upon complaint, under oath, before the Municipal Court for the District of Columbia, or a United States commissioner, setting forth that the affiant believes and has good cause to believe that there are concealed in any house or place arti-

cles stolen, taken by robbers, embezzled, or obtained by false pretenses, forged or counterfeited coins, stamps, labels, bank bills, or other instruments, or dies, plates, stamps, or brands for making the same, books or printed papers, drawings, engravings, photographs, or pictures of an indecent or obscene character, or instruments for immoral use, or any gaming table, device, or apparatus kept for the purpose of unlawful gaming, or any lottery tickets or lottery policies, or any book, paper, memorandum, or device for or used in recording any bet or deposit of money or thing or consideration of value received for any share, ticket, certificate, writing, bill, slip, or token in any pool or lottery or as a wager on or in connection with any race, game, contest, election, or other gambling transaction or device of an unlawful nature as defined in sections 22-1501, 22-1503, 22-1504, 22-1505, 22-1507, 22-1508, particularly describing the house or place to be searched, the things to be seized, substantially alleging the offense in relation thereto, and describing the person to be seized, the said court or United States commissioner may issue a warrant either to the marshal or any officer of the Metropolitan Police commanding him to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the Municipal Court for the District of Columbia or United States commissioner issuing said warrant, as the case may be.

The said warrant shall have annexed to it, or inserted therein, a copy of the affidavit upon which it is issued, and may be substantially in the form following:

"Whereas there has been filed before _____ an affidavit, of which the following is a copy (here insert). These are therefore to command you to enter (here describe the place) and there diligently search for the said articles, goods, or chattels in the said affidavit described, and that you bring the same, or any part thereof, found on said search and also the body of _____ before the Municipal Court for the District of Columbia, or United States commissioner, as the case may be, to be dealt with and disposed of according to law." (Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 911; Apr. 5, 1938, 52 Stat. 199, ch. 72, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

AMENDMENT

1938—Act Apr. 5, 1938, omitted provisions for bringing complaints before justices of the peace and inserted provisions relative to United States commissioners, and also included those additional items for search following "lottery policies."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Advance information of raid to attorneys or bondsmen unlawful, see § 23-609.

Examination of books and search of premises of certain businesses, property pledged, see §§ 4-148, 4-149.

Inspector of weights, measures, and markets may inspect and search without warrants, see § 10-126.

Major and superintendent [now Chief of Police] may authorize search in gaming houses, bawdy-houses, etc., see § 4-145.

Provision in civil cases relating to amendment of proceedings and harmless error do not apply to criminal cases, see §§ 13-312 to 13-319.

Search warrant in prevention of cruelty to animals, see § 22-805.

Search warrants under Uniform Narcotic Drug Act, see § 33-414.

Search warrant to discover and eradicate plant diseases and insects, see § 6-904.

Search warrant to discover illegal use of milk containers, see §§ 48-205, 48-305.

Search warrant under Alcoholic Beverage Control Act, see § 25-129.

NOTES TO DECISIONS

Compliance with federal rules of criminal procedure 1

Description of premises 2

Espionage Act 3

Evidence as admissible 4

Hotels 5

Illegal search, legalization 6

Person aggrieved 7

Probable cause 8

Reasonableness of search 9

Search

Reasonableness 9

Validity 10

Sufficiency of copy 11

Validity of search 10

1. Compliance with federal rules of criminal procedure

Statute of the District of Columbia dealing with issuance of search warrants on complaint under oath need not be complied with when Federal Rule of Criminal Procedure 41, U.S. Code, title 18, Appendix, dealing with search and seizure has been complied with. *Shay v. United States* (1954, 212 F. 2d 809, 93 U.S. App. D.C. 379, certiorari denied 74 S. Ct. 865, 347 U.S. 1012, 98 L. Ed. 1136).

Search warrant, which had been executed in accordance with Federal Rule of Criminal Procedure 41, U.S. Code, title 18, Appendix, was valid even though it did not comply with this section authorizing issuance of search warrants. *Ledbetter v. United States* (1954, 211 F. 2d 628, 93 U.S. App. D.C. 155, certiorari denied 74 S. Ct. 789, 347 U.S. 977, 98 L. Ed. 1116).

2. Description of premises

Search warrant which described premises as "The Humidor" is sufficient to search entire four-story building. *Irwin v. United States* (1937, 89 F. 2d 678, 67 App. D.C. 41).

3. Espionage Act

There is nothing in the Espionage Act which makes it inapplicable in the District of Columbia and search warrant may be issued where property is used as means of committing felony. *Nuckols v. United States* (1938, 99 F. 2d 353, 69 App. D.C. 120, certiorari denied 59 S. Ct. 89, 305, U.S. 626, 83 L. Ed. 401).

Search warrant conforms in every respect to the requirements of the Espionage Act and does not infringe the rights of appellant under the Fourth Amendment. *Hysler v. United States* (C.C.A. Fla. 1937, 86 F. 2d 918).

4. Evidence as admissible

Where search bears a reasonable relation to the arrest, evidence secured during the search is admissible. *Collins v. U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

In prosecution under indictment for housebreaking and grand larceny, admission of stolen article allegedly obtained by illegal search of defendant's room was not error in view of testimony that defendant agreed to the search and even pointed out stolen articles. *Alderman v. U.S.* (1948, 165 F. 2d 622, 83 U.S. App. D.C. 48).

5. Hotels

A hotel is a public place and search thereof is not so rigidly restricted as search of a private home. *Collins v. U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

6. Illegal search, legalization

Under rule that officers should not be encouraged to proceed in an irregular manner on chance that all will end well, an illegal search cannot be legalized by what it brings to light. *Darnall v. U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

7. Person aggrieved

In order to qualify as a "person aggrieved by an unlawful search and seizure" within Rule 41(e) of the Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, authorizing such a person to move the court for district in which property was seized for return of the property and to suppress for use as evi-

dence anything so obtained, one must have been a victim of a search or seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through use of evidence gathered as a consequence of a search or seizure directed at someone else. *Jones v. United States* (1960, 80 S. Ct. 725, 362 U.S. 257, 4 L. Ed. 2d 697).

A defendant charged with violation of narcotics laws had standing to contend that entry and subsequent seizure were unlawful notwithstanding he testified that property seized was not his and that place of arrest was not his home, where to hold that defendant's failure to acknowledge interest in narcotics or premises prevented his attack upon search, would be to permit the Government to have advantage of contradictory positions as basis for conviction, since conviction flowed from defendant's possession of narcotics at time of search, yet fruits of that search, upon which conviction depended, were admitted into evidence on ground that defendant did not have possession of narcotics at that time, so that prosecution subjected defendant to penalties meted out to one in lawless possession while refusing him remedies designated for one in that situation. *Id.*

8. Probable cause

Affidavits before Commissioner were sufficient to satisfy requisite of probable cause for issuance both of arrest warrants of persons who were subsequently convicted of illegal gambling on evidence showing that they maintained betting office and issuance of search warrants for search of premises which contained such office. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

"Probable cause" exists for a search warrant if affiant has reasonable grounds at the time of his affidavit and the issuance of the warrant for the belief that the law was being violated on the premises to be searched, and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe there was a commission of the offense charged. *Herson v. United States* (1936, 80 F. 2d 529, 65 App. D.C. 86).

Probable cause to justify a search must be determined by existence of facts known to officer before, not after, the search. *Darnall v. U. S.* (D. C. Mun. App. 1943, 33 A. 2d 734).

9. Search—Reasonableness

In testing the reasonableness of a search at time of arrest, all circumstances must be considered. *Collins v. U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

Where police department had made a long, careful, and thorough investigation which indicated that hotel was being used for disorderly purposes and that misdemeanors were being committed therein continually, those in charge of the arrest were justified in organizing a raiding squad sufficiently large to make all necessary and proper arrests, and officers were properly permitted to testify as to what they saw while making search even though a search warrant had not been obtained. *Id.*

10. — Validity

Action of officers who, with permission of owners, entered vacant row house adjoining that in which they suspected defendants were maintaining unlawful betting office, in inserting antenna spike under baseboard and into party wall and connecting ear phones so that they were then able to overhear defendants conduct their betting business by telephone, did not constitute such an unlawful "search and seizure" as is proscribed by the betting business by telephone, did not constitute such Fourth Amendment to the federal Constitution and such actions did not constitute an interference with any communications system in violation of the Communications Act of 1934. *Silverman et al. v. United States* (1960, 275 F. 2d 173, 107 U.S. App. D.C. 144, certiorari granted 80 S. Ct. 1237, 363 U.S. 801, 4 L. Ed. 2d 1145).

A search may be made only under a valid search warrant or as an incident to a lawful arrest. *Collins v. U. S.* (D. C. Mun. App. 1945, 41 A. 2d 515).

Even in connection with a valid arrest, a search is unlawful if it is merely exploratory and general and made solely to find evidence of defendant's guilt. *Id.*

11. Sufficiency of copy

Where defendants although present at time when premises were searched pursuant to warrant, made no claim to property when inquiry was made in that respect by searching officers, and defendants disavowed any interest in premises, they were without right to have been served with a copy of search warrant, and could not claim that copy left on premises was defective. *Shaw v. United States* (1954, 209 F. 2d 298, 93 U.S. App. D.C. 90, certiorari denied 74 S. Ct. 430, 347 U.S. 905, 98 L. Ed. 1063).

§ 23-302. Disposition of property seized.

When the warrant is executed by the seizure of the property or things described therein, the said property or things shall be delivered to the marshal, and shall be safely kept to be used as evidence. (Mar. 3 1901, 31 Stat. 1338, ch. 854, § 912.)

CROSS REFERENCE

Powers and duties of property clerk of Metropolitan Police, see § 4-151 et seq.

§ 23-303. Commitment of defendant—Retention of things seized.

If upon the examination the court is satisfied that the offense charged with reference to the things seized has been committed, the party accused shall be committed for trial or held to bail, and said things shall remain in the custody of the marshal until the accused is tried or the right of the claimant to said things is otherwise ascertained. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 913.)

§ 23-304. Return or destruction of property seized.

If the accused be discharged, the property or other things seized shall be returned to the person in whose possession they were found. If he be convicted, the property stolen, embezzled, or obtained by false pretenses shall be returned to its owner, and the other articles before described shall be destroyed, under direction of the court.

If the property seized be articles, games, devices, or contrivances maintained, kept set up, or used in violation of sections 22-1501 to 22-1508, they may be ordered destroyed, under direction of court, irrespective of any trial or the outcome thereof. (Mar. 3, 1901, 31 Stat. 1338, ch. 854, § 914; Apr. 5, 1938, 52 Stat. 199, ch. 72, § 4.)

AMENDMENT

1938—Act Apr. 5, 1938, added the second paragraph relating to the destruction of seized gaming devices.

CROSS REFERENCES

Disposition of drugs seized under Uniform Narcotic Drug Act, see § 33-417.

§ 23-305. Separability of provisions.

If any provision of sections 22-1501, 22-1502, 23-301, 23-304, 23-305, or the application thereof to any person or circumstance, is held invalid, the remainder of said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Apr. 5, 1938, 52 Stat. 199, ch. 72, § 5.)

§ 23-306. Arrests without warrant for unlawful possession of implements of crime—Burglar tools—Weapons—Lottery tickets—Stolen property.

(a) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for violation of any section listed in subsection (b), by police officers, as in the case of a felony, upon

probable cause that the person arrested is violating the section involved at the time of the arrest.

(b) Subsection (a) shall apply with respect to section 22-3601 (possession of implements of crime), sections 22-3203, 22-3204, and 22-3214, providing for the control of dangerous weapons in the District, and section 22-1502 (possession of lottery tickets).

(c) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for violation of section 22-2202 (petit larceny), by police officers, as in the case of a felony, upon probable cause that the person arrested has in his possession at the time of the arrest, property taken in violation of that section.

(d) No evidence discovered in the course of any arrest, search, or seizure authorized by this section shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating one of the sections referred to in subsection (b) or had in his possession property taken in violation of the section referred to in subsection (c). (June 29, 1953, 67 Stat. 96, ch. 159, § 207.)

NOTES TO DECISIONS**L. Probable cause**

Where, over a period of two and a half months, officers had placed numbers bets on fifteen separate occasions at one location, and, on ten separate occasions, had observed a suspect depart from that location with bulging pockets and enter other premises, from which he subsequently departed "without the bulge," officers had reasonable grounds to believe that latter premises were being used in lottery operations, and that defendant, who at time such premises were searched pursuant to a search warrant was the only male present and was leaving "hastily," was participating therein, justifying arrest of defendant without an arrest warrant and seizure and use of incriminating evidence found in course of search of defendant made in connection with such arrest. *Stephens v. United States* (1959, 271 F. 2d 832, 106 U.S. App. D.C. 249).

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings v. United States* (1957, 247 F. 2d 784, 101 U.S. App. D.C. 198).

Where police officer observed defendant and another, both of whom he recognized as having prior convictions for larceny, carrying a console-type record player and followed them into a liquor store, saw that the record player was new and questioned them about the machine and defendant gave improbable and unbelievable answers, officer had probable cause to arrest defendant for petit larceny, and refusal of trial court to suppress the evidence seized at time of arrest was not erroneous. *Brooks v. United States* (D.C. Mun. App. 1960, 159 A. 2d 876).

Probable cause to justify arrest without warrant means more than a bare suspicion, and it exists where the facts and circumstances within officers' knowledge are sufficient in themselves to warrant a reasonable belief that an offense has been or is being committed. *Cormier v. United States* (D. C. Mun. App. 1957, 137 A. 2d 212).

Where officers were told during nighttime, by a young girl, that a man fitting general description had chased girl out of house with a gun, officers had probable cause to arrest defendant without warrant. *Id.*

Where officers had probable cause to arrest defendant without warrant, ensuing search was legal and unregistered guns discovered thereby were admissible in evidence. *Id.*

Where officer observed person on street at 5:19 a.m., and, when asked what he was doing on street at such hour,

person answered evasively, and when turning to leave, officer's elbow bumped solid unseen object on person's stomach, officer had probable cause for arrest and search which revealed concealed loaded pistol. *Dickerson v. United States* (D.C. Mun. App. 1956, 120 A. 2d 588).

In determining whether police officer had probable cause for arrest and search of person, which revealed concealed pistol, question was not whether person was proved guilty beyond reasonable doubt, but whether as practical matter, man of ordinary and reasonable caution would have reason to believe that person was carrying a gun. *Id.*

Where first defendant had once informed arresting officer that defendant was engaged in numbers business, and first defendant was known to have police record as numbers violator and had been acting suspiciously, and officer, while going to inform second defendant of parking violation, saw second defendant pass to first defendant, in manner and at time that number slips are usually passed, an envelope, officer could, without warrant, seize envelope and arrest defendants. *Price et ano., v. United States* (D.C. Mun. App. 1956, 119 A. 2d 718).

Chapter 4.—FUGITIVES FROM JUSTICE

Sec.

- 23-401. Extradition.
- 23-402. When associate judge may act.
- 23-403. Detention of fugitives from justice—Warrants for apprehension.
- 23-404. Bail—When allowed.
- 23-405. Commitment when bond not given—Forfeiture of bond.
- 23-406. Discharge of prisoner if not demanded by return day—Future commitment.
- 23-407. Major and superintendent of police to give notice of apprehension.
- 23-408. Period of detention.
- 23-409. Voluntary return—Bond for appearance in demanding state.
- 23-410. Removal proceedings and returns to foreign countries not repealed.
- 23-411. Confinement in Washington Asylum and Jail of prisoners being extradited.

§ 23-401. Extradition.

(a) In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the Chief Judge of the United States District Court for the District of Columbia shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authorities of the several States are required to do by the provisions of sections 5278 and 5279, title 66, of the Revised Statutes of the United States, "Extradition", and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in such delivery.

(b) The chief judge of the United States District Court for the District of Columbia may also surrender, on demand of the executive authority of any State, any person in the District of Columbia charged in such State in the manner provided in subsection (a) of this section with committing an act in the District of Columbia, or in another State, intentionally resulting in a crime in the State whose executive authority is making the demand, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

(c) No person apprehended in accordance with the provisions of subsections (a) and (b) of this section shall be delivered over to the agent whom the executive authority demanding him shall have ap-

pointed to receive him unless he shall first be taken before the chief judge of the United States District Court for the District of Columbia who shall inform him of the demand made for his surrender, and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if such person or his counsel shall state that he or they desire to test the legality of his arrest, the judge shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the United States attorney for the District of Columbia, and to the said agent of the demanding State: *Provided, however,* That nothing contained in this subsection shall prevent such person from waiving his right to appear before the chief judge of the United States District Court for the District of Columbia and voluntarily returning in custody of a proper official to the jurisdiction of the State, Territory, or other possession of the United States which is demanding him. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 930; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127. June 29, 1953, 67 Stat. 106, ch. 159, § 407.)

REFERENCE IN TEXT

Sections 5278 and 5279 of the Revised Statutes, referred to in text related to extradition, and have been repealed by act June 25, 1948, 62 Stat. 683, ch. 645, § 21. Similar provisions are now set out in sections 3182, 3194, and 3195 of title 18, U.S. Code.

AMENDMENT

1953—Act June 29, 1953, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

Arrest in different state 1
 Burden of proof 2
 Cruel and unusual punishment 3
 Detention of accused person 4
 Duty and authority of chief judge 5
 Evidence 6
 False imprisonment 7
 Finding of trial judge 8
 Fugitive from justice 9
 Habeas corpus 10
 Indictment 11
 Mental competency 12
 Sheriff's application 13

1. Arrest in different State

Defendant indicted in State of Pennsylvania for obtaining money under false pretenses, arrested in District of Columbia upon warrant issued under this section on requisition of Governor of Pennsylvania, was remanded to custody of the agent of the State of Pennsylvania. *Barrett v. Bigger* (1927, 17 F. 2d 669, 57 App. D.C. 81, certiorari denied 47 S. Ct. 765, 274 U.S. 752, 71 L. Ed. 1332).

2. Burden of proof

If the extradition papers make out a prima facie case, the burden of proving absence from the State is on petitioner. *Levy v. Splain* (1920, 267 F. 333, 50 App. D.C. 31). See, also, *Ellison v. Splain* (1920, 267 F. 247, 49 App. D.C. 99).

3. Cruel and unusual punishment

Even if mental condition of alleged convict, who had allegedly escaped from custody in North Carolina, were such that, after extradition order had been properly

entered, convict was in fact psychotic and could not assist counsel who had promptly filed habeas corpus petition after entry of the extradition order, return of convict to North Carolina would not be cruel and unusual punishment. *Lathan v. Reid* (1960, 280 F. 2d 66, 108 U.S. App. D.C. 58, certiorari denied 81 S. Ct. 107, 364 U.S. 865, 5 L. Ed. 2d 86).

4. Detention of accused person

"An accused person may be held a reasonable time to await the preparation and transmission of extradition papers from the demanding State." *Stallings v. Splain* (1919, 258 F. 510, 49 App. D.C. 38, affirmed 40 S. Ct. 537, 253 U.S. 339, 64 L. Ed. 940).

5. Duty and authority of chief judge

The Chief Judge of the United States District Court for the District of Columbia has executive authority similar to that of State governors in requisition proceedings. *Maktos v. Matthews* (1952, 194 F. 2d 354, 90 U.S. App. D.C. 183).

This section expressly confers upon the Chief Justice of the Supreme Court (District Court of the United States) of the District authority to act in requisition proceedings. *Hill v. Dorsey* (1928, 22 F. 2d 1003, 57 App. D.C. 305).

Chief Justice acts in extradition matters in an executive capacity. *Reed v. Colpoys* (1938, 99 F. 2d 396, 69 App. D.C. 163, certiorari denied 59 S. Ct. 97, 305 U.S. 598, 83 L. Ed. 379). See, also, *Lee Won Sing v. Cottone* (1941, 123 F. 2d 169, 74 App. D.C. 374).

6. Evidence

Where uncontradicted testimony showed that defendant was in Baltimore, Maryland, on day that Maryland indictment charged that he unlawfully deserted his wife and no evidence was offered by defendant to rebut presumption of fugitivity created by recitals of indictment, that issue was closed and there was ample basis for the requisition made by Governor of Maryland. *Brown Sr., v. Ward, U.S. Marshal etc.* (1960, 275 F. 2d 884, 107 U.S. App. D.C. 220).

Relator, held for extradition, could not complain that his petition for habeas corpus was denied on basis of evidence received at requisition hearing where his counsel made no request at any stage that relator be put on stand and no proffer at all of any evidence contradicting what was established at the requisition hearing. *Id.*

To justify commitment for extradition there must be evidence to prove guilt of the accused. *Foster v. Goldsoll* (48 App. D.C. 505, certiorari denied 39 S. Ct. 495, 250 U.S. 647, 63 L. Ed. 1188).

7. False imprisonment

Where after District of Columbia judge had issued executive order, in compliance with requisition proceedings from Pennsylvania, ordering the petitioner, arrested in District, be delivered to Pennsylvania authority, petitioner instituted habeas corpus proceedings, trial court denied writ, but did not order any stay of requisition proceedings, and while appeal of habeas corpus proceeding was pending, District Marshal delivered petitioner to Pennsylvania detective, detective was protected by his warrant and executive order of judge from liability to petitioner for false imprisonment when he received him and returned him to Pennsylvania. *Robinson Jr. v. Harris, District Attorney* (1955, 135 F. Supp. 239).

8. Finding of trial judge

If evidence is conflicting as to presence of defendant in demanding state, the finding of the trial judge will not be disturbed on appeal. *Jackson v. Snyder* (1924, 293 F. 842, 54 App. D.C. 23).

9. Fugitive from justice

Under U.S. Code, title 18, § 3182, implementing U.S. Const. Art. 4, § 2, concerning interstate extradition, the governor of the asylum state has for decision the legal question whether the demanded person has been substantially charged with a crime, and the factual question whether he is a fugitive from justice. *Bruzaud v. Matthews* (1953, 207 F. 2d 25, 93 U.S. App. D.C. 47).

If petitioner offers proof showing with precision that he left the demanding state before the commission of the alleged crime "it would then devolve upon the person detaining him 'to show that he was a fugitive from justice by producing evidence that he was in the state

at the time charged in the indictment, or to prove that said date had been erroneously charged and could be carried back to the necessary time." *Levy v. Splain* (1920, 267 F. 333, 50 App. D.C. 31).

"To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the state in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense he has left its jurisdiction and is found within the territory of another." *DePoilly v. Palmer* (28 App. D.C. 324).

10. Habeas corpus

Where order for extradition of alleged convict from District of Columbia was properly entered, even if, at time of hearing on habeas corpus petition, which had been filed promptly by convict after extradition order had been entered, convict was psychotic and could not assist counsel, convict was not entitled to habeas corpus, and extradition would not be delayed until restoration of convict to competency. *Lathan v. Reid* (1960, 280 F. 2d 66, 108 U.S. App. D.C. 58, certiorari denied 81 S. Ct. 107, 364 U.S. 865, 5 L. Ed. 2d 86).

In habeas corpus proceeding brought by relator held for extradition, hearing court will not consider guilt or innocence of accused, will not try any issues in the criminal case, will not construe any statutes of requisitioning state and will not inquire into validity of the indictment. *Brown Sr., v. Ward, U.S. Marshal, etc.* (1960, 275 F. 2d 884, 107 U.S. App. D.C. 220).

On habeas corpus, where there is no claim that the extradition papers are not regular on their face, there is but one question open for investigation, namely, whether petitioner was in demanding state at the time the crime charged was committed. *Levy v. Splain* (1920, 267 F. 333, 50 App. D.C. 31). See, also, *Watts v. Splain* (1922, 277 F. 335, 51 App. D.C. 129).

When indictment charged conspiracy on a certain day without a continuando, the accused in extradition proceeding should be discharged on habeas corpus when he proved he was not in the state when the offense was charged to have been committed. *Levy v. Splain* (1920, 267 F. 333, 50 App. D.C. 31).

On habeas corpus review in court of asylum state of an extradition order of governor, the inquiry of the court is limited to the two questions which were before governor, namely, whether demanded person has been substantially charged with crime, and factual question whether he is a fugitive from justice. *Bruzaud v. Matthews* (1953, 207 F. 2d 25, 93 U.S. App. D.C. 47).

Where indictment involved in extradition proceeding charged commission of crime within Virginia, this section permitting extradition from the district without showing of fugitivity of person charged with committing, outside the demanding state, an act which intentionally resulted in a crime in the demanding State was not applicable. *In re Gibson* (1956, 147 F. Supp. 591).

Where extradition is sought for commission of crime within demanding state, it is jurisdictional that person sought to be extradited was in demanding state at time the alleged offense was committed, and, in absence of allegation as to date of offense in the indictment or papers accompanying request for requisition or of testimony as to such date at the requisition or habeas corpus proceeding, there is no prima facie case of fugitivity made by the warrant itself, and the usual presumption of fugitivity cannot arise. *Id.*

11. Indictment

U.S. Code, title 18, § 3182, does not permit a requisition to be based upon a warrant of arrest, but requires demanding governor to produce copy of an indictment of copy of an accusatory affidavit, and when an indictment had been returned and copy of it attached to requisition, no purpose was served by also attaching a copy of an earlier affidavit made by complaining witness, but affidavit was mere surplusage. *Bruzaud v. Matthews* (1953, 207 F. 2d 25, 93 U.S. App. D.C. 47).

"It is only in cases when it is apparent that the indictment does not charge an offense at all, that another court will pass on it." *Wheeler v. Palmer* (42 App. D. C. 395).

Indictment need only show that accused was substantially charged with a crime under the law of the demanding state. The legal sufficiency of the indictment as a pleading must be tested in the courts of the demanding state. *Webster v. Splain* (45 App. D.C. 567). See, also, *Wheeler v. Palmer* (42 App. D.C. 395); *Farr v. Palmer* (24 App. D.C. 234); *DePoilly v. Palmer* (28 App. D.C. 324); *Goodale v. Splain* (42 App. D.C. 235).

Formal defects in indictment will not prevent removal of petitioners to another district for trial but "if indictment were a mere information, or upon inspection, set forth no crime against United States, or a wholly different crime from that alleged as the basis for proceedings, or if such crime be charged to have been committed in another district from that to which the extradition is sought, the commissioner could not properly consider it as ground for removal." *Whitaker v. Hitt* (1923, 285 F. 797, 52 App. D.C. 149, 27 A.L.R. 951).

12. Mental competency

In hearing to determine whether to extradite from District of Columbia one who had allegedly escaped from custody in North Carolina, evidence supported finding that alleged fugitive was mentally competent for purposes of the hearing. *Lathan v. Reid* (1960, 280 F. 2d 66, 103 U.S. App. D.C. 58, certiorari denied 81 S. Ct. 107, 364 U.S. 865, 5 L. Ed. 2d 86).

Where alleged fugitive was competent for purposes of hearing to determine whether to extradite him from District of Columbia, and the government's evidence as to identity, fugitivity, and charge of criminality was clear and complete, extradition order was valid. *Id.*

13. Sheriff's application

It is immaterial when sheriff used the wrong gender of prisoner in application to the governor for a requisition on the authorities of the District of Columbia. *John v. Splain* (1921, 269 F. 717, 50 App. D.C. 201).

§ 23-402. When associate judge may act.

Any associate judge of said court shall have like power, in case of the illness, absence, or other disability of the chief judge, or when any such application shall be certified to him by the chief judge. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 931; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a); May 24, 1949, 63 Stat. 107, ch. 139, § 127).

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

Section 32(a) of act June 25, 1948, as amended by act May 24, 1949, substituted "judge" for "justice" in three instances.

§ 23-403. Detention of fugitives from justice—Warrants for apprehension.

Whenever any person shall be found within the District of Columbia charged with any offense committed in any state, territory, or other possession of the United States, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the governor of such state, territory, or possession, any judge of the Municipal Court for the District of Columbia, may, upon complaint on oath or affirmation of any credible witness, setting forth the offense, that such person is a fugitive from justice, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the Municipal Court for the District of Columbia, to answer such complaint. (Apr. 21, 1928,

45 Stat. 440, ch. 398, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

NOTES TO DECISIONS

1. Detention pending requisition

Where state circuit court granted writ of habeas corpus discharging petitioner, who had been ordered recommitted for violation of conditional pardon, on ground that state statute was unconstitutional and after state court of last resort had reversed the decision petitioner was arrested in District of Columbia on a fugitive warrant, detention of petitioner pending receipt of requisition from Governor of the state was authorized. *Herzog v. Colpoys* (1944, 143 F. 2d 137, 79 U. S. App. D. C. 81).

§ 23-404. Bail—When allowed.

If, upon the examination of the person charged, it shall appear to the judge of the Municipal Court for the District of Columbia that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Chief Judge of the United States District Court for the District of Columbia, he shall, if not charged with murder in the first degree, be required to give bond or other obligation, with sufficient sureties, in a reasonable sum, to appear before said judge of the Municipal Court for the District of Columbia at a future date, allowing thirty days to obtain a requisition from the governor of the state, territory, or possession of the United States from which said person is a fugitive, he to abide the order of such judge of the Municipal Court for the District of Columbia in the premises. (Apr. 21, 1928, 45 Stat. 440, ch. 398, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCE

Other provisions concerning bail, see § 11-602.

§ 23-405. Commitment when bond not given—Forfeiture of bond.

If such person shall not give bond or other obligation, as provided in section 23-404 or if he shall be charged with the crime of murder in the first degree, he shall be committed to the District jail, and there detained until a day fixed by the court, in like manner as if the offense charged had been committed within the District of Columbia; and, if the person so giving bond or other obligation shall fail to appear according to the condition of his bond or obligation, he shall be defaulted, and the bond or other obliga-

tion entered into by him shall be forfeited to the United States. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 3.)

§ 23-406. Discharge of prisoner if not demanded by return day—Future commitment.

If the person so giving bond or other obligation, or committed, shall appear before the judge of the Municipal Court for the District of Columbia upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him, or unless the judge of the Municipal Court for the District of Columbia shall see cause to commit him for a further time, or to require him to give bond or other obligation for his appearance at some other day, and if, when ordered, he shall not give bond or other obligation he shall be committed and detained as before: *Provided*, That whether the person so charged shall give bond or other obligation, be committed or discharged, his delivery to any person authorized by the warrant of the governor shall be a discharge of his bond or obligation, if any. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT
"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 23-407. Major and superintendent of police to give notice of apprehension.

The major and superintendent of the Metropolitan police of the District of Columbia shall give notice to the police official or sheriff of the city or county from which such person is a fugitive that the person is so held in the District of Columbia. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 5.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

§ 23-408. Period of detention.

A person committed as provided in section 23-404 shall not be detained in jail longer than to allow a reasonable time to the person receiving the notice herein required to apply for and obtain a proper requisition for such person according to the circumstances of the case and the distance of the place where the offense is alleged to have been committed. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 6.)

§ 23-409. Voluntary return—Bond for appearance in demanding state.

Nothing contained in sections 23-403 to 23-410 shall prevent the voluntary return, in the custody of a proper official, of a person to the jurisdiction of the state, territory, or other possession of the United States from which he is a fugitive. And nothing contained in sections 23-403 to 23-410 shall prevent a judge of the Municipal Court for the District of Columbia, in his discretion, accepting bond or other obligation for the appearance of a person before the proper official in the state, territory, or possession of the United States from which he is a fugitive. (Apr. 21, 1928, 45 Stat. 441, ch. 398, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 23-410. Removal proceedings and returns to foreign countries not repealed.

Nothing contained in sections 23-403 to 23-410 shall repeal, modify, or in any way affect existing law concerning the procedure for the return of any person apprehended in the District of Columbia to a Federal district to answer a Federal charge, or repeal, modify, or affect existing law or treaty concerning the return to a foreign country of a person apprehended in the District of Columbia as a fugitive from justice from a foreign country. (Apr. 21, 1928, 45 Stat. 442, ch. 398, § 8.)

§ 23-411. Confinement in Washington Asylum and Jail of prisoners being extradited.

(a) The agent of the demanding State to whom the prisoner may have been delivered in accordance with the provisions of section 23-401, may, when necessary, confine the prisoner in the Washington Asylum and Jail; and the superintendent of the Washington Asylum and Jail must receive and safely keep the prisoner for such reasonable time as will enable the officer or person having charge of him to proceed on his route, such officer or person being chargeable with the expense of keeping.

(b) The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in such other State, and who is passing through the District of Columbia with such a prisoner for the purpose of immediately returning such prisoner to the demanding State, may, when necessary, confine the prisoner in the Washington Asylum and Jail; and the superintendent of the Washington Asylum and Jail must receive and safely keep the prisoner for such reasonable time as will enable the officer or agent to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: *Provided, however*, That such officer or agent shall produce and show to the superintendent satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding State after a requisition by the executive authority of such demanding State. Such prisoner shall not be entitled to demand a new requisition while in the District of Columbia. (June 29, 1953, 67 Stat. 107, ch. 159, § 407(b).)

Chapter 5.—UNIFORM ACT ON FRESH PURSUIT

Sec.

23-501. Arrests in District of Columbia by officers of other States.

23-502. Hearing—Commitment—Discharge.

23-503. Construction of section 23-501.

23-504 "Fresh pursuit" defined.

§ 23-501. Arrests in District of Columbia by officers of other States.

Any member of a duly organized State, county, or municipal peace unit of any State of the United States who enters the District of Columbia in fresh pursuit and continues within the said District in such

fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in such State shall have the same authority to arrest and hold such person in custody as has any member of any duly organized peace unit of the said District to arrest and hold in custody a person on the ground that he is believed to have committed a felony in the said District. (July 26, 1939, 53 Stat. 1124, ch. 375, § 1.)

SHORT TITLE

Section 6 of act July 26, 1939, provided that act July 26, 1939, which enacted this chapter, may be cited as the "Uniform Act on Fresh Pursuit."

§ 23-502. Hearing—Commitment—Discharge.

If an arrest is made in the District of Columbia by an officer of another State in accordance with the provisions of section 23-501, he shall without unnecessary delay take the person arrested before a judge of the Municipal Court for the District of Columbia, or a United States commissioner for the District of Columbia, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge of the Municipal Court for the District of Columbia or the United States commissioner before whom the hearing is conducted determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Chief Judge of the United States District Court for the District of Columbia. If the judge of the Municipal Court for the District of Columbia or the United States commissioner for the District of Columbia, before whom the hearing is held, determines that the arrest was unlawful he shall discharge the person arrested. (July 26, 1939, 53 Stat. 1124, ch. 375, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 23-503. Construction of section 23-501.

Section 23-501 shall not be construed so as to make unlawful any arrest in this District which would be otherwise lawful. (July 26, 1939, 53 Stat. 1124, ch. 375, § 3.)

§ 23-504. "Fresh pursuit" defined.

The term "fresh pursuit" used in this chapter shall include fresh pursuit as defined by the common law, also the pursuit of a person who has committed a felony or one whom the pursuing officer has reasonable grounds to believe has committed a felony. It shall also include the pursuit of a person whom the pursuing officer has reasonable grounds to believe has committed a felony, although no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. "Fresh pursuit" as used herein shall not necessarily imply an instant pursuit, but pursuit

without unreasonable delay. (July 26, 1939, 53 Stat. 1124, ch. 375, § 4.)

SEPARABILITY OF PROVISIONS

Section 5 of act July 26, 1939, provided: "If any part of this Act [this chapter] is for any reason declared void, it is declared to be the intent of this Act that such invalidity shall not affect the validity of the remaining portions of this Act."

Chapter 6.—PROFESSIONAL BONDSMEN

Sec.

- 23-601. Definitions
- 23-602. Business impressed with public interest.
- 23-603. Procuring business through official or attorney for a consideration—Prohibited.
- 23-604. Attorneys procuring employment through official or bondsman for a consideration—Prohibited.
- 23-605. Receiving other than regular fee for bonding prohibited—Bondsman prohibited from endeavoring to secure dismissal or settlement.
- 23-606. Posting names of authorized bondsmen—List to be furnished prisoners—Prisoners may communicate with bondsman—Record to be kept by police.
- 23-607. Bondsman prohibited from entering place of detention unless requested by prisoner—Record of visit to be kept.
- 23-608. Qualifications of bondsmen—Rules to be prescribed by courts—List of agents to be furnished—Renewal of authority to act—Detailed records to be kept—Penalties and disqualification.
- 23-609. Giving advance information of proposed raid prohibited.
- 23-610. Designation of official to take bail or collateral when court is not in session.
- 23-611. Penalties.
- 23-612. Enforcement.

§ 23-601. Definitions.

The words "bonding business" as used in this chapter mean the business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia, and the word "bondsman" means any person or corporation engaged either as principal or as agent, clerk, or representative of another in such business. (Mar. 3, 1933, 47 Stat. 1482, ch. 206, § 1.)

CROSS REFERENCE

Other provisions concerning bail, see §§ 11-602, 11-606.

§ 23-602. Business impressed with public interest.

The business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia is impressed with a public interest. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 2.)

§ 23-603. Procuring business through official or attorney for a consideration—Prohibited.

It shall be unlawful for any person engaged, either as principal or as the clerk, agent, or representative of a corporation, or another person in the business of becoming surety upon bonds for compensation in the District of Columbia, either directly or indirectly, to give, donate, lend, contribute, or to promise to give, donate, loan, or contribute any money, property, entertainment, or other thing of value whatsoever to any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, or other attaché of a criminal court, or public official of any character, for procuring or assisting in procuring any person to employ said bondsman to execute as surety any bond for compensation in any criminal

case in the District of Columbia; and it shall be unlawful for any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, bailiff, or other attaché of a criminal court, or public official of any character, to accept or receive from any such person engaged in the bonding business any money, property, entertainment, or other thing of value whatsoever for procuring or assisting in procuring any person to employ any bondsman to execute as surety any bond for compensation in any criminal case in the District of Columbia. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 3.)

§ 23-604. Attorneys procuring employment through official or bondsman for a consideration—Prohibited.

It shall be unlawful for any attorney at law, either directly or indirectly, to give, loan, donate, contribute, or to promise to give, loan, donate, or contribute any money, property, entertainment, or other thing of value whatsoever to, or to split or divide any fee or commission with, any bondsman, the agent, clerk, or representative of any bondsman, police officer, deputy United States marshal, probation officer, assistant probation officer, bailiff, clerk, or other attaché of any criminal court for causing or procuring or assisting in causing or procuring any person to employ such attorney to represent him in any criminal case in the District of Columbia. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 4.)

§ 23-605. Receiving other than regular fee for bonding prohibited—Bondsmen prohibited from endeavoring to secure dismissal or settlement.

It shall be lawful to charge for executing any bond in a criminal case in the District of Columbia, and it shall be unlawful for any person or corporation engaged in the bonding business, either as principal, or clerk, agent, or representative of another, either directly or indirectly, to charge, accept, or receive any sum of money, or other thing of value, other than the regular fee for bonding, from any person for whom he has executed bond, for any other service whatever performed in connection with any indictment, information, or charge upon which said person is bailed or held in the District of Columbia. It also shall be unlawful for any person or corporation engaged either as principal or as agent, clerk, or representative of another in the bonding business, to settle, or attempt to settle, or to procure or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the District of Columbia, with any court, or with the prosecuting attorney in any court in the District of Columbia. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 5.)

§ 23-606. Posting names of authorized bondsmen—List to be furnished prisoners—Prisoners may communicate with bondsmen—Record to be kept by police.

A typewritten or printed list alphabetically arranged of all persons engaged under the authority of any of the courts of criminal jurisdiction in the District of Columbia in the business of becoming surety upon bonds for compensation in criminal cases shall be posted in a conspicuous place in each police precinct, jail, prisoner's dock, house of detention, and every other place in the District of

Columbia in which persons in custody of the law are detained, and one or more copies thereof kept on hand; and when any person who is detained in custody in any such place of detention shall request any person in charge thereof to furnish him the name of a bondsman, or to put him in communication with a bondsman, said list shall be furnished to the person so requesting, and it shall be the duty of the person in charge of said place of detention within a reasonable time to put the person so detained in communication with the bondsman so selected, and the person in charge of said place of detention shall contemporaneously with said transaction make in the blotter or book of record kept in any such place of detention, a record showing the name of the person requesting the bondsman, the offense with which the said person is charged, the time at which the request was made, the bondsman requested, and the person by whom the said bondsman was called, and preserve the same as a permanent record in the book or blotter in which entered. (Mar. 3, 1933, 47 Stat. 1483, ch. 206, § 6.)

§ 23-607. Bondsmen prohibited from entering place of detention unless requested by prisoner—Record of visit to be kept.

It shall be unlawful for any bondsman, agent, clerk, or representative of any bondsman to enter a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia for the purpose of obtaining employment as a bondsman, without having been previously called by a person so detained, or by some relative or other authorized person acting for or on behalf of the person so detained, and whenever any person engaged in the bonding business as principal, or as clerk, agent, or representative of another, shall enter a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia, he shall forthwith give to the person in charge thereof his mission there, the name of the person calling him, and requesting him to come to such place, and the same shall be recorded by the person in charge of the said place of detention and preserved as a public record, and the failure to give such information, or the failure of the person in charge of said place of detention to make and preserve such a record, shall constitute a violation of this chapter. (Mar. 3, 1933, 47 Stat. 1484, ch. 206, § 7.)

§ 23-608. Qualifications of bondsmen—Rules to be prescribed by courts—List of agents to be furnished—Renewal of authority to act—Detailed records to be kept—Penalties and disqualifications.

(a) It shall be the duty of the United States District Court for the District of Columbia, the municipal court for the District of Columbia, and the juvenile court of the District of Columbia, each, to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which such business shall be carried on, and no person or corporation shall, either as principal, or as agent, clerk, or representative of another, engage

in the bonding business in any such court until he shall by order of the court be authorized to do so. Such courts, in making such rules and regulations, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the business of becoming surety upon bonds for compensation in criminal cases, who has ever been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of said courts to require every person qualifying to engage in the bonding business as principal to file with said court a list showing the name, age, and residence of each person employed by said bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of said persons stating that said person will abide by the terms and provisions of this chapter. Each of said courts shall require the authority of each of said persons to be renewed from time to time at such periods as the court may by rule provide, and before said authority shall be renewed the court shall require from each of said persons an affidavit that since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of said affidavits shall be guilty of perjury.

(b) Each such court shall prescribe such rules and regulations as may be necessary to insure that whenever a bondsman becomes surety for compensation upon a bond in a criminal case before the court, the bondsman, or his agent, clerk, or representative, shall make a record, which shall be accurate to the best of the maker's knowledge and belief and shall thereafter be open for inspection by the court or its designated representative, and by the designated representative of other law-enforcement agencies of the District of Columbia, of the following matters:

(1) The full name and address of the person for whom the bond is executed (referred to in this subsection as the "defendant") and the full name and address of his employer, if any;

(2) The offense with which the defendant is charged;

(3) The name of the court or officer authorizing the defendant's admission to bail;

(4) The amount of the bond;

(5) The name of the person who called the bondsman, if other than the defendant;

(6) The amount of the bondsman's charge for executing the bond;

(7) The full name and address of the person to whom the bondsman presented his bill for such charge;

(8) The full name and address of the person paying such charge; and

(9) The manner of payment of such charge.

Whoever violates any rule or regulation prescribed under this subsection shall be fined not more than \$500 or imprisoned not more than six months or both and if he is a bondsman, or the agent, clerk, or representative of a bondsman, shall be disqualified

from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge shall order. (Mar. 3, 1933, 47 Stat. 1484, ch. 206, § 8; June 29, 1953, 67 Stat. 106, ch. 159, § 406; July 18, 1958, 72 Stat. 396, Pub. L. 85-537, § 1.)

AMENDMENTS

1958—Act July 18, 1958, substituted "United States District Court for the District of Columbia, the municipal court for the District of Columbia, and the juvenile court for the District of Columbia," for "police court, juvenile court, and the criminal divisions of the District Court of the United States for the District of Columbia."

1953—Act June 29, 1953, designated existing provisions as subsec. (a) and added subsec. (b).

CROSS REFERENCE

Perjury, see § 22-2501.

NOTES TO DECISIONS

Evidence 1
Grounds for renewal of license 2
Nature of license 3
Revocation of license 4

1. Evidence

Evidence was insufficient to sustain finding that bondsman was guilty of infraction of court rule providing that any bondsman who procures or assists in procuring or attempts to procure retention or employment of any attorney to represent any person charged with offense cognizable in Municipal Court for the District of Columbia, or solicits or receives or enters into any agreement to receive any fee, commission money, or property or things of value for procuring or assisting or attempting to procure retention or employment of any attorney to represent any person charged with offense cognizable in Municipal Court, shall be suspended. *Matter of Leon B. Greene* (D. C. Mun. App. 1957, 130 A. 2d 593).

2. Grounds for renewal of license

Order of District Court denying application of a professional bondsman for renewal of his license to engage in bonding business on ground that applicant lacked qualifications for a bondsman was set aside. *In re Carter* (1951, 192 F. 2d 15, 89 U.S. App. D.C. 310, certiorari denied 72 S. Ct. 89, 342 U.S. 862, 96 L. Ed. 648, rehearing denied 72 S. Ct. 173, 342 U.S. 889, 96 L. Ed. 667).

3. Nature of license

License to engage in bonding business, once granted, becomes a right, which ought not to be taken away on the strength of vague, indefinite, and uncorroborated testimony. *Matter of Leon B. Greene* (D. C. Mun. App. 1957, 130 A. 2d 593).

4. Revocation of license

When an authorization to engage in the bonding business has been approved by the district court and is outstanding, it can be revoked, prior to the expiration of the term, only upon a proceeding which contains the elements of due process of law, i. e., a hearing and revelation of all matter upon which a decision is to be based. *In re Carter* (1949, 177 F. 2d 75, 85 U.S. App. D.C. 229, certiorari denied 70 S. Ct. 250, 338 U.S. 900, 94 L. Ed. 554).

§ 23-609. Giving advance information of proposed raid prohibited.

It shall be unlawful for any police officer or other public official, in advance of any raid by police or other peace officers or public officials or the execution of any search warrant or warrant of arrest, to give or furnish, either directly or indirectly, any information concerning such proposed raid or arrest to any person engaged in any manner in the bonding business, or to any attorney at law: *Provided, however*, That it shall not be unlawful for any police or other peace officer, in conducting any raid or in executing any search warrant or warrant of arrest, to communicate to any attorney at law or person engaged in the bonding business, any fact necessary

to enable such officer to obtain from such attorney at law or person engaged in the bonding business information necessary to enable such officer to carry out said raid or execute such process. (Mar. 3, 1933, 47 Stat. 1485, ch. 206, § 9.)

§ 23-610. Designation of official to take bail or collateral when court is not in session.

The judges of the Municipal Court for the District of Columbia shall have the authority to appoint some official of the Metropolitan police force of the District of Columbia to act as a clerk of the municipal court with authority to take bail or collateral from persons charged with offenses triable in the municipal court in criminal cases in the District of Columbia at all times when the municipal court is not open and its clerks accessible. The official so appointed shall have the same authority at said times with reference to taking bonds or collateral as the clerk of the municipal court had on March 3, 1933; shall receive no compensation for said services other than his regular salary; shall be subject to the orders and rules of the municipal court in discharge of his said duties, and may be removed as such clerk at any time by the judges of the municipal court. The United States District Court for the District of Columbia and the Juvenile Court of the District of Columbia each shall have power by order to authorize the official, appointed by the municipal court, to take bond of persons arrested upon writs and processes from those courts in criminal cases between four o'clock postmeridian and nine o'clock antemeridian and upon Sundays and holidays, and each of such courts shall have power at any time by order to revoke such authority granted by it. (Mar. 3, 1933, 47 Stat. 1485, ch. 206, § 10; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" and "municipal court" for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 23-611. Penalties.

Any person violating any provision of this chapter other than in the commission of perjury shall be punished by a fine of not less than \$50 nor more than \$100, or by imprisonment of not less than ten or more than sixty days in jail, or both, where no other penalty is provided by this chapter; and if the person so convicted be a police officer or other public official, he shall upon recommendation of the trial judge also be forthwith dismissed from office; if a bondsman, or the agent, clerk, or representative of a bondsman, he shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge

shall order; and, if an attorney at law, shall be subject to suspension or disbarment as attorney at law. (Mar. 3, 1933, 47 Stat. 1485, ch. 206, § 11.)

§ 23-612. Enforcement.

It shall be the duty of the municipal court, juvenile court, and of the criminal divisions of the United States District Court for the District of Columbia to see that this chapter is enforced, and upon the impaneling of each grand jury in the United States District Court for the District of Columbia it shall be the duty of the judge impaneling said jury to give it in charge to the jury to investigate the manner in which this chapter is enforced and all violations thereof. (Mar. 3, 1933, 47 Stat. 1485, ch. 206, § 12; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

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CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

Chapter 7.—DEATH PENALTY

Sec.

- 23-701. Capital punishment—How inflicted.
- 23-702. Commissioners to provide death chamber, appoint executioner and assistants, and fix fees.
- 23-703. Sentences to be in writing and certified copy furnished superintendent of District jail.
- 23-704. Who may be present at executions—Fact of execution to be certified to clerk of court.
- 23-705. Who may not be present at executions.
- 23-706. Place of execution.

§ 23-701. Capital punishment—How inflicted.

The mode of capital punishment shall be by the process commonly known as electrocution. The punishment of death shall be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of such current shall be continued until such convict is dead. (Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1.)

NOTES TO DECISIONS

1. Authority to execute capital punishment

Regardless of the legislation under which the appeal was brought, Congress had unmistakably invested the respondent, the superintendent of the jail, with authority within the District to carry into effect the death sentence in capital cases. *Price v. Moyer* (1923, 288 F. 269, 53 App. D.C. 63).

§ 23-702. Commissioners to provide death chamber, appoint executioner and assistants, and fix fees.

The commissioners of the District of Columbia are authorized and required to provide a death chamber and necessary apparatus for inflicting the death penalty by electrocution, to designate an executioner and necessary assistants, not exceeding three in number, and to fix the fees thereof for services. (Jan. 30, 1925, 43 Stat. 799, ch. 115, § 2.)

CROSS REFERENCE

Place of execution, see § 23-706.

§ 23-703. Sentences to be in writing and certified copy furnished superintendent of District jail.

Upon the conviction of any person in the District of Columbia of a crime the punishment of which is death, it shall be the duty of the presiding judge to sentence such convicted person to death according to the terms of sections 23-701 to 23-704, and to make such sentence in writing, which shall be filed with the papers in the case against such convicted person, and a certified copy thereof shall be transmitted, by the clerk of the court in which such sentence is pronounced, to the superintendent of the District jail, not less than ten days prior to the time fixed in the sentence of the court for the execution of the same. (Jan. 30, 1925, 43 Stat. 799, ch. 115, § 3.)

CROSS REFERENCE

Time of execution, see § 23-114.

NOTES TO DECISIONS

1. Construction

This section must be read in connection with § 23-114 and with their legislative history. When this is done, it is clear that this section is intended not for the benefit of defendants upon whom death sentences are to be imposed, but as an aid to the prison authorities charged with execution of such sentences. *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

§ 23-704. Who may be present at executions—Fact of execution to be certified to clerk of court.

At the execution of the death penalty as herein prescribed there shall be present the following persons, and no more, to wit:

The executioner and his assistant; the physician of the prison and one other physician if the condemned person so desires; the condemned person's counsel and relatives, not exceeding three, if they so desire; the prison chaplain and such other ministers of the Gospel, not exceeding two, as may attend by desire of the condemned; the superintendent of the prison, or, in the event of his disability, a deputy designated by him; and not fewer than three nor more than five respectable citizens whom the superintendent of the prison shall designate, and, if necessary to insure their attendance, shall subpoena to be present. The fact of execution shall be certified by the prison physician and the executioner to the clerk of the court in which sentence was pronounced, which certificate shall be filed by the clerk with the papers in the case. (Jan. 30, 1925, 43 Stat. 799, ch. 115, § 4.)

§ 23-705. Who may not be present at executions.

No person whatever under the age of twenty-one years, shall be allowed to witness any such execution. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1203.)

§ 23-706. Place of execution.

Persons adjudged to suffer death shall be executed within the walls of the jail of the District, or within the yard or inclosure thereof, and not elsewhere. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1200.)

Chapter 8.—OUT-OF-STATE WITNESSES

Sec.

23-801. Definitions.

23-802. Hearing on recall of out-of-state witnesses by State Courts—Determination—Travel allowance—Penalty.

23-803. Certificate providing for the attendance of witnesses at criminal prosecutions in the District of Columbia—Travel allowance—Penalty.

23-804. Exemption from arrest.

§ 23-801. Definitions.

As used in this chapter—

(a) The term "witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(b) The word "State" includes any Territory of the United States and the District of Columbia.

(c) The word "summons" includes a subpoena, order, or other notice requiring the appearance of a witness. (Mar. 5, 1952, 66 Stat. 15, ch. 82, § 2.)

SHORT TITLE

Section 1 of act Mar. 5, 1952, provided: "This Act [this chapter] may be cited as the 'District of Columbia Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings.'"

SEPARABILITY OF PROVISIONS

Section 6 of act Mar. 5, 1952, provided: "If any provision of this Act [this chapter] or the application thereof to any person or circumstances is held invalid, such invalidity shall not apply to other provisions of this Act."

§ 23-802. Hearing on recall of out-of-state witnesses by State Courts—Determination—Travel allowance—Penalty.

(a) If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in the District of Columbia certifies under the seal of such court (1) that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, (2) that a person being within the District of Columbia is a material witness in such prosecution, or grand jury investigation, and (3) that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of the municipal court for the District of Columbia, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at such hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other State, and that the laws of the State in which the prosecution is pending, or grand jury investigation has commenced or is about to commence and of any other State through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In

any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance in the requesting State, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting State.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and \$5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from the municipal court for the District of Columbia. (Mar. 5, 1952, 66 Stat. 15, ch. 82, § 3.)

§ 23-803. Certificate providing for attendance of witnesses at criminal prosecutions in the District of Columbia—Travel allowance—Penalty.

(a) If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in the District of Columbia, is a material witness in a prosecution pending in a court of record in the District of Columbia, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer

of the United States or the District of Columbia to assure his attendance in the District of Columbia. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in the District of Columbia he shall be tendered the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending or where the grand jury investigation has commenced or is about to commence, and \$5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the District of Columbia a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into the District of Columbia, fails without good cause to attend and testify as directed in the summons, he may be punished in the manner provided for the punishment of any other witness who disobeys a summons issued from the court in the District of Columbia where the prosecution has been instituted or the grand jury investigation has commenced or is about to commence. (Mar. 5, 1952, 66 Stat. 15, ch. 82, § 4.)

§ 23-804. Exemption from arrest.

(a) If a person comes into the District of Columbia in obedience to a summons directing him to attend and testify in the District of Columbia he shall not while in the District of Columbia pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into the District of Columbia under the summons.

(b) If a person passes through the District of Columbia while going to another State in obedience to a summons to attend and testify in that State or while returning therefrom, he shall not while so passing through the District of Columbia be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into the District of Columbia under the summons. (Mar. 5, 1952, 66 Stat. 16, ch. 82 § 5.)

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TITLE 24.—PRISONERS AND THEIR TREATMENT

Chap.	Sec.
1. Probation	24-101
2. Indeterminate Sentences and Paroles.....	24-201
3. Insane Criminals.....	24-301
4. Prisons and Prisoners.....	24-401
5. Rehabilitation of Alcoholics.....	24-501
6. Rehabilitation of Users of Narcotics.....	24-601

Chapter 1.—PROBATION

Sec.
24-101. Probation system—Probation officers—Appointment.
24-102. When probation may be granted—Statement to probationer—Rules and regulations.
24-103. Investigations and reports by probation officers.
24-104. Discharge from or continuance of probation—Modification or revocation of order.
24-105. Quarters for probation officers—Payment of expenses.
24-106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

§ 24-101. Probation system—Probation officers—Appointment.

The United States District Court for the District of Columbia in general term may appoint one probation officer, and as many volunteer assistant probation officers, male or female, as occasion may require; and the Municipal Court for the District of Columbia may appoint one chief probation officer, and two assistant probation officers, one of which assistant probation officers shall serve for one year only, and one stenographer and typist, who shall serve for one year only, and as many volunteer assistant probation officers, male or female, as occasion may require.

All such probation officers and assistants shall be appointed for a term of two years, with the exception of one assistant probation officer and one stenographer and typist, who shall be appointed for one year only, and may be removed by the respective courts appointing them. All such volunteer probation officers shall serve without compensation, and shall have such powers and perform such duties as may be assigned to them by said courts. (June 25, 1910, 36 Stat. 864, ch. 433, § 1; Mar. 4, 1919, 40 Stat. 1324, ch. 122; Mar. 4, 1923, 42 Stat. 1488, ch. 265; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

Provisions which prescribed salaries for the specified positions were omitted in view of act Mar. 4, 1923, which reclassified employees by salary grades.

AMENDMENT

1919—Act Mar. 4, 1919, raised the number of assistant probation officers from one to two, of which one shall serve for one year only, and provided for "one stenographer and typist who shall serve for one year only."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCE

Probation department for juvenile court, see § 11-922 et seq.

NOTES TO DECISIONS

Federal Probation Law 1
Sentence suspended indefinitely 2
Suspension of sentence 3

1. Federal probation law

The Federal Probation Law, 18 U.S. Code former § 724 [now U.S. Code, title 18, § 3651], does not apply to the District of Columbia. *Cooper v. U.S.* (D.C. Mun. App. 1946, 48 A. 2d 771).

2. Sentence suspended indefinitely

When Federal District Court exceeded its power and ordered that sentence be suspended indefinitely during good behavior, mandamus was the proper remedy. *Ex parte United States* (1917, 37 S. Ct. 72, 242 U.S. 27, 61 L. Ed. 129, L.R.A. 1917E, 1178, Ann. Cas. 1917B, 355).

3. Suspension of sentence

Where defendant was convicted for violation of a traffic regulation, and execution of sentence was suspended, such suspension must be vacated because such power is derived from the Federal Probation Act, U.S. Code, title 18, § 3651. Though under the §§ 24-101 to 24-105 the court is authorized to suspend execution, clearly the suspension in this case was not and did not purport to be exercised under the authority of the probation law and was beyond the power of the court. *Ziegler v. District of Columbia* (D.C. Mun. App. 1950, 71 A. 2d 618).

§ 24-102. When probation may be granted—Statement to probationer—Rules and regulations.

The United States District Court for the District of Columbia shall have power in any case, except those involving treason, homicide, rape, arson, kidnaping, or a second conviction of a felony, after conviction or after a plea of guilty of a felony or misdemeanor and after the imposition of a sentence thereon but before commitment, and the said Municipal Court for the District of Columbia shall have like power, after a conviction or a plea of guilty in any case of misdemeanor, to place the defendant upon probation, provided that it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as of the defendant would be subserved thereby, and may suspend the imposition or execution of the sentence, as the case may be, for such time and upon such terms as it may deem best and place the defendant in charge of a probation

officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time when he is placed thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. No person shall be put on probation except with his or her consent. (June 25, 1910, 36 Stat. 864, ch. 433, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

PARTIAL REPEAL

Act June 20, 1958, 72 Stat. 216, Pub. L. 85-463, § 2, provides in part that this section is repealed insofar as it applies to the United States District Court for the District of Columbia.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

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CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCE

Duties concerning persons found guilty under laws against prostitution, see § 22-2703.

Suspension of sentence in cases in Municipal Court, see § 11-757.

NOTES TO DECISIONS

Appeal after probation 1
Power of Municipal Court 2
Reduction of sentence 3
Restitution 4
Time for probation 5

1. Appeal after probation

A defendant, who has been convicted and placed on probation, being subject to surveillance and discipline and terms and conditions imposed on him, retains his right of appeal, whether probation follows actual imposition of sentence or suspension of imposition of sentence. *Blohm v. District of Columbia* (D.C. Mun. App. 1955, 113 A. 2d 111).

2. Power of municipal court

The Municipal Court of the District of Columbia may in its discretion order restitution or reparation as a condition of probation. *Basile v. United States* (D. C. Mun. App. 1944, 38 A. 2d 620).

3. Reduction of sentence

Where order of probation was void because entered after defendant had been committed, release of defendant under the probation order was premature and it was duty of court to cause him to be recommitted, and the void probation order did not amount to an unconditional reduction of sentence. *Peden v. Fleming* (1946, 153 F. 2d 800, 81 U.S. App. D.C. 2).

The effect of a probation order is not to reduce sentence to time already served, but, while on probation, prisoner continues to be, in a sense, in custodia legis and the sentence is, through grace of this section, merely in a state of suspended animation, if probation has been properly granted. *Id.*

4. Restitution

Restitution was a proper probationary condition, notwithstanding contention that it amounted to use of criminal process to collect civil debt. *Freeman v. United States* (1958, 254 F. 2d 352, 103 U.S. App. D.C. 15).

Trust funds coming into possession of Chief Probation Officer of Federal District Court in criminal cases in which defendant is placed on probation on condition of making restitution or paying maintenance are not subject to garnishment. *Manley v. Butterfield* (1953, 111 F. Supp. 783).

Where defendant was not placed on probation and money which he informally gave to Probation Officer was not received to make restitution to aggrieved parties for actual damages or loss caused by offenses for which he had been convicted and court who sentenced defendant made no order in respect to restitution, money was subject to garnishment. *Id.*

Conditioning probation on restitution, to be made by paying compensation award, and revoking probation for failure to pay the award, was not improper as imprisoning probationer for debt. *Basile v. U. S.* (D. C. Mun. App. 1944, 38 A. 2d 620).

Failure of Congress to specifically authorize restitution as a condition of probation in District of Columbia, though specific authority was given under 18 U.S. Code former § 724 et seq. [now U.S. Code, title 18, § 3651], did not negative power of District of Columbia court to impose such a condition. *Id.*

Where defendant was convicted of failure to provide compensation insurance policy and placed on probation, conditioning the probation on his making restitution to compensation claimant by paying the total award of compensation was proper. *Id.*

5. Time for probation

Under this section, probation may be granted after appeal to and affirmance by appellate court but before service of sentence has begun. *Gaston v. U.S.* (1944, 143 F. 2d 10, 79 U.S. App. D.C. 37, certiorari denied 64 S. Ct. 1286, 322 U. S. 764, 88 L. Ed. 1591).

Under this section providing that probation may be granted after imposition of sentence but before commitment, Municipal Court of District of Columbia did not have power to enter a probation order after defendant had been committed. *Peden v. Fleming* (1946, 153 F. 2d 800, 81 U.S. App. D.C. 2).

§ 24-103. Investigations and reports by probation officers.

The probation officers shall carefully investigate all cases referred to them by the court, and make recommendations to the court to enable it to decide whether the defendant ought to be placed under probation, and shall report to the court, from time to time as may be required by it, touching all cases in their care, to the end that the court may be at all times fully informed of the circumstances and conduct of probationers. (June 25, 1910, 36 Stat. 864, ch. 433, § 3.)

CROSS REFERENCE

Services of a psychiatrist and a psychologist available to probation officers, see § 24-106.

NOTES TO DECISIONS

Abuse of discretion 1
Recommending sentence 2

1. Abuse of discretion

Where probationer, against whom judgment of pater-nity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

2. Recommending sentence

Where accused pleaded guilty to maintaining disorderly house and, on plea for probation, trial judge announced, that probation officer had recommended maxi-

imum sentence and, on objection to consideration of recommendation, trial judge, without express ruling thereon, sentenced defendant to the near maximum penalty, sentence was not set aside. *Ishkanian v. U. S.* (D. C. Mun. App. 1944, 35 A. 2d 176).

A recommendation by a probation officer to trial judge as to sentence to be imposed is not merely unauthorized by this chapter but is an infringement upon court's judicial function, which officer has no right to exercise and judge no right to permit. *Id.*

§ 24-104. Discharge from or continuance of probation—Modification or revocation of order.

Upon the expiration of the term fixed for such probation, the probation officer shall report that fact to the court, with a statement of the conduct of the probationer while on probation, and the court may thereupon discharge the probationer from further supervision, or may extend the probation, as shall seem advisable. At any time during the probationary term the court may modify the terms and conditions of the order of probation, or may terminate such probation, when in the opinion of the court the ends of justice shall require, and when the probation is so terminated the court shall enter an order discharging the probationer from serving the imposed penalty; or the court may revoke the order of probation and cause the rearrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed, or both, as the case may be, and the time of probation shall not be taken into account to diminish the time for which he was originally sentenced. (June 25, 1910, 36 Stat. 865, ch. 433, § 4.)

NOTES TO DECISIONS

- Abuse of discretion 1
- Extension of probation 2
- Probable cause 3
- Revocation 4
- Rights of probationer 5

1. Abuse of discretion

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or wilful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

2. Extension of probation

Where this section under which probation was extended did not require a hearing either at the time of extension or of revocation of probation, and procedure in the statute was complied with, probationer was not entitled to order setting aside revocation of extended probation on ground that extension of probation was entered ex parte. *United States v. Freeman* (1958, 160 F. Supp. 532, affirmed 254 F. 2d 352, 103 U.S. App. D.C. 15).

The extension of the probation every six months after the return unexecuted of an attachment for violation of terms of probation kept the probation alive and did not violate this section, which does not limit the number or length of extensions of probation. *Cooper v. U. S.* (D. C. Mun. App. 1946, 48 A. 2d 771).

3. Probable cause

A probationer who had been arrested on another charge was properly arrested by probation officer for violation of terms of probation when she appeared in another court to answer the new charge, since only the execution of the sentence had been suspended and the requirement as to probable cause for the commission of an offense did not

apply to her. *Cooper v. U. S.* (D. C. Mun. App. 1946, 48 A. 2d 771).

4. Revocation

The court had jurisdiction to reconsider defendant's probation and revoke it if the public interest seemed to justify such action. *Cooper v. U. S.* (D. C. Mun. App. 1946, 48 A. 2d 771).

That the judge who had originally sentenced defendant was no longer in office did not prevent another judge of the same court from revoking the defendant's probation. *Id.*

5. Rights of probationer

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by statute, and, apart from statute, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens v. District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 147).

§ 24-105. Quarters for probation officers—Payment of expenses.

The chief probation officer of each court shall be entitled, for himself and his assistants, to a room in the building occupied by that court, and all necessary stationery and supplies for the transaction of the business of his office, and all the probation officers except volunteer officers shall be entitled to their necessary expenses in performing the duties of their office, under the direction of the court, the amount of the expense for such stationery, supplies, and expenses to be fixed and allowed by the court upon proper vouchers submitted to it by the probation officers, and accounts duly verified by their oath. (June 25, 1910, 36 Stat. 865, ch. 433, § 5; Mar. 4, 1919, 40 Stat. 1325, ch. 122.)

CODIFICATION

Provisions of section 5 of act June 25, 1910, as amended by act Mar. 4, 1919, which authorized an appropriation of \$8,000 for the payment of expenses, are omitted as obsolete.

CROSS REFERENCE

Annual estimate of expenditures, see § 47-213.

§ 24-106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

The Commissioners shall appoint a qualified psychiatrist and a qualified psychologist whose services shall be available to the following officers to assist them in carrying out their duties: (1) In criminal cases, the judges of the district court and the probation officers of the district court and the municipal court, (2) such officers of the juvenile court of the District of Columbia as the judge thereof shall designate, (3) such officers of the Department of Corrections as the Director thereof shall designate, and (4) the Board of Parole of the District. (June 29, 1953, 67 Stat. 105, ch. 159, § 405; Aug. 16, 1954, 68 Stat. 730, ch. 737, § 1.)

AMENDMENT

1954—Act Aug. 16, 1954, substituted "(1) In criminal cases, the judges of the district court and the probation officers", for "(1) the probation officers."

CROSS REFERENCES

Board of Parole, see § 24-201a.

Department of Corrections, see § 24-441.

Investigations and reports by probation officers, see § 24-103.

Juvenile Court, physical and mental examinations and treatment of child, see § 11-926.

Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

Sec.

24-201. Repealed.

24-201a. Board of Parole—Rules and regulations.

24-201b. Transfer of powers of Board of Indeterminate Sentence and Parole—Duties of parole executive—Cooperation with Board.

24-201c. Applications for reduction of minimum sentence—Jurisdiction of court—Limits on reduction for certain crimes.

24-202. Repealed.

24-203. Imposition of indeterminate sentences authorized—Life and death sentences.

24-204. Parole authorized—Conditions—Custody.

24-205. Violation of parole—Warrant—Arrest—Return to confinement.

24-206. Revocation of parole after retaking—Hearing—New parole.

24-207. Repeal of inconsistent laws—Savings provision.

24-208. Power of Board—Prisoners sentenced to more than 180 days—Minimum sentence required to be served.

24-209. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia.

§ 24-201. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Section, act July 15, 1932, 47 Stat. 696, ch. 492, § 1, related to former Board of Indeterminate Sentence and Parole, and is now covered by §§ 24-201a to 24-201c.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality 1

Parole board 2

Purpose 3

Removal of prisoner from district 4

Sentence 5

1. Constitutionality

This act does not violate the Fifth Amendment, and is not invalid as a delegation of judicial power to the executive branch of the Government. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402). See, also, *Tomlin v. United States* (1936, 84 F. 2d 879, 66 App. D.C. 32).

2. Parole board

Authority of the new board and the system of parole which it was to supervise were confined to the penal institutions in the District of Columbia, and only persons therein confined were to be affected. *Aderhold v. Lee* (C.C.A. Ga. 1934, 68 F. 2d 824, certiorari denied 54 S. Ct. 718, 292 U.S. 633, 78 L. Ed. 1486).

Board pronouncing final judgment was vested by statute with full jurisdiction to determine the question at issue; at which the prisoner was accorded a fair hearing; to which he made no objection; and in which his only complaint is that he was not brought before the board upon a proper warrant. *Jarman v. United States* (C.C.A. Va. 1937, 92 F. 2d 309).

3. Purpose

Title 18, U.S. Code former §§ 710, 715—716b [now U.S. Code, title 18, §§ 4161, 4164, 4201, 4203, 4204] and this chapter regarding powers of federal board of parole and District of Columbia Board of Indeterminate Sentence and Parole indicate congressional intent to provide a uniform administration of federal and District laws with respect to the control of released prisoners. *Gould v. Green* (1944, 141 F. 2d 533, 78 U.S. App. D.C. 363).

4. Removal of prisoner from district

Prisoner sentenced after creation of special parole board for the District could, after federal board was given equal authority over those in District, be removed to penitentiary outside of the District. *MacAboy v. Klecka* (D.C. Md. 1938, 22 F. Supp. 960).

5. Sentence

Sentence imposed under this act for violation of Liquor Taxing Act of 1934, was valid. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

§ 24-201a. Board of Parole—Rules and regulations.

A Board of Parole for the penal and correctional institutions of the District of Columbia is hereby created to consist of three members appointed by the Commissioners of the District of Columbia, one of whom shall serve on a full-time basis and be designated by the Commissioners as Parole Executive. The other two members shall serve without compensation, one of whom shall be elected Chairman of the said Board. The Board of Parole shall select its own Chairman and shall have power to establish rules and regulations for its procedure. (July 17, 1947, 61 Stat. 378, ch. 263, § 1.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 33 dated May 28, 1953, and effective June 21, 1953, established a Board of Parole under the direction and control of a Commissioner and consisting of three members for the purpose of developing and administering an effective parole system. The new Board was authorized to exercise all powers of the previously existing Board of Parole which the order abolished. All positions under the previously existing Board of Parole were transferred to the new Board including the duties, powers, and authorities of all officers and employees. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

CROSS REFERENCE

Services of a psychiatrist and a psychologist available to the Board of Parole, see § 24-106.

§ 24-201b. Transfer of powers of Board of Indeterminate Sentence and Parole—Duties of parole executive—Cooperation with Board.

Upon appointment of the members of the Board of Parole, the powers of the Board of Indeterminate Sentence and Parole created by section 24-201, not specifically repealed, shall be transferred to and vested in the Board of Parole. The officers and employees of the Board of Indeterminate Sentence and Parole, except the members thereof, together with all official records, furniture and supplies, and all unexpended balances of any appropriations, shall be transferred to the Board of Parole. It shall be the duty of the parole executive to prepare for the consideration of the Board of Parole all applications of prisoners for parole in such form and at such times and together with such information and records as the Board of Parole may require, to perform such administrative duties as the Board may prescribe, and to supervise prisoners on parole in accordance with the terms and conditions prescribed by the Board. The Department of Corrections, and all other agencies and officials of the District shall cooperate with the Board and shall furnish the Board with such information, files, and records as it may deem necessary in the performance of its duties: *Provided*, That confidential information and records shall not be required to be produced. (July 17, 1947, 61 Stat. 378, ch. 263, § 2.)

§ 24-201c. Applications for reduction of minimum sentence—Jurisdiction of court—Limits on reduction for certain crimes.

When by reason of his training and response to the rehabilitation program of the Department of Corrections it appears to the Board that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, and that

his immediate release is not incompatible with the welfare of society, but he has not served his minimum sentence, the Board in its discretion may apply to the court imposing sentence for a reduction of his minimum sentence. The court shall have jurisdiction to act upon the application at any time prior to the expiration of the minimum sentence and no hearing shall be required. If a prisoner is serving a sentence for a crime for which a minimum sentence is prescribed by section 24-203(b) his minimum sentence shall not be reduced under this section below the minimum sentence so prescribed. (July 17, 1947, 61 Stat. 379, ch. 263, § 4; June 29, 1953, 67 Stat. 92, ch. 159, § 201 (b).)

AMENDMENT

1953—Act June 29, 1953, added provisions forbidding reduction of a minimum sentence when said sentence was prescribed by section 24-203(b).

EFFECTIVE DATE OF 1953 AMENDMENT

Section 201(c) of act June 29, 1953, provided that "The amendments made by this section [to this section and section 24-203] shall not apply with respect to any sentence imposed for a crime committed before the date of enactment of this Act [June 29, 1953]."

§ 24-202. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Section, acts July 15, 1932, 47 Stat. 697, ch. 492, § 2; June 6, 1940, 54 Stat. 242, ch. 254, § 1, related to employees of Board of Indeterminate Sentence and Parole, and is now covered by section 24-201b.

§ 24-203. Imposition of indeterminate sentences authorized—Life and death sentences.

(a) Except as provided in subsections (b) and (c), in imposing sentence on a person convicted in the District of Columbia of a felony, the justice or judge of the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a minimum period not exceeding one-third of the maximum sentence imposed, and any person so convicted and sentenced may be released on parole as herein provided at any time after having served the minimum sentence. Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed fifteen years' imprisonment. Nothing in sections 22-2601, 24-201, 24-202 to 24-209 and 24-425 shall abrogate the power of the justice or judge to sentence the convicted prisoner to the death penalty as on June 6, 1940 or thereafter may be provided by law.

(b) The minimum sentence imposed under this section on a person convicted of an assault with intent to commit rape in violation of section 22-501, or of armed robbery in violation of section 22-3202 shall be not less than two years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in section 22-3201, providing for the control of dangerous weapons in the District of Columbia. The minimum sentence imposed under this section on a person convicted of rape in violation of section 22-2801, shall not be less than seven years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined. The maximum sentence in each case to which this subsection applies shall not be less than three times the minimum

sentence imposed, and shall not be more than the maximum fixed by law.

(c) For a person convicted of—

(1) a violation of section 22-505 (relating to assault with a dangerous weapon on a police officer) occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction;

(2) a violation of section 22-3203, providing for the control of dangerous weapons in the District (relating to illegal possession of a pistol), occurring after the person has been convicted of violating that section; or

(3) a violation of section 22-3601 (relating to possession of implements of crime) occurring after the person has been convicted in the District of Columbia of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction,

the minimum sentence imposed under this section shall not be less than one year, and the maximum sentence shall not be less than three times the minimum sentence imposed nor more than the maximum fixed by law. (July 15, 1932, 47 Stat. 697, ch. 492, § 3; June 6, 1940, 54 Stat. 246, ch. 254, § 2; June 29, 1953, 67 Stat. 91, ch. 159, § 201a.)

REFERENCES IN TEXT

Sections 24-201 and 24-202, referred to in subsec. (a), were repealed by act July 17, 1947, 61 Stat. 379, ch. 263, § 7.

Subsection (b) of this section, as added by act June 29, 1953, provided in part as follows: "... armed robbery in violation of section 810 of such Act (D.C. Code 22-3202)". Section 810 of act March 3, 1901, is found in the code as section 22-2901 and concerns the crime of robbery. Section 22-3202 concerns the commission of a crime while armed.

AMENDMENTS

1953—Act June 29, 1953, added "(a) Except as provided in subsections (b) and (c)" at the beginning of the first sentence, and added subsections. (b) and (c).

1940—Act June 6, 1940, amended section generally, and among other changes, increased the minimum period of sentence from one-fifth of the maximum period fixed by law to one-third of said period.

EFFECTIVE DATE OF 1953 AMENDMENT

Amendment of section by act June 29, 1953, not applicable with respect to any sentence imposed for a crime committed before June 29, 1953, see section 201(c) of act June 29, 1953, set out as a note under section 24-201c.

SHORT TITLE

Section 1 of act June 29, 1953, provided that: "This Act [which added §§ 1-319, 2-1901, 4-134a, 4-134b, 4-134c, 4-156a, 4-186, 4-187, 11-332, 22-109, 22-1002, 22-1515, 22-3601, 23-115, 23-306, 24-106, 25-128, 25-139, amended §§ 4-134, 4-135, 4-137, 4-156, 11-605, 11-606, 11-756, 11-1402, 11-1417, 22-201, 22-505, 22-507, 22-1107, 22-1121, 22-1207, 22-1301, 22-1502, 22-1505, 22-1508, 22-1514, 22-2201, 22-2202, 22-2203, 22-2204a, 22-2205, 22-2208, 22-2701, 22-3203, 22-3204, 22-3207, 22-3208, 22-3210, 22-3214, 22-3302, 23-401, 23-411, 23-608, 24-201c, 24-203, 25-107, 25-109 to 25-111, 25-115, 25-121, 25-128, 25-129, repealed § 4-109, and enacted provisions set out as notes under §§ 1-319, 4-186, 24-201c, 25-109] may be cited as the 'District of Columbia Law Enforcement Act of 1953'."

SAVINGS PROVISION

Section 2(b) of act June 6, 1940, provided that act June 6, 1940 should not affect the penalty, sentence, or forfeiture for felonies committed prior thereto.

ELIGIBILITY FOR PAROLE OF PERSONS CONVICTED OF
FELONIES COMMITTED PRIOR TO JUNE 6, 1940

Section 9 of act June 6, 1940, provides as follows: "(a) Where as justice or a judge of the District Court of the United States for the District of Columbia has imposed or shall impose a life sentence on a prisoner convicted of a felony committed before this amendatory act takes effect such prisoner shall be eligible to parole under the provisions of said act approved July 15, 1932, as amended, after having served fifteen years of his life sentence.

"(b) Where a justice or judge of the District Court of the United States has imposed or shall impose a sentence for a definite term of imprisonment on a prisoner convicted of a felony committed before this amendatory act takes effect, such prisoner shall be eligible to parole under the provisions of said act approved July 15, 1932, as amended, after having served one-third of the sentence imposed."

CROSS REFERENCES

Assault with intent to kill, rob, rape, or poison, see § 22-501.

Committing crime when armed, added punishment, see § 22-3202.

Definition of "crime of violence", see § 22-3201.

Rape, definition and penalty, see § 22-2801.

Robbery, see § 22-2901.

NOTES TO DECISIONS

Application of statute 1
Constitutionality 2
Contempt 3
Crime committed before passage of act 4
Jurisdiction upon conditional release 5
Meaning of indeterminate sentence 6
Second-degree murder 7
Sentences 8

1. Application of statute

This act is applicable to persons convicted in the District of Columbia of offenses defined in the general laws of the United States. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

2. Constitutionality

The Indeterminate Sentence Act applies to convictions in the District for offenses defined in the general laws of the United States, and thus applied is constitutionally valid. *Farnsworth v. Zerbst* (C.C.A. Ga., 1938, 98 F. 2d 541).

3. Contempt

This section is inapplicable to a criminal contempt conviction not only because it ought not and is not intended to apply, but also because it cannot be made applicable in view of fact that trial judge has nonarbitrary discretion in matter of sentence. *Warring v. Huff* (1941, 122 F. 2d 641, 74 App. D.C. 302, certiorari denied 62 S. Ct. 183, 314 U. S. 678, 86 L. Ed. 543).

4. Crime committed before passage of act

Indeterminate Sentence Act was not applicable where crime of grand larceny was committed before passage of that act. *De Benque v. United States* (1936, 85 F. 2d 202, 66 App. D.C. 36, 106 A.L.R. 839, certiorari denied 56 S. Ct. 960, 298 U.S. 681, 80 L. Ed. 1402, rehearing denied 57 S. Ct. 6, 299 U.S. 620, 81 L. Ed. 457).

Where defendants were found guilty in 1939 of having committed robbery in District of Columbia on June 10, 1932, sentence to prison of 3 to 15 years was not void on theory that it should be for not less than 6 months nor more than 15 years. *U.S. v. Neufeld* (1945, 62 F. Supp. 600).

Claim of defendants that much had come to light after their conviction which would show that defendants were innocent could not be considered in passing on motion to set aside sentences as void because sentences allegedly did not comply with law in effect when offenses were committed. *Id.*

5. Jurisdiction upon conditional release

Where defendant was sentenced in 1936 to 30-year term for second-degree murder and was given conditional release when his accumulated good time and industrial good time allowances and his time already served totaled 30 years, defendant was thereafter under the supervision

of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. *Johnson v. Ward, U.S. Marshal, etc.* (1959, 171 F. Supp. 26).

6. Meaning of indeterminate sentence

An indeterminate sentence is one for the maximum period imposed by the court, subject to termination by the Parole Board at any time after service of the minimum period. *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325, certiorari denied 59 S. Ct. 71, 305 U.S. 595, 83 L. Ed. 377). See, also, *U.S. v. Neufeld* (1945, 62 F. Supp. 600).

An "indeterminate sentence" differs from a "determinate sentence" only in that the former imposes a minimum term; the good time and industrial time off provisions, however, are geared to the maximum term and the minimum term does not affect the computation. *Johnson v. Ward, U.S. Marshal etc.* (1959, 171 F. Supp. 26).

7. Second-degree murder

Indeterminate Sentence Act is inapplicable to second-degree murder and the existing statute providing a penalty of imprisonment for life or for not less than 20 years remains in effect. *Anderson v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

8. Sentences

Where the first sentences imposed under Indeterminate Sentence law were void, since the said statute was by its own terms inapplicable, the passing of the term did not deprive the court of power to resentence. *De Benque v. United States* (1936, 85 F. 2d 202, 66 App. D.C. 36, 106 A.L.R. 839, certiorari denied 56 S. Ct. 960, 298 U.S. 681, 80 L. Ed. 1402, rehearing denied 57 S. Ct. 6, 299 U.S. 620, 81 L. Ed. 457).

This provision brings the described sentences, although not indeterminate ones, within the new scheme by treating one-fifth thereof as the equivalent of the minimum in an indeterminate sentence and may include prisoners sentenced before the date of the act if imprisoned in the institutions under the jurisdiction of the board, but it does not extend the board's jurisdiction to prisoners in other institutions nor require their return to the District although convicted there before the act was passed. *Aderhold v. Lee* (C.C.A. 5, 1934, 68 F. 2d 824).

As maximum sentence on each count was 3 years, and as it did not exceed the maximum of 10 years fixed by law, and when minimum sentence on each of four counts was 2 years, the sentence therefore did not exceed one-fifth of the maximum period fixed by law of 10 years and was not in violation of Indeterminate Sentence and Parole law. *United States ex rel. Bracey v. Hill* (C.C.A. 3, 1935, 77 F. 2d 970). See, also, *Bracey v. Zerbst* (C.C.A. 10, 1938, 93 F. 2d 8).

Sentence fixing a maximum of 12 years conformed with the act, as did the minimum period of 3 years, being for a minimum period not exceeding one-fifth of the maximum period fixed by law. *McDonald v. Johnston* (C.C.A. 9, 1937, 86 F. 2d 329).

A sentence is legal so far as it is within provisions of law and jurisdiction of court, and is void only as to excess when such excess is separable and may be dealt with without disturbing valid portion of sentence. *U. S. v. Neufeld* (1945, 62 F. Supp. 600).

§ 24-204. Parole authorized—Conditions—Custody.

Whenever it shall appear to the Board of Parole that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his release is not incompatible with the welfare of society, and that he has served the minimum sentence imposed or the prescribed portion of his sentence, as the case may be, the Board may authorize his release on parole upon such terms and conditions as the Board shall from time to time prescribe. While on parole, a prisoner shall remain in the legal custody and under the control of the Attorney General of the United States or his authorized representative until the expiration of the maximum of the term or terms specified in his sen-

tence without regard to good time allowance. (July 15, 1932, 47 Stat. 697, ch. 492, § 4; June 6, 1940, 54 Stat. 242, ch. 254, § 3; July 17, 1947, 61 Stat. 378, ch. 263, § 3.)

AMENDMENTS

1947—Act July 17, 1947, amended section generally.

1940—Act June 6, 1940, inserted "or to such other place as the board may indicate," after "return to his home;" substituted the Attorney General or his representative in place of superintendent of the institution as the party to have control of the paroled prisoner; "without regard to the good-time allowance" for "less such good-time allowance as is, or may hereafter be, provided by law," and "paroled: Provided, however, That the conditions prescribed and the residential limits may be thereafter changed or modified as the Board in its judgment may determine" for "paroled, which limits, however, may be thereafter changed in the discretion of the board."

NOTES TO DECISIONS

Applicability of statute 1
Discretion of board 2
Intent of Congress 3
Jurisdiction upon conditional release 4
Prisoners confined outside district 5
Term of sentence 6

1. Applicability of statute

This section concerning paroles is not applicable to prisoner who is given a conditional release. *Johnson v. Ward, U.S. Marshal, etc.* (1959, 171 F. Supp. 26).

2. Discretion of board

A prisoner may be released from imprisonment before he has served the maximum period of his sentence, less lawful good-time allowance, only in the discretion of the Board of Indeterminate Sentence and Parole. *De Benque v. United States* (1936, 85 F. 2d 202, 66 App. D.C. 36, 106 A.L.R. 839).

The District of Columbia Board of Indeterminate Sentence and Parole has authority to impose conditions or to exercise supervision over prisoners convicted in the District of Columbia and thereafter released because of good conduct allowance. *In re Reed* (1947, 158 F. 2d 323, 81 U.S. App. D.C. 310).

3. Intent of Congress

Congress intended to provide uniform administration of Federal and District of Columbia law with respect to control of released prisoners. *Johnson v. Ward, U.S. Marshal* (1960, 278 F. 2d 245, 107 U.S. App. D.C. 365).

4. Jurisdiction upon conditional release

Where defendant was sentenced in 1936 to 30-year term for second-degree murder and was given conditional release when his accumulated good time and industrial good time allowances and his time already served totaled 30 years, defendant was thereafter under the supervision of the United States Board of Parole until his maximum sentence expired, not counting his good time and industrial time allowances. *Johnson v. Ward, U.S. Marshal etc.* (1959, 171 F. Supp. 26).

5. Prisoners confined outside district

Same privileges of parole are accorded to prisoners sentenced in the District of Columbia and committed to penal institutions outside of the District as to those sentenced and confined within the District. *Bracey v. Hill.* (D.C. Pa., 1935, 11 F. Supp. 148).

4. Parties interested

Where federal prisoner was released pursuant to U.S. Code, title 18, § 4164, a prisoner who has served term for which he was sentenced, less deductions allowed for good conduct, shall upon release be treated as if released on parole and be subject to laws relating to parole of federal prisoners until expiration of maximum term specified in sentence, released prisoner was under supervision of parole board until maximum sentence, not counting time off for good behavior, expired, as against contention that because parole law in effect when original criminal acts were committed provided for measurement of parole period by maximum sentence less good time allowance, prisoner could not be subject to condi-

tions of parole law after his release because he had served maximum sentence less good-time allowance. *Hicks v. Reid* (1952, 194 F. 2d 327, 90 U.S. App. D.C. 109, certiorari denied 73 S. Ct. 51, 344 U.S. 840, 97 L. Ed. 653).

§ 24-205. Violation of parole—Warrant—Arrest—Return to confinement.

If said Board of Parole, or any member thereof, shall have reliable information that a prisoner has violated his parole, said board, or any member thereof, at any time within the term or terms of the prisoner's sentence, may issue a warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner. Any officer of the District of Columbia penal institutions, any officer of the Metropolitan Police Department of the District of Columbia, or any federal officer authorized to serve criminal process within the United States to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such prisoner and returning or removing him to the penal institution of the District of Columbia from which he was paroled or to such penal or correctional institution as may be designated by the Attorney General of the United States. (July 15, 1932, 47 Stat. 698, ch. 492, § 5; June 6, 1940, 54 Stat. 242, ch. 254, § 4; July 17, 1947, 61 Stat. 378, ch. 263, § 2.)

AMENDMENT

1940—Act June 6, 1940, substituted "him to said penal institution," for "or removing him to the penal institution of the District of Columbia from which he was paroled or to such penal or correctional institution as may be designated by the Attorney General of the United States."

TRANSFER OF FUNCTIONS

Board of Parole was substituted for Board of Indeterminate Sentence and Parole to conform to act July 17, 1947, which transferred the powers of the Board of Indeterminate Sentence and Parole not specifically repealed, to the Board of Parole. See § 24-201b.

NOTES TO DECISIONS

Crime committed while on parole 1
Jail sentence while on probation 2
Jurisdiction 3
Parties interested 4
Return to confinement 5
Unexpired sentence 6

1. Crime committed while on parole

Petition for writ of habeas corpus, on the ground that petitioner's confinement after expiration of his sentence was illegal, was denied where petitioner had committed a crime while on parole, and the judge imposing the second sentence had no power to make it and the unexpired portion of the first sentence run concurrently. *Hammer v. Huff* (1940, 110 F. 2d 113, 71 App. D.C. 246).

2. Jail sentence while on probation

When probationer was actually serving a jail sentence while on probation with respect to another sentence, even in jail, he was subject to the conditions of the probation and by its terms he was to refrain from violation of law. *Burns v. United States* (1932, 53 S. Ct. 154, 287 U.S. 216, 77 L. Ed. 266).

3. Jurisdiction

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

4. Parties interested

Defendant who had not been paroled or retaken on warrant was not in a position to challenge the validity of this section under the Fourth Amendment. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

5. Return to confinement

Where petitioner who had been granted parole by Board of Indeterminate Sentence and Parole for District of Columbia was re-arrested on reliable information for parole violation, was taken to United States Penitentiary outside District, hearing was had before Board of Parole, and certificate of revocation was signed by assistant parole executive of United States Board of Parole and transmitted to warden, certificate of revocation was valid although not issued by Board of Indeterminate Sentence and Parole for District of Columbia. *Stillwell v. Looney* (1953, 110 F. Supp. 1, affirmed 207 F. 2d 359).

6. Unexpired sentence

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

§ 24-206. Revocation of parole after retaking—Hearing—New parole.

When a prisoner has been retaken upon a warrant issued by the Board of Parole, he shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board. At such hearing he may be represented by counsel. The Board may then, or at any time in its discretion, terminate the parole or modify the terms and conditions thereof. If the order of parole shall be revoked, the prisoner, unless subsequently reparaoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return to custody. For the purpose of computing commutation for good conduct, the remainder of the sentence originally imposed shall be considered as a new sentence. The time a prisoner was on parole shall not be taken into account to diminish the time for which he was sentenced.

In the event a prisoner is confined in, or as a parolee is returned to a penal or correctional institution other than a penal or correctional institution of the District of Columbia, the Board of Parole created by section 723a of title 18, U.S. Code, shall have and exercise the same power and authority as the Board of Parole of the District of Columbia had the prisoner been confined in or returned to a penal or correctional institution of the District of Columbia. (July 15, 1932, 47 Stat. 698, ch. 492, § 6; June 6, 1940, 54 Stat. 242, ch. 254, § 5; July 17, 1947, 61 Stat. 379, ch. 263, § 5.)

REFERENCE IN TEXT

Section 723a of title 18, U.S. Code, referred to in the text, was repealed by act June 25, 1948, 62 Stat. 862, ch. 645, § 21, and is now covered by section 4201 of title 18, U.S. Code.

AMENDMENTS

1947—Act July 17, 1947, amended section generally, and among other changes, permitted the parole violator, upon recommitment, to earn commutation for good conduct.

1940—Act June 6, 1940, added the provisions relating to the authority of the Board of Parole when a prisoner is removed to an institution designated by the Attorney General.

NOTES TO DECISIONS

Appearance and hearing 1
Assignment of counsel 2
Certificate of revocation 3
Commutation of sentence 4
Construction 5
Discretion of board 6
Habeas corpus 7
Jurisdiction 8
Revocation of parole 9
Right to counsel 10
Rules of evidence 11
Sentence upon reimprisonment 12
Service of sentence 13
Violation of conditions 14

1. Appearance and hearing

The provision of this section that a paroled prisoner arrested for violation of parole should be given an opportunity to appear before board meant an effective appearance, including presence of counsel, if desired by prisoner, and receipt of testimony if he has testimony to present. *Fleming v. Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

Participation by counsel in proceedings against parole violator need be no greater than necessary to insure that board is accurately informed from parolee's standpoint before it acts, and permitted presentation of testimony by parolee is governed by same rule. *Id.*

Prisoner who had been retaken on warrant issued by Board of Parole was entitled to explain before Board his assertion that he had been leading a decent life and was entitled to more than a pro forma proceeding, and he would either be given an opportunity to explain such matters before Board or be discharged. *United States ex rel. McCreary v. Kenton* (1960, 190 F. Supp. 689).

There is no denial of administrative due process to prisoner who is not entitled to have witnesses summoned and heard or who may not appear with counsel at hearing concerning revocation of parole. *Id.*

This section providing that a prisoner shall be given an opportunity to "appear" before the Board of Indeterminate Sentence and Parole of District of Columbia contemplates an effective appearance and not the mere physical presence of prisoner, and implies that he must be given a "hearing" wherein he is entitled to be represented by retained counsel, present evidence, and adduce witnesses. *In re Tate* (1946, 63 F. Supp. 961).

Under this section providing that a prisoner returned to an institution for alleged violation of his parole shall be given an opportunity to appear before the Board of Indeterminate Sentence and Parole of District of Columbia, a summary and informal hearing is sufficient. *Id.*

2. Assignment of counsel

Under this section providing that a prisoner returned to an institution for alleged violation of his parole shall be given an opportunity to appear before the Board of Indeterminate Sentence and Parole of District of Columbia, right of counsel is statutory and not constitutional, and prisoner would not be entitled to have counsel assigned to represent him. *In re Tate* (1946, 63 F. Supp. 961).

3. Certificate of revocation

Where petitioner who had been granted parole by Board of Indeterminate Sentence and Parole for District of Columbia was re-arrested on reliable information for parole violation, was taken to United States Penitentiary outside District, hearing was had before Board of Parole, and certificate of revocation was signed by assistant parole executive of United States Board of Parole and transmitted to warden, certificate of revocation was valid although not issued by Board of Indeterminate Sentence and Parole for District of Columbia. *Stillwell v. Looney* (1953, 110 F. Supp. 1, affirmed 207 F. 2d 359).

4. Commutation of sentence

Any right to commutation which defendant may have earned for good conduct at any time prior to recommitment was conditional and was forfeited by violation of parole. *Jones v. Clemmer* (1947, 163 F. 2d 852, 82 U.S. App. D.C. 288).

The amendment of July 17, 1947, to this section permitting parole violator to earn commutation for good conduct applied to service of remainder of sentences after recommitment, although sentences were originally imposed prior to such amendment. *Id.*

5. Construction

The amendment of July 17, 1947, to this section so as to permit parole violator upon recommitment to earn commutation for good conduct was remedial and was to be construed liberally. *Jones v. Clemmer* (1947, 163 F. 2d 852, 82 U.S. App. D.C. 288).

6. Discretion of board

Under this section, parolee should be permitted to present any pertinent matter, and, although board's discretion in continuing or revoking parole is uncontrolled, it cannot act in disregard of facts or refuse to hear argument. *Fleming v. Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

The granting or revocation of a parole is within discretion of Board of Indeterminate Sentence and Parole of the District of Columbia. *In re Tate* (1946, 63 F. Supp. 961).

7. Habeas corpus

A parole violator, who was returned to prison without permitting counsel who had previously represented prisoner to appear in his behalf or permitting his employer to testify, was entitled to release in habeas corpus proceeding. *Fleming v. Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

On writ of habeas corpus, District Court had no jurisdiction to review on merits a revocation of a parole by the Board of Indeterminate Sentence and Parole of District of Columbia, and only issue was whether petitioner had been deprived of his legal rights by manner in which revocation hearing was conducted. *In re Tate* (1946, 63 F. Supp. 961).

Where, at hearing before Board of Indeterminate Sentence and Parole of District of Columbia to revoke a parole, parolee's counsel was not permitted to appear, parolee's employer was not permitted to testify, and parole was revoked, parolee's right under this section to appear before the board was violated and parolee would be discharged on habeas corpus without prejudice to subsequent proceedings for revocation of his parole in conformity with this section. *Id.*

8. Jurisdiction

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

9. Revocation of parole

Failure of Board of Parole to give immediate hearing and revoke parole when paroled prisoner was returned to reformatory pursuant to sentences for crimes committed while on parole did not permit parole to continue running in satisfaction of original sentences after prisoner's reentry of reformatory. *Washington v. Clemmer* (1948, 169 F. 2d 300, 83 U.S. App. D.C. 268).

10. Right to counsel

In proceeding for writ of habeas corpus by petitioner who had been arrested for violation of conditional release and imprisoned, where there was no showing that petitioner was advised of his right to have his counsel present at hearing before parole board respecting revocation of conditional release, record failed to disclose that petitioner had made an election not to have his counsel present at hearing. *Moore v. Reid et al.* (1957, 246 F. 2d 654, 100 U.S. App. D.C. 373).

Where person was arrested and imprisoned for violation of conditional release and brought before the District of Columbia Parole Board for hearing on revocation of conditional release, under circumstances, his failure to have counsel present at hearing was critical and ef-

fectively denied him of his statutory right to appear before board. *Id.*

Under this section giving a paroled prisoner an opportunity to appear before Parole Board at hearing on revocation of his parole, appearance includes right to counsel if the prisoner so elects. *Id.*

11. Rules of evidence

Although parole violator is entitled to present testimony at hearing before board, it is not required that receipt of testimony be governed by strict rules of evidence. *Fleming v. Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

12. Sentence upon reimprisonment

Section 4164 of title 18, U.S. Code, providing that federal prisoners shall be subject to all provisions of law relating to the parole of United States prisoners, did not require that a District of Columbia prisoner who had his conditional release revoked be recommitted under good conduct deduction provisions of the general federal statutes without regard to this section providing for computation of good conduct deductions for recommitted parolees, and fact that prisoner, as a result of application of this section was required to serve more time than a prisoner convicted under general federal law did not deny prisoner the equal protection or due process of law as guaranteed by the Fifth Amendment. *Gilstrap v. Clemmer et al.* (C.A. Va. 1960, 284 F. 2d 804).

The provision of this former section that unexpired term of imprisonment of any paroled prisoner shall begin to run from date he is returned to institution does not require that original sentence shall run from date of his imprisonment for new and separate offense, but refers only to reimprisonment on original sentence under order of parole board. *Washington v. Clemmer* (1948, 169 F. 2d 300, 83 U.S. App. D.C. 268).

13. Service of sentence

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

14. Violation of conditions

District of Columbia Board of Indeterminate Sentence and Parole had power to impose conditions upon release of prisoner who had served full time of sentence with deductions for good conduct and in event of violation of conditions to recommit him to serve out balance of his term. *Gould v. Green* (1944, 141 F. 2d 533, 78 U.S. App. D.C. 363).

§ 24-207. Repeal of inconsistent laws—Savings provision.

All acts or parts of acts inconsistent with the provisions of sections 22-2601, 24-201, 24-202 to 24-209 and 24-425 are hereby repealed: *Provided, however,* That for any felony committed before July 15, 1932, the penalty, sentence, or forfeiture provided by law for such felony at the time such felony was committed shall remain in full force and effect and shall be imposed, notwithstanding said sections. (July 15, 1932, 47 Stat. 698, ch. 492, § 7.)

REFERENCES IN TEXT

Sections 24-201 and 24-202, referred to in the text, were repealed by act July 17, 1947, 61 Stat. 379, ch. 263, § 7.

NOTES TO DECISIONS

Prisoners confined outside District 1
Purpose 2

1. Prisoners confined outside District

Parole board under Indeterminate Sentence Act had no jurisdiction over prisoners convicted of murder in the District of Columbia, but confined in the United States penitentiary at Atlanta, Ga. *Aderhold v. Lee* (C.C.A. 5, 1934, 68 F. 2d 824, certiorari denied 54 S. Ct. 718, 292 U.S. 633, 78 L. Ed. 1486).

2. Purpose

This section was intended to repeal those provisions of existing acts requiring the imposition of a definite, as distinguished from an indeterminate, sentence. *Ander-son v. Rives* (1936, 85 F. 2d 673, 66 App. D.C. 174).

§ 24-208. Power of Board—Prisoners sentenced to more than 180 days—Minimum sentence required to be served.

The power of the Board of Parole shall extend to all prisoners whose sentences exceed one hundred and eighty days regardless of the nature of the offense: *Provided*, That in the case of a prisoner convicted of an offense other than a felony, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, the prisoner may not be paroled until he has served one-third of the sentence imposed, and in the case of two or more sentences for other than a felony, no parole may be granted until after the prisoner has served one-third of the aggregate sentences imposed. (July 15, 1932, 47 Stat. 698, ch. 492, § 9; June 6, 1940, 54 Stat. 242, ch. 254, § 7 (a); July 17, 1947, 61 Stat. 379, ch. 263, § 6.)

AMENDMENTS

1947—Act July 17, 1947, amended section generally.

1940—Act June 6, 1940, substituted "any prisoner convicted of two or more crimes other than a felony, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, when the aggregate of the sentences imposed is in excess of one year, said Board of Indeterminate Sentence and Parole may parole said prisoner, under the provisions of this Act, after said prisoner has served one-third of the aggregate sentence imposed", for "a prisoner convicted of felony committed prior to the effective date of this Act [July 15, 1932] and in the case of any prisoner convicted of misdemeanor when the aggregate sentence imposed is in excess of one year, said Board of Indeterminate Sentence and Parole may parole said prisoner, under the provisions of this Act, after said prisoner has served one-fifth of the sentence imposed."

CONVICTION OF PRIOR MISDEMEANORS OR FELONIES

Subsection (b) of section 7 of act June 6, 1940, provided: "In the case of a prisoner convicted of misdemeanors committed prior to the effective date of this amendatory act [June 6, 1940], when the aggregate sentence imposed is in excess of one year, and in the case of a prisoner convicted of felony committed prior to the effective date of said act approved July 15, 1932, said Board of Indeterminate Sentence and Parole may parole said prisoner under the provisions of said act approved July 15, 1932, as amended, after said prisoner has served one-fifth of the sentence imposed."

NOTES TO DECISIONS

1. Powers of board

Under this section creating District of Columbia Board of Indeterminate Sentence and Parole and providing for transfer of powers from federal board of parole to district board upon appointment of members of district board, the district board receives such powers over prisoners confined in penal institutions of district as existed in federal board of parole on date of appointment of members of district board, and not merely powers which existed in federal board of parole at time this chapter became effective. *Gould v. Green* (1944, 141 F. 2d 533, 78 U.S. App. D.C. 363).

Under this section creating District of Columbia Board of Indeterminate Sentence and Parole and providing for transfer of powers from federal board of parole over prisoners confined in penal institutions in District of Columbia to district board upon appointment of members of district board, authority of district board was not limited to prisoners thereafter convicted. *Id.*

§ 24-209. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia.

The Board of Parole created by section 723a of title 18, U.S. Code, shall have and exercise the same power and authority over prisoners convicted in the District of Columbia of crimes against the United States and now or hereafter confined in any United States penitentiary or prison (other than the penal institutions of the District of Columbia) as is vested in the Board of Indeterminate Sentence and Parole over prisoners confined in the penal institutions of the District of Columbia. (July 15, 1932, ch. 492, § 10, as added June 5, 1934, 48 Stat. 880, ch. 391.)

REFERENCE IN TEXT

Section 723a of title 18, U.S. Code, referred to in the text, was repealed by act June 25, 1948, 62 Stat. 862, ch. 645, § 21, and is now covered by section 4201 of title 18, U.S. Code.

NOTES TO DECISIONS

In general 1
Jurisdiction 2
Prisoner confined outside district 3
Release of prisoners
Not on parole 4
On parole 5
Service of sentence 6
United States prisoner 7

1. In general

There is no doubt that Congress intended this section to be applicable to persons convicted in the District of Columbia of crimes against the general laws of the United States. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D. C. 24).

This section gives to the United States Board of Parole the same power and authority over prisoners convicted in the District of Columbia of crimes against the United States as is vested in the Board of Indeterminate Sentence and Parole. *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325).

The term "prisoners confined in", as used in this section transferring power over prisoners confined in penal institutions of District of Columbia from United States Board of Parole to the District Board of Penal Institutions, is used to designate group of persons by institutions rather than to delimit powers of District board to such persons only while they are in confinement. *Ex parte Gould* (1943, 51 F. Supp. 354).

The power of United States Board of Parole to impose conditions on release on account of deductions for good conduct of United States prisoners passed from United States Board of Parole to District Board of Penal Institutions with respect to United States prisoners in penal institutions of the District of Columbia. *Id.*

2. Jurisdiction

Where petitioner was released from District of Columbia Reformatory on parole, but a warrant was subsequently issued against him for violation of that parole and petitioner was confined at a Federal Penitentiary in Kansas upon conviction of a new and separate offense in Missouri, District of Columbia Board of Parole did not lose its jurisdiction over petitioner to Federal Parole Board and had the right to file a detainer against petitioner. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

3. Prisoners confined outside district

This section is not inconsistent with the authority of the Attorney General to transfer prisoners from the District of Columbia. *Bracey v. Hill* (D.C. Pa. 1935, 11 F. Supp. 148).

The same privileges of parole are accorded prisoners sentenced in the District of Columbia and committed to

penal institutions outside of the District as to those sentenced and confined within the District. *Id.*

This section removes the question whether a defendant, who was sentenced in the District of Columbia, could be committed to a penal institution outside of the District because of the deprivation of parole. *Id.*

One sentenced for violation of the laws of the District of Columbia, convicted and confined in District, could be confined outside the District, and such confinement does not violate any constitutional rights. *MacAboy v. Klecka* (D.C. Md. 1938, 22 F. Supp. 960).

The United States Board of Parole and not the District Board of Penal Institutions, has jurisdiction over prisoners convicted in District of Columbia and transferred to some Federal institution other than penal institutions of the District. *Ex parte Gould* (1943, 51 F. Supp. 354).

4. Release of prisoners not on parole

Neither this section nor §§ 24-201 to 24-208 have any bearing upon the release of prisoners other than on parole, and neither restricts in any way the power of the United States Board to supervise prisoners so released from institutions other than in the District under the provisions of section 4 of the act of June 29, 1932 (U.S. Code, title 18, former § 716b [now U.S. Code, title 18, § 4164]). *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325).

5. Release of prisoners on parole

This act constituted an extension of power in the United States Board over District of Columbia prisoners in that it permitted the board to release such prisoners on parole from non-District institutions after serving only one-fifth of their maximum terms. *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325).

6. Service of sentence

The unexpired portion of a parole violator's original sentence begins to run not when he is in prison by arrest or conviction for a new and separate offense but only when his parole has been revoked and he has been returned to custody of revoking authority. *Noll v. Board of Parole for Government of District of Columbia* (1951, 191 F. 2d 653, 89 U.S. App. D.C. 206).

Where petitioner was released from District of Columbia Reformatory on parole but a subsequent warrant was issued for violation of that parole, fact that petitioner served time in various places of detention other than in District of Columbia did not fulfill requirement of serving District of Columbia sentence. *Id.*

7. United States prisoner

Prisoner sentenced for violation of the laws of the District of Columbia is a "United States prisoner" within the meaning of U.S. Code, title 18, § 716b [now U.S. Code, title 18, § 4164]. *MacAboy v. Klecka* (D.C. Md. 1938, 22 F. Supp. 960).

Chapter 3.—INSANE CRIMINALS

Sec.

24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.

24-302. Commitment of mentally ill person while serving sentence.

24-303. Restoration to sanity—Delivery of person to court—Delivery of person to Director of Department of Corrections.

§ 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.

(a) Whenever a person is arrested, indicted, charged by information, or is charged in the juvenile court of the District of Columbia, for or with

an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial, the court shall order the accused confined to a hospital for the mentally ill.

(b) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial, unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial.

(c) When any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(d) If any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, the court shall order such person to be confined in a hospital for the mentally ill.

(e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of

the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section: *Provided*, That the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

(f) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 927; Apr. 14, 1906, 34 Stat. 113, ch. 1624; July 2, 1945, 59 Stat. 311, ch. 217; Aug. 9, 1955, 69 Stat. 609, ch. 673, § 1.)

AMENDMENTS

1955—Act Aug. 9, 1955, amended section generally.

1945—Act July 2, 1945, inserted the references to the juvenile court of the District of Columbia wherever appearing, provided for committing the accused to the Gallinger Municipal Hospital for psychiatric evaluation, and for a report on the accused's sanity by the psychiatric staff, and substituted "Federal Security Administrator" for "Secretary of the Interior."

1906—Act Apr. 14, 1906, inserted "or is charged by an information" following "whenever a person is indicted."

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, and effective Aug. 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Gallinger Municipal Hospital and transferred all of its positions and functions to the new department. It further provided that within the department the District of Columbia General Hospital is to perform all functions previously performed by Gallinger Municipal Hospital. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

CROSS REFERENCES

Commitment and trial of mentally ill persons charged with crime, see § 301 et seq.

Commitment as feeble-minded person, see § 32-621.

General provisions concerning payment of hospitalization of insane persons, see § 21-318.

NOTES TO DECISIONS

Appeal	1
Burden of proof	2
Certification of sanity	3
Commitment procedure	4
Competency to stand trial	5
Conditional release	6
Constitutionality	7
Criminal responsibility	8
Directed verdict	9
Discretion of court	10
Estoppel	34
Evidence	11
Expense of support	12
Habeas corpus	13
Instructions	14
Judge's comments on evidence	15
Judicial determination	16
Jury trial	17
Law governing	18
Motion for leave to appeal	19
Potentially dangerous	20
Presumption of sanity	21
Pretrial mental examination	22
Procedure	23
Public policy	24
Purpose	25
Record of determination of competency	26
Release	27
Report of commission	28
Right to counsel	29
Setting aside verdict	30
Suspension of proceedings	31
Temporary leave	32
Verdict	33

1. Appeal

Where accused was found not guilty by reason of insanity and was committed to hospital and some two months thereafter accused petitioned for writ of habeas corpus without prepayment of costs and District Court denied such petition without a hearing and without stating reasons for denial, case would be remanded and District Court, if it rejected allegation of poverty, would be required to state basis for such rejection, and if leave to file without costs was permitted or if accused should pay necessary filing fees, hospital superintendent would be directed to report as to accused's condition, and upon the return the District Court should conduct hearing to determine whether accused had recovered sanity and would not be dangerous to himself or others in reasonable future. *Tatem, Sr. v. United States* (1960, 275 F. 2d 894, 107 U.S. App. D.C. 230).

Where it appeared to Court of Appeals reviewing conviction of an attempted abortion resulting in death that evidence did not permit trial of fact to conclude beyond a reasonable doubt that defendant had no mental disease or defect, case would be remanded with instructions that unless Government advised trial court without unreasonable delay that it can meet its burden of proof at a new trial, defendant is to be acquitted on ground of insanity and committed to a mental hospital and dealt with in accordance with statute, that is, hospitalized until she is free from such abnormal condition as would render her dangerous to herself or community in the reasonably

foreseeable future. *Hopkins v. United States* (1960, 275 F. 2d 155, 107 U.S. App. D.C. 126).

Where trial court did not have benefit of construction of Court of Appeals respecting this section providing for the conditional release of patients who have been committed to mental hospital after acquittal of crime by reason of insanity, Court of Appeals would refrain from review of evidence and allow trial court to evaluate it in the first instance in light of principles held applicable. *Hough v. United States* (1959, 271 F. 2d 458, 106 U.S. App. D.C. 192).

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for a new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

Appeal from commitment to St. Elizabeths Hospital under this section was moot in view of the fact that petitioner had been determined by a jury to be of sound mind and had been released from the hospital. *Savage v. White* (1926, 14 F. 2d 352, 56 App. D.C. 365).

2. Burden of proof

Petitioner maintaining proceeding for writ of habeas corpus to secure release from mental institution in which he has been confined upon his acquittal of criminal charge by reason of insanity has heavy burden of proof that he is not dangerous or potentially dangerous to himself or others, exceeding a standard of proof by a preponderance of evidence, and in a close case, even where preponderance of evidence favors the petitioner, the doubt, if reasonable doubt exists about danger to public or patient, cannot be resolved so as to risk danger to public or individual. *Ragsdale v. Overholser, Supt. etc.* (C.A.D.C. 1960, 281 F. 2d 943).

Where there is evidence that accused was of unsound mind when offenses occurred, prosecution is under necessity of establishing to satisfaction of jury beyond reasonable doubt that offenses were not result of accused's insanity. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

In order to justify conviction, where there is evidence that accused was of unsound mind when offenses occurred, proof, considered with presumption of sanity, must exclude beyond reasonable doubt the hypothesis that conduct indicted was product of a diseased mind or mental defect. *Id.*

When lack of mental capacity is raised as a defense to a charge of crime, the law presumes that the defendant is sane, but as soon as some evidence of mental disorder is introduced, sanity must be proved beyond a reasonable doubt as part of prosecution's case. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

In forgery prosecution, testimony of two psychiatrists and a lay witness to effect that defendant was, in their opinion, suffering from mental illness when he committed the crimes charged satisfied requirement that defendant produce some evidence, and shifted burden of proving sanity to government. *United States v. Amburgey* (1960, 189 F. Supp. 687).

In habeas corpus proceeding brought by petitioner claiming right to be released from hospital for the mentally ill, it was necessary for petitioner to show not only that he had recovered his sanity but also that superintendent of hospital was arbitrarily and capriciously withholding certificate of recovered sanity; and, on record presented, such burden was not sustained. *O'Beirne v. Overholser, Superintendent etc.* (1960, 180 F. Supp. 572).

3. Certification of sanity

Court may not authorize release of person confined in hospital for mentally ill unless hospital superintendent certifies that he has recovered his sanity. *O'Beirne v. Overholser, Superintendent etc.* (1960, 180 F. Supp. 572).

Purpose of requirement of this section that superintendent of hospital certify that person seeking release has recovered his sanity is to safeguard public against

release of insane criminals who might possibly repeat their depredations. *Id.*

4. Commitment procedure

Although inmate of mental hospital had not been informed that possible alternative to commitment, pursuant to this section requiring confinement in mental hospital of those acquitted solely on ground of insanity, was to ask for new trial, inmate whose only possible defense was insanity and whose chances for acquittal on a second trial were minuscule was properly committed to hospital after being acquitted. *Curry v. Overholser, Supt. etc.* (C.A.D.C. 1960, 287 F. 2d 137).

When person suspected of insanity is also accused of crime, trial court is not to be permitted to commit such person to a mental hospital without benefit of a jury or of the Mental Health Commission, even though the person is competent to stand trial, but there must be a report and recommendation by the commission, a jury's verdict if demanded, and a district court order. *Williams v. Overholser, Supt, etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

5. Competency to stand trial

Under District of Columbia law pertaining to insane criminals, any hearing must be on issue of defendant's competency to stand trial, and nothing more. *Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

6. Conditional release

Under this section governing conditional release of persons who have been committed to mental hospital after acquittal of crime by reason of insanity, to order conditional release upon a challenged certification court must conclude individual has recovered sufficiently so that under proposed conditions, or under conditions which this section empowers court to impose, such person will not in the reasonable future be dangerous to himself or others. *Hough v. United States* (1959, 271 F. 2d 458, 106 U.S. App. D.C. 192).

7. Constitutionality

Provision requiring commitment to mental institution of persons acquitted of crimes by reason of insanity did not deprive one committed pursuant thereto of liberty without due process of law, as there was rational connection between known evidence of the person's mental disease and mandatory commitment provision, and as statute authorizes one so confined to test legality of confinement by habeas corpus proceeding which provides de novo hearing to examine into mental condition. *Ragsdale v. Overholser, Supt. etc.* (C.A.D.C. 1960, 281 F. 2d 943).

"There can be no reasonable objection to the validity of the provision of this section. It makes ample provision for the inquiry which is conducted with due regard to the protection of the defendant." *Wagner v. White* (38 App. D. C. 554).

This section is constitutional and valid. *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

8. Criminal responsibility

In determining issue whether or not indicted conduct was product of mental disease or mental defect, or whether accused acted because of mental disorder, there need be only reasonable doubt about it to entitle accused to an acquittal. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

While issue of criminal responsibility of defendant suffering from mental disease is not an issue of fact in same sense as the commission of the offense, it still is an issue of fact. *Id.*

The court-formulated test of insanity that accused is not criminally responsible if his unlawful act was product of mental disease or mental defect could not be applied retrospectively but only prospectively. *Watson, Jr. v. United States* (1956, 234 F. 2d 42, 98 U.S. App. D.C. 221).

Term "disease", as used in rule that an accused is not criminally responsible if his unlawful act was product of mental disease or mental defect, means condition which is considered capable of either improving or deteriorating, and term "defect" as so used means condition which is not considered capable of improving or deteriorating and which may be either congenital, or

traumatic, or the residual effect of physical or mental disease. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

In District of Columbia, formulation of tests of criminal responsibility is entrusted to the courts, and they may adopt changes in such tests retroactively. *Id.*

Whenever there is some evidence that the accused suffered from a diseased or defective mental condition at the time the unlawful act was committed, trial court must provide jury with guides for determining whether accused can be held criminally responsible. *Id.*

An accused is not criminally responsible if his unlawful act was product of mental disease or mental defect. *Id.*

A defendant is entitled to verdict of not guilty on ground of insanity, if jury finds that offense charged was insane act by application of any one of three tests as to whether defendant was able to distinguish between right and wrong, able to adhere to right and refrain from doing wrong, or suffered from mental disease or defect which caused criminal act. *United States v. Fielding* (1956, 148 F. Supp. 46, reversed on other grounds 251 F. 2d 878, 102 U.S. App. D.C. 167).

9. Directed verdict

Where a trial court, in a criminal prosecution, should have directed a judgment of acquittal by reason of insanity, notwithstanding the verdict, judgment of conviction would be vacated on appeal and case remanded with directions. *Isaac v. United States* (C.A.D.C. 1960, 284 F. 2d 168).

On record presented, in robbery prosecution, it was error to deny defendant's motion for directed verdict on ground of insanity. *Satterwhite v. United States* (1959, 267 F. 2d 675, 105 U.S. App. D.C. 398).

10. Discretion of court

In proceeding brought by one who was confined to mental institution following his acquittal of criminal charge by reason of insanity, to secure his release from institution, District Court, in denying writ, made permissible choice between expert evidence that he was dangerous and other evidence, including testimony of laymen, tending to suggest that he was not. *Ragsdale v. Overholser, Supt. etc.* (C.A.D.C. 1960, 281 F. 2d 943).

Under this section authorizing persons confined to mental institution by reason of having been acquitted of crime on ground of insanity to test legality of their commitments by habeas corpus, certificate of superintendent of mental institution, in form of conclusion, may be disregarded by the district judge if it is not supported by medical recitals which satisfy or persuade him that the conclusion is correct. *Id.*

"Whether a prima facie case has been made by the petitioner requiring submission of the issue (of insanity) to a jury is a question submitted to the sound discretion of the trial judge." *Gonzales v. United States* (40 App. D.C. 450). See, also, *Neely v. U.S.* (1945, 150 F. 2d 977, 80 U.S. App. D.C. 187, certiorari denied 66 S. Ct. 166, 326 U.S. 768, 90 L. Ed. 463).

Refusal of trial court to submit to a jury the question of defendant's mental responsibility was not an abuse of its discretion, where there had never been any suggestion that he should be restrained of his liberty because of insanity, and where at his trial it did not appear and was not suggested that he was not fully and entirely responsible from a mental standpoint. *Jackson v. United States* (1928, 25 F. 2d 549, 58 App. D.C. 125).

11. Evidence

Evidence supported finding that inmate, who was seeking release from confinement in mental hospital as insane criminal, was at time of the habeas corpus proceeding suffering from abnormal mental condition and would be dangerous to himself and others if released. *Curry v. Overholser, Supt. etc.* (C.A.D.C. 1960, 287 F. 2d 137).

In habeas corpus proceeding by one who had been committed to mental hospital after being found not guilty of robbery by reason of insanity, where superintendent of hospital had refused to certify that petitioner had recovered sanity and would not in reasonable future be dangerous to himself or others, evidence did not warrant release of petitioner despite opinion of two psychiatrists denying present mental disease, where seven psychiatrists

agreed that petitioner was a sociopathic personality with dyssocial outlook and would be dangerous to community if released. *Overholser etc. v. Leach* (1958, 257 F. 2d 667, 103 U.S. App. D.C. 289, certiorari denied 79 S. Ct. 1152, 359 U.S. 1013, 3 L. Ed. 2d 1038).

When issue of insanity is raised by introduction of "some evidence" so that presumption of sanity is no longer absolute, trier of fact must weigh the whole evidence, including that supplied by the presumption of sanity, on the issue of capacity in law of accused to commit the crime, and failure so to weigh the whole evidence on such issue is reversible error. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

Evidence concerning events of defendant's youth, none of them more recent than 15 years prior to time of hearing on petition for sanity inquisition after conviction of murder, and indicating that defendant as a youth had been reckless, imprudent, and brutal, was of no value to establish insanity. *Neely v. U.S.* (1945, 150 F. 2d 977, 80 U.S. App. D.C. 187, certiorari denied 66 S. Ct. 166, 326 U.S. 768, 90 L. Ed. 463).

Opinion evidence by lay witness that a defendant convicted of murder was insane, was valueless to establish prima facie that defendant was insane so as to authorize granting of a petition for sanity inquisition. *Id.*

Denial of motion of one of the two defendants jointly indicted on charge of killing another in perpetrating robbery for a mental examination was not error, where moving defendant did not make prima facie showing of mental incapacity. *Wheeler v. U.S.* (1948, 165 F. 2d 225, 82 U.S. App. D.C. 363, certiorari denied 68 S. Ct. 448, 830 U.S. 333, 92 L. Ed 1115.) See, also, *Wheeler v. Reid* (1949, 175 F. 2d 829, 84 U.S. App. D.C. 180).

In prosecution for drunkenness, evidence which was taken in prior proceeding to determine competency of defendant to stand trial could not be used to sustain a finding of not guilty by reason of insanity. *In re Williams* (1958, 165 F. Supp. 879).

In prosecution for intoxication, evidence was insufficient to support trial judge's finding that defendant was not guilty because of insanity. *Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

In prosecution for intoxication, trial judge, in determining issue of defendant's competency under District of Columbia law to stand trial, could not use evidence introduced in previous hearing as to defendant's sanity where hearing was held after defendant entered plea of guilty on same charge. *Id.*

12. Expense of support

Where disability compensation due incompetent veteran was discontinued by Veterans' Administration because veteran was being cared for by government, government retained money for care of veteran, and veteran was not liable for board and maintenance at government hospital. *Silverstein v. United States* (1954, 210 F. 2d 19, 93 U.S. App. D.C. 174).

13. Habeas corpus

All indigent inmates who petition for habeas corpus for release from confinement in a hospital, including those committed as insane prisoners, may demand expert testimony of members of Commission on Mental Health, or court on its own motion may require it. *Curry v. Overholser, Supt. etc.* (C.A.D.C. 1960, 287 F. 2d 137).

Habeas corpus jurisdiction of District Court was properly invoked for release from hospital to which petitioner was committed by Municipal Court on being found not guilty of crime by reason of insanity. *O'Beirne v. Overholser* (C.A.D.C. 1960, 287 F. 2d 133).

In habeas corpus proceeding brought by one who had been committed to mental institution upon acquittal of criminal charges on ground of insanity, brought to secure release from institution, finding that petitioner was no longer mentally ill was clearly erroneous. *Overholser, Supt etc. v. Russell* (1960, 283 F. 2d 195, 108 U.S. App. D.C. 400).

Under statutory provisions authorizing one confined to mental institution because of his acquittal of crime by reason of insanity to maintain habeas corpus proceeding to test legality of his confinement, habeas corpus hearing is de novo proceeding to examine into petitioner's existing mental condition, and at such hearing he

is free to put in evidence, both lay and expert, to demonstrate that he has recovered to the point where he will not be dangerous to himself or others. *Ragsdale v. Overholser, Sup't etc.* (C.A.D.C. 1960, 281 F. 2d 943).

Where accused who had been adjudged insane pursuant to verdict of jury appointed to inquire into his sanity and who had been ordered confined to hospital subsequently filed petition for writ of habeas corpus which contained crucial statement that he was of sound mind and acting superintendent of hospital in response to rule to show cause why writ should not issue alleged that accused was of unsound mind, giving details of asserted malady and opinion that accused was not mentally competent to stand trial, an issue of fact as to whether accused had regained his sanity was presented, he was entitled to hearing thereon and court erred in dismissing petition without hearing. *Lewis v. Overholser, Sup't etc.* (1960, 274 F. 2d 592, 107 U.S. App. D.C. 83).

Where petitioner was committed to hospital after acquittal by reason of insanity and his petition for habeas corpus failed to allege that he would not in the reasonable future be dangerous to himself or others and the hospital superintendent stated that he could not certify that the petitioner had recovered and petitioner failed to put in issue the superintendent's conclusion, district judge properly concluded that a hearing was not necessary. *Fielding v. Overholser, Superintendent, etc.* (1959, 268 F. 2d 898, 106 U.S. App. D.C. 23).

Where, after setting aside accused's plea of guilty to charge of public drunkenness, and committing accused to hospital for examination and observation, the municipal court found accused of unsound mind and ordered him confined to another hospital but did not determine whether accused was competent to stand trial, accused would be entitled to release on writ of habeas corpus unless the municipal court determined that he was mentally incompetent to stand trial and ordered him confined on that ground or unless proper lunacy proceedings were instituted. *Williams v. Overholser, Sup't, etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

In habeas corpus proceeding brought by petitioner who had been committed to St. Elizabeths Hospital after being found not guilty of criminal charge by reason of insanity and who alleged that he was receiving no individual psychotherapy at hospital and that no further institutional care was necessary, petitioner was not, on facts disclosed, entitled to independent examination by member of mental health commission. *Hayward v. Overholser, Sup't etc.* (1960, 191 F. Supp. 464).

Records of Municipal Court imported verity, and in habeas corpus proceeding brought by patient of hospital for the mentally ill, court would not go behind record to determine whether patient had had opportunity to present his defense in Municipal Court prosecution in which he had been found not guilty by reason of insanity at time offense was committed. *O'Beirne v. Overholser, Superintendent, etc.* (1960, 180 F. Supp. 572).

Use of writ of habeas corpus may not be limited by statute, and person who claims to be deprived of his liberty illegally may always resort to writ. *Id.*

In habeas corpus proceeding brought by petitioner claiming right to be released from hospital for the mentally ill, court could not try de novo issue as to whether petitioner had ever been insane, or whether he had recovered his sanity. *Id.*

Where municipal court found accused charged with being drunk or intoxicated on a public street to be of unsound mind and committed him to mental hospital, but made no judicial determination on competency to stand trial, such failure constituted an illegal detention cognizable under writ of habeas corpus since such failure resulted in denial of a right given him by statute as well as his right, if competent, to speedy trial under the constitution. *Williams v. Overholser* (1958, 162 F. Supp. 514, modified on other grounds 259 F. 2d 175, 104 U.S. App. D.C. 18).

It is not the function of the district court to determine in habeas corpus proceeding, the mental competency of an accused to stand trial on a charge pending against him in the municipal court, but the only court that may determine that fact is the court having jurisdiction of such charge. *Id.*

14. Instructions

In prosecution for murder, instruction that if verdict of not guilty by reason of insanity was returned defendant would be committed to mental hospital until such time as it was established that he was no longer insane, was not objectionable for failure to add that he would be kept in hospital until he would not in reasonable future be dangerous to himself or others. *Starr, Jr. v. United States* (1959, 264 F. 2d 377, 105 U.S. App. D.C. 91, certiorari denied 79 S. Ct. 652, 359 U.S. 936, 3 L. Ed. 2d 639).

If it affirmatively appears on record that defendant, who pleaded not guilty by reason of insanity, did not want instruction as to effect of verdict of not guilty by reason of insanity, Court of Appeals will not regard failure of trial court to give such instruction as grounds for reversal. *Lyles v. United States* (1958, 254 F. 2d 725, 103 U.S. App. D.C. 22, certiorari denied 78 S. Ct. 997, 356 U.S. 961, 2 L. Ed. 2d 1067).

When instruction is given jury as to effect of verdict of not guilty by reason of insanity, jury should simply be informed that such verdict means that accused will be confined in hospital for mentally ill until superintendent has certified, and court is satisfied, that accused has recovered his sanity and will not in reasonable future be dangerous to himself or to others, in which event and at which time court shall order his release either unconditionally or under such conditions as court may see fit. *Id.*

Where defendant pleads not guilty by reason of insanity, jury has right to know meaning of verdict of not guilty by reason of insanity as accurately as it knows by common knowledge the meaning of verdict of guilty and verdict of not guilty. *Id.*

Evidence of mental condition at a given time is relevant to determination of mental condition at another time not unreasonably far removed, and it might be proper to inquire as to probability that as of time of act charged, an accused's mental condition was the same as it was found to be somewhat earlier, or somewhat later, but such rule does not justify judge in warning jury that if they acquit accused who has pleaded insanity they will be releasing a dangerous man to prey upon society. *Blunt v. United States* (1957, 244 F. 2d 355, 100 U.S. App. D.C. 266).

In prosecution for housebreaking, wherein judge told jury that hospital Acting Superintendent had advised court that accused was found competent to stand trial and assist in his own defense, and after stating that court would commit accused to hospital if he were found not guilty by reason of insanity, judge added that accused would remain there until determined to be "of sound mind" by hospital authorities and that "if the authorities adhered to their last opinion on this point, he will be released very shortly", latter statement was highly prejudicial since it implied a warning that dire consequences might result from finding that accused was not guilty by reason of insanity. *Durham v. United States* (1956, 237 F. 2d 760, 99 U.S. App. D.C. 132).

When accused person has pleaded insanity, counsel may and judge should inform jury that if he is acquitted by reason of insanity he will be presumed to be insane and may be confined in hospital for insane as long as public safety and welfare require. *Taylor v. United States* (1955, 222 F. 2d 398, 95 U.S. App. D.C. 373).

Instructions to jury relative to criminal responsibility must in substance advise jury that they may find defendant guilty only if they find, beyond reasonable doubt, from evidence and from facts fairly deducible, (1) that defendant was not suffering from diseased or defective mental condition at time of the act, or (2) that the act was not the result of such condition. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

15. Judge's comments on evidence

If trial judge submits to jury question of probable release of defendant at some future date from mental hospital, submits evidence to jury on that point, or comments to jury respecting speculative possibilities in that regard, trial judge commits error. *A. Lyles v. United States* (1958, 254 F. 2d 725, 103 U.S. App. D.C. 22, certiorari denied 78 S. Ct. 997, 356 U.S. 961, 2 L. Ed. 1067).

Statement by trial judge that doctor testified that on prior occasion he found no mental disorder whatever in defendant, and that defendant was a man of average intelligence, was not reversible error, though made in connection with statement to jury that if defendant should be acquitted by reason of insanity, he would be committed to a mental institution, where statement as to testimony of doctor was a remark in single sentence in middle of long charge, and trial judge did not relate testimony of doctor to time of trial or to any possible future time. *Id.*

16. Judicial determination

Under this section trial court may or may not make a finding on whether accused is of unsound mind, but must determine whether he is mentally competent to stand trial, when objection is made to the report from hospital and a hearing is held, and if accused is found to be of unsound mind this section requires court to commit defendant to a mental hospital, and if court also determines him to be incompetent to stand trial statute requires the same commitment, but section requires a judicial determination in the latter type of mental condition, but does not require a determination in the former. *Williams v. Overholser* (1958, 162 F. Supp. 514, modified on other grounds 259 F. 2d 175, 104 U.S. App. D.C. 18).

17. Jury trial

This section providing for commitment of accused found incompetent to stand trial to a mental hospital is not unconstitutional for absence of provision for jury trial since all that is required is due process which is satisfied by judicial hearing which is provided for. *Williams v. Overholser* (1958, 162 F. Supp. 514, modified on other grounds 259 F. 2d 175, 104 U.S. App. D.C. 18).

18. Law governing

Where doctor, who had examined defendant for purpose of determining his mental competency to stand trial, did not testify to any statement made by defendant on issue of guilt and judge's finding of mental competency to stand trial was not brought to notice of jury, it was immaterial whether commitment to mental institution for determination of mental competency to stand trial was made under federal statute or under District of Columbia statute; and neither statute barred doctor's testimony expressing his opinion that defendant was sane when he committed act. *Edmonds v. United States* (1959, 273 F. 2d 108, 106 U.S. App. D.C. 373, certiorari denied 80 S. Ct. 1062, 362 U.S. 977, 4 L. Ed. 2d 1012).

If this section stating procedure to be followed by federal District Court for District of Columbia in determining an accused person's mental competence to stand trial requires a jury, it has been superseded in that respect by U.S. Code, title 18, § 4244 which does not require a jury and which has general application in Federal Court throughout nation, and federal District Court for District of Columbia did not err in proceeding under later statute without intervention of jury in determining mental competency of an accused to stand trial on murder charge. *Jordan v. United States* (1953, 207 F. 2d 28, 93 U.S. App. D.C. 65).

19. Motion for leave to appeal

Where defendant's motion to vacate sentences was denied without hearing and district judge also denied defendant's application for leave to appeal in forma pauperis, defendant's motion in the Court of Appeals for leave to so appeal and for appointment of counsel would be granted in view of fact that trial judge denied such motion without hearing on erroneous grounds that competency to stand trial was not subject to collateral attack but was waived if not advanced at trial, and that defendant did not allege he was in fact mentally incompetent when tried, and that an amendment to this section abrogated requirement for a judicial determination of restored competency before trial. *Blunt v. United States* (1957, 244 F. 2d 355, 100 U.S. App. D.C. 266).

20. Potentially dangerous

Under this section concerning commitment of insane criminals to hospital, a sane person cannot be confined in a mental hospital simply because he is thought to be potentially dangerous if released and his dangerous tendencies must be attributable to an abnormal mental

condition if he is to be retained in confinement. *Starr, Jr. v. United States* (1959, 264 F. 2d 377, 105 U.S. App. D.C. 91, certiorari denied 79 S. Ct. 652, 359 U.S. 936, 3 L. Ed. 2d 639).

Under this section relating to commitment of insane criminals to hospital, a defendant, acquitted because of insanity and committed to mental hospital because of the verdict, may not be released if, despite some recovery, doctors certify and in the exercise of its own function the court finds he is, and in the reasonably foreseeable future will be, dangerous because of mental disease or defect. *Id.*

21. Presumption of sanity

In prosecution for housebreaking, psychiatrist's opinion that defendant had been of unsound mind on date when crime was committed was sufficient to satisfy "some evidence" test and thereby to shift to prosecution the burden of proving defendant's sanity, though psychiatrist could not state categorically that defendant had not known right from wrong. *Durham v. United States* (1954, 214 F. 2d 862, 94 U.S. App. D.C. 228, 45 A.L.R. 2d 1430).

Trial court's erroneous holding that there was no evidence of alleged housebreaker's mental state as of date when crime was committed, and that presumption of sanity therefore prevailed, was prejudicial and required reversal. *Id.*

22. Pretrial mental examination

Nature of crime of sodomy, with which accused was charged, was not sufficient alone, to require the District Court, before accepting guilty plea, to order a mental examination of accused, although court could properly consider nature of crime in that connection, and where there was no indication by prosecuting attorney, that accused might be a sexual psychopath, and no request for a mental examination was made by prosecution or accused, convictions could not be set aside in collateral proceeding, such as coram nobis, because of court's failure to order examination on its own motion. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

A prosecutor who knows that the accused's mental state at the time of the crime will be the critical issue at trial has an obligation to see that any pretrial mental examination of the accused that may be ordered be broad enough to cast light on that issue, and such course is required not only to protect the rights of the accused, but also to protect society's interest in hospitalizing the accused, if his violent acts sprang from mental disorder, so that he will not be released, as he would be after completion of a prison sentence, without medical assurance that he is not likely to be dangerous to himself or others in the reasonably foreseeable future. *Winn v. United States* (1959, 270 F. 2d 326, 106 U.S. App. D.C. 133).

There is a vast difference between that mental state which permits an accused to be tried and that which permits him to be held responsible for a crime, and in view of fact that an examination made for the purpose of determining competency to stand trial requires less than an examination designed to determine sanity for the purpose of criminal responsibility, it is not to be assumed that a psychiatrist who has been ordered to prepare an opinion as to man's trial competency will conduct a type of examination which is necessary to provide the trier of facts with information essential for a proper determination of criminal responsibility. *Id.*

Where the prosecuting attorney moved for a complete and thorough mental examination of the accused, but district court's order upon the motion required only such examination as was necessary to permit formulation of an opinion as to whether defendant was presently of unsound mind or mentally incompetent so as to be unable to understand the proceeding against him or properly to assist in his own defense, the complete and thorough type of examination required for a proper determination of the issue of responsibility would be deemed never made because it was not ordered as requested in the prosecutor's pretrial motion, and therefore defendant's conviction would be reversed and he would be granted a new trial. *Id.*

23. Procedure

Where doctors who testified at habeas corpus proceeding for release of inmate who had been committed after

acquittal by reason of insanity were among those whom he had called as witnesses in his own behalf at criminal trial and were thoroughly familiar with his history and behavior at hospital, and inmate did not request testimony of members of Commission on Mental Health, although private psychiatrists were not available to testify as to inmate's mental condition at time of proceeding, inmate received due process of law. *Curry v. Overholser, Sup't etc.* (C.A.D.C. 1960, 287 F. 2d 137).

Under statutes relating to insane criminals, a reasonable doubt about insanity of accused required acquittal and authorized hospital confinement. *Ragsdale v. Overholser, Sup't etc.* (C.A.D.C. 1960, 281 F. 2d 943).

Procedure which governs lunacy inquisition in case of person charged with criminal offense is different from that governing ordinary lunacy inquisition. *Evans v. United States* (D.C. Mun. App. 1951, 83 A. 2d 876).

24. Public policy

The community is not without means of protecting itself if at time that a prisoner's sentence ends he is found to be a sexual psychopath, or to be insane or mentally incompetent. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

The existence of possibilities to protect society from, and to treat, prisoner convicted of sodomy, or other sexual crimes, in the event he is found to be a sexual psychopath, or insane, of unsound mind or otherwise defective during imprisonment or at time his sentence ends, does not relieve bench and bar of responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. *Id.*

Policies underlying distinction in treatment between mentally responsible law breakers, who are sent to prison, and mentally irresponsible law breakers, who are sent to hospitals, are (1) that it is both wrong and foolish to punish where there is no blame and where punishment cannot correct, and (2) that community's security may be better protected by hospitalization than by imprisonment. *Williams v. United States* (1958, 250 F. 2d 19, 102 U.S. App. D.C. 51).

25. Purpose

Although this section respecting release of persons committed to mental hospitals after acquittal by reason of insanity does not speak of temporary release from hospital, its purpose is to assure that members of exceptional class be kept under hospital restraint until District Court, in exercise of a discretion reviewable by Court of Appeals, approves relaxation of that restraint. *Hough v. United States* (1959, 271 F. 2d 458, 106 U.S. App. D.C. 192).

Purpose of this section pertaining to commitment to hospital of an accused who is mentally incompetent to stand trial is to prescribe procedure for determining whether an accused can understand the proceedings against him and properly assist in his defense and, in event he cannot, to provide for his confinement in a hospital instead of a jail until he can. *Williams v. Overholser, Sup't., etc.* (1958, 259 F. 2d 175, 104 U.S. App. D.C. 18).

The purpose of this section providing that whenever prima facie evidence is submitted that accused is insane, the court may cause a jury to be impaneled to inquire into the sanity of accused, is to prevent the infliction of punishment upon a person so lacking in mental capacity as to be unable to understand the nature and purpose of the punishment. *Neely v. U.S.* (1945, 150 F. 2d 977, 80 U.S. App. D.C. 187, certiorari denied 66 S. Ct. 166, 326 U.S. 768, 90 L. Ed. 463).

Purpose of this section making it mandatory for court to commit to a mental hospital any defendant in a criminal case who is found not guilty on ground of insanity, and placing certain safeguards against release of such person from mental hospital after his commitment thereto, is to protect public and discourage unfounded pleas of insanity and statute must be construed in a manner to best effectuate those objectives. *In re Milton T. Rosenfield* (1958, 157 F. Supp. 18, remanded on other grounds 262 F. 2d 34, 104 U.S. App. D.C. 322).

Purpose of this section providing for mental examination of person charged with crime before trial is to determine whether prisoner is then capable of understanding the nature and object of the proceedings so as to properly conduct his defense at a trial of the charge against him. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

26. Record of determination of competency

Where defendant's motion for mental examination has been granted, determination of competency should be noted of record. *Watson v. United States* (1956, 234 F. 2d 42, 98 U.S. App. D.C. 221).

27. Release

Under this section providing that a person committed to hospital for mentally ill because he was acquitted for criminal offense solely on ground that he was insane at time of commission may be unconditionally released by District Court if superintendent of hospital certifies, inter alia, that in his opinion such person will not in reasonable future be dangerous to himself or others, the danger to the public need not be possible physical violence or crime of violence but it is enough to preclude release if there is competent evidence that he may commit any criminal act. *Overholser Sup't etc. v. Russell* (1960, 283 F. 2d 195, 108 U.S. App. D.C. 400).

In view of this section providing that person who has been committed to hospital for mentally ill because he was acquitted of criminal offense solely on ground of insanity at time of commission may be released unconditionally by District Court if superintendent certifies that he has recovered, that he will not in reasonable future be dangerous to himself or others, and that, in opinion of superintendent, he is entitled to unconditional release, to demonstrate at habeas corpus hearing that he is entitled to unconditional release, the patient must show that he has recovered, that he will not in reasonable future be dangerous to others and that superintendent acted arbitrarily and capriciously in refusing to certify him and recommend him for unconditional release. *Id.*

This section governing release of one committed to mental institution after being found not guilty of crime by reason of insanity, based upon certificate that such person has recovered sanity and will not in a reasonable future be dangerous to himself or others, does not, by phrase "establishing his eligibility for release", establish the test of whether particular individual, engaged in ordinary pursuits of life, is committable to mental institution under the law governing civil commitments, but requires freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future. *Overholser etc. v. Leach* (1958, 257 F. 2d 667, 103 U.S. App. D.C. 289, certiorari denied 79 S. Ct. 1152, 359 U.S. 1013, 3 L. Ed. 2d 1038).

Insane person, found not guilty of homicide by reason of insanity, and committed to asylum, must prove sanity and that he is no longer a menace, to obtain release. *Barry v. White* (1933, 64 F. 2d 707, 62 App. D.C. 69).

In habeas corpus proceeding seeking unconditional release from mental institution to which petitioner had been committed after acquittal on ground of insanity, return to writ of habeas corpus filed on behalf of superintendent of mental hospital stating that psychosis from which petitioner was suffering was in remission since his readmission to hospital on a certain date did not warrant granting of petitioner's unconditional release from hospital. *In re Milton T. Rosenfield* (1958, 157 F. Supp. 18, remanded on other grounds 262 F. 2d 34, 104 U.S. App. D.C. 322).

28. Report of commission

Where the examination of accused as to his insanity was made by the Commission of Health at accused's request, and in support of his attempt to make a prima facie showing so as to authorize granting of petition for sanity inquisition after conviction of murder, the court was not required to disregard the Commission's report on theory that to permit its consideration would have the effect of a waiver of privilege upon part of accused. *Neely v. U.S.* (1945, 150 F. 2d 977, 80 U.S. App. D.C. 187, certiorari denied 66 S. Ct. 166, 326 U.S. 768, 90 L. Ed. 463).

29. Right to counsel

Though due process does not absolutely require appointment of counsel in all cases where person is deprived of his liberty because of unsound mind, where person charged with criminal offense of assault was subjected to lunacy inquisition prior to trial, due process required that defendant be represented by counsel in spite of ostensible waiver of that right or privilege. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

A lunacy inquisition, held before trial to determine if accused is capable of going to trial, is not a criminal proceeding and does not fall within ambit of the Sixth Amendment. *Id.*

30. Setting aside verdict

In appropriate case there is duty to set aside verdict of guilty and to direct verdict of not guilty by reason of insanity; though this duty is to be performed with caution because of deference due jury in resolving factual issues. *Douglas v. United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

31. Suspension of proceedings

The sole effect of section 301 et seq. of this title governing procedure in case of insanity of person charged with crime is to suspend the criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. *Haislip v. U.S.* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

Sole effect of this section providing for mental examination of person charged with criminal offense before trial is, in proper case, to suspend criminal proceedings during period of insanity. *Evans v. United States* (D.C. Mun. App. 1951, 83 A. 2d 876).

32. Temporary leave

Where hospital authorities have decided that a patient committed to the hospital after acquittal by reason of insanity has reached stage where temporary leave from hospital is necessary and proper, authorities should certify that fact to District Court and obtain an appropriate order. *Hough v. United States* (1959, 271 F. 2d 458, 106 U.S. App. D.C. 192).

33. Verdict

Under this section providing for commitment to mental institution of persons acquitted of criminal charges by reason of insanity, it is contemplated that a person acquitted on a charge calling for a maximum sentence of 18 months may be confined to mental institution for two, five or ten years or beyond that, and nothing less will fulfill protective and rehabilitative purposes of this section. *Ragsdale v. Overholser, Supt. etc.* (C.A.D.C. 1960, 281 F. 2d 943).

A general verdict of not guilty by reason of insanity carried with it a finding that, except for the question as to his sanity, defendant was guilty as charged. *Rucker v. United States* (1960, 280 F. 2d 623, 108 U.S. App. D.C. 75).

In prosecution for assault with intent to kill and possession of a rifle with intent to use it unlawfully against another, where the court found the defendant not guilty by reason of insanity and it did not appear that defendant actually understood and acquiesced that the question of his guilt was being tried in that it did not appear that he understood and acquiesced in what was being accomplished without witnesses or evidence and he protested promptly a few days after the verdict, the defendant was entitled to a new trial. *Id.*

It is common knowledge that verdict of not guilty means that prisoner goes free and that verdict of guilty means that he is subject to such punishment as court may impose, but it is not common knowledge that verdict of not guilty by reason of insanity means that he will be confined in hospital for mentally ill until superintendent of hospital certifies, and court is satisfied, that he has recovered his sanity. *Lyles v. United States* (1958, 254 F. 2d 725, 103 U.S. App. D.C. 22, certiorari denied 78 S. Ct. 997, 356 U.S. 961, 2 L. Ed. 2d 1067).

Verdict of not guilty by reason of insanity means that defendant will be confined in hospital for mentally ill until superintendent of hospital certifies, and court is satisfied, that defendant has recovered his sanity and will

not in reasonable future be dangerous to himself or others. *Id.*

Instruction that if defendant is found not guilty on ground of insanity, it then becomes duty of court to commit him to hospital, where he will remain until he is cured, and it is deemed safe to release him, and that when such time arrives, he will be released and will suffer no further consequences from his offense, was not reversibly erroneous. *Id.*

Whenever defense of insanity is fairly raised, trial judge should instruct jury as to legal meaning of verdict of not guilty by reason of insanity. *Id.*

Where accused was found to be of unsound mind and was committed to hospital, the verdict of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial but when he was restored to sanity, certificate of hospital superintendent to that effect removed the previous bar. *Haislip v. U.S.* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

Verdict of insanity of accused given as result of lunacy inquisition spoke as of that date and was legal determination that defendant was not then mentally qualified to stand trial. *Evans v. United States* (D. C. Mun. App. 1951, 83 A. 2d 876).

34. Estoppel

Inmate who had elected to seek verdict of not guilty by reason of insanity could not be heard to complain of commitment to mental hospital pursuant to this section requiring confinement in mental hospital of those acquitted solely on ground of insanity. *Curry v. Overholser, Supt. etc.* (C.A.D.C. 1960, 287 F. 2d 137).

§ 24-302. Commitment of mentally ill person while serving sentence.

Any person while serving sentence of any court of the District of Columbia for crime, in a District of Columbia penal institution, and who, in the opinion of the Director of the Department of Corrections of the District of Columbia, is mentally ill, shall be referred by such Director to the psychiatrist functioning under section 24-106, and if such psychiatrist certifies that the person is mentally ill, this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 928; Aug. 9, 1955, 69 Stat. 611, ch. 673, § 2.)

AMENDMENT

1955—Act Aug. 9, 1955, amended section generally. Prior to amendment, section read as follows: "Any person becoming insane while undergoing a sentence of any court of the District of Columbia for crime may, in like manner, be committed to said hospital for the insane, by order of the Secretary of the Interior, to receive the same treatment as other patients during the continuance of his disorder."

NOTES TO DECISIONS

1. In general

The community is not without means of protecting itself if at time that a prisoner's sentence ends he is found to be a sexual psychopath, or to be insane or mentally incompetent. *Carter v. United States* (1960, 283 F. 2d 200, 108 U.S. App. D.C. 405).

The existence of possibilities to protect society from, and to treat, prisoner convicted of sodomy, or other sexual crimes, in the event he is found to be a sexual psychopath, or insane, of unsound mind or otherwise defective during imprisonment or at time his sentence ends, does not relieve bench and bar of responsibility of endeavoring to reach at the earliest possible stage, ideally prior to trial and sentence, the approach to a particular case which appears to be most just and appropriate, having regard to the individual's mental condition, his history, and the possibility of rehabilitating him and restoring him to usefulness in the community. *Id.*

If prisoner serving sentence on conviction of crime is presently insane or of unsound mind or otherwise defective, prison authorities may and presumably should transfer him to an appropriate institution, so that he may be given treatment for his condition. *Id.*

§ 24-303. Restoration to sanity—Delivery of person to court—Delivery of person to Director of Department of Corrections.

(a) When any person confined in a hospital for the mentally ill, charged with crime and subject to be tried therefor, shall be found competent to stand trial in the opinion of the superintendent of such hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge is pending, in accordance with the procedure specified in section 24-301, and deliver such person to the court according to its proper precept.

(b) When any person confined in a hospital for the mentally ill while serving sentence shall be restored to mental health within the opinion of the superintendent of the hospital, the superintendent shall certify such fact to the Director of the Department of Corrections of the District of Columbia and such certification shall be sufficient to deliver such person to such Director according to his request. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 929; Aug. 9, 1955, 69 Stat. 611, ch. 673, § 3.)

AMENDMENTS

1955—Act Aug. 9, 1955, amended section generally. Prior to amendment, section read as follows: "When any person confined in the hospital for the insane, charged with crime and subject to be tried therefor or undergoing sentence therefor, shall be restored to sanity the superintendent of the hospital shall give notice thereof to the justice holding the criminal court and deliver him to the court according to its proper precept."

NOTES TO DECISIONS

Certification of sanity 1
Construction with other laws 2
Habeas corpus 3
Jurisdiction 4
Prisoner convicted but not sentenced 5

1. Certification of sanity

Where accused charged with incest was found by jury to be of unsound mind and was committed to hospital, upon discharge of accused from hospital as cured and in absence of anything showing invalidity of certificate of hospital superintendent, court was required to proceed with trial on the suspended criminal indictment and no further proceedings on the question of sanity was necessary. *Haislip v. U.S.* (1942, 129 F. 2d 53, 76 U.S. App. D. C. 91).

Where accused was found to be of unsound mind and was committed to hospital, the verdict of insanity spoke as of the date thereof and was a legal determination that accused was not then mentally qualified to stand trial but when he was restored to sanity, certificate of hospital superintendent to that effect removed the previous bar. *Id.*

2. Construction with other laws

Where accused was charged with incest, found to be of unsound mind and committed to hospital and thereafter hospital superintendent certified that accused was not insane, in determining whether trial court had duty to ascertain judicially if superintendent's certificate correctly fixed accused's mental condition, § 21-320 relating to method of inquisition in case of persons believed to be of unsound mind was inapplicable. *Haislip v. U.S.* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

3. Habeas corpus

"But we find in this section nothing that precludes the right of the prisoner to have a judicial inquiry made into

the fact of restoration to sanity," and he may apply for a habeas corpus in the event that the superintendent refuses to certify to his restoration to sanity. *Wagner v. White* (38 App. D. C. 554).

In habeas corpus proceeding by petitioner, who had been committed as an insane person pursuant to verdict, in murder prosecution, of not guilty by reason of insanity, evidence sustained determination that petitioner had not been restored to mental health and justified discharge of writ. *Orencia v. Overholser* (1947, 163 F. 2d 763, 82 U.S. App. D.C. 285).

4. Jurisdiction

The sole effect of § 24-301 et seq. is to suspend the criminal proceedings during the period of insanity but jurisdiction of court continues and when sanity is restored, the case may proceed as if the interregnum had not occurred. *Haislip v. U.S.* (1942, 129 F. 2d 53, 76 U.S. App. D.C. 91).

5. Prisoner convicted but not sentenced

This section includes one convicted of crime but not yet sentenced. *Ormsby v. United States* (C.C.A. 6, 1921, 273 F. 977).

Chapter 4.—PRISONS AND PRISONERS

SUBCHAPTER I.—PRISONS

Sec.

- 24-401. Place of imprisonment—Cumulative sentences—Jurisdiction of prosecutions.
- 24-402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioners over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.
- 24-403. Transfer of prisoners from jail to workhouse.
- 24-404. Commutation of fine.
- 24-405. Deduction for good conduct—Discharge.
- 24-406. Prisoners in workhouse and reformatory to be returned to and released in District of Columbia.
- 24-407. Jail and Washington Asylum combined.
- 24-408. Commitments to Washington Asylum and Jail.
- 24-409. Board of Public Welfare to have exclusive management and control of workhouse, reformatory, and Washington Asylum and Jail.
- 24-410. Detention of United States prisoners in Washington Asylum and Jail.
- 24-411. Superintendent and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.
- 24-412. Employment of prisoners.
- 24-413. Commitment by marshal.
- 24-414. Delivery of prisoners to marshal.
- 24-415. Superintendent of Washington Asylum and Jail accountable for safe-keeping of prisoners.
- 24-416. Annual report by Superintendent of Washington Asylum and Jail.
- 24-417. Superintendent required to execute judgments in capital cases—Failure of Congress to make specific appropriation not abolition of position or repeal of authority.
- 24-418. Sale of products of workhouse and reformatory.
- 24-418a. Sale of gun mountings to States of the Union and their political subdivisions.
- 24-419. Workhouse—Reformatory—Superintendents and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.
- 24-420. Grounds of jail increased.
- 24-421. Subsistence of prisoners—Payment by Attorney-General.
- 24-422. Maintenance of jail—Support of prisoners—Estimates of expenses.
- 24-423. Cost of care of District of Columbia convicts charged against District—United States reimbursed—Miscellaneous receipts.
- 24-424. Cost of care of District of Columbia convicts charged against District—Accounts.
- 24-425. Place of imprisonment—Designation by Attorney General—Transfer.

SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS

Sec.

- 24-441. Department of Corrections created—Director.
 24-442. Powers of Department over institutions—Rules and regulations.
 24-443. Board of Public Welfare powers transferred to Department—Officers and employees.
 24-444. Rules and regulations of Board of Public Welfare in effect.
 24-445. Contracts of Board of Public Welfare not invalidated—Appropriations available.
 24-446. Cost of care and custody of persons confined in institutions.
 24-447. Advances to Director, Department of Corrections.

SUBCHAPTER I.—PRISONS

§ 24-401. Place of imprisonment—Cumulative sentences—Jurisdiction of prosecutions.

When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the workhouse or in the jail. When any person is sentenced for a term longer than six months and not longer than one year such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision. When the punishment of an offense may be imprisonment for more than one year the prosecution shall be in the United States District Court for the District of Columbia. When the maximum punishment is a fine only or imprisonment for one year or less the prosecution may be in the Municipal Court for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 934; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Place of imprisonment designated by Attorney General, see § 24-425.

NOTES TO DECISIONS

- Authority to designate institution 1
 Cumulative sentences 2
 Direction contrary to statute 3
 Federal crimes 4
 Hard labor 5
 Probation 6
 Sentence before repeal of Eighteenth Amendment 7
 Term exceeding one year 8

1. Authority to designate institution

Attorney General of the United States has authority to designate an institution outside of the District of Columbia for service of sentence of a person convicted in the District of Columbia. *Stoneburg v. Hiatt* (D.C. Pa. 1943, 47 F. Supp. 596).

2. Cumulative sentences

Under this section cumulative sentences aggregating more than one year must be deemed one sentence for

the purpose of determining the place of imprisonment. *Kelleher v. United States* (1930, 35 F. 2d 877, 59 App. D.C. 107).

The purpose of the cumulative sentence provision was merely the adoption of a policy that District of Columbia prisoners sentenced for more than a year should serve time in a penitentiary rather than in the District jail, at least when the sentence was imposed by the district court. *Brosius v. Botkin* (1940, 114 F. 2d 22, 72 App. D.C. 279).

Sentences for two separate offenses, each for a term from six months to a year, were properly served in a reformatory in Virginia. *Id.*

Sentences imposed by Municipal Court of the District of Columbia can be cumulated with sentences imposed in District Court of the District of Columbia, and all served in a United States penitentiary. *Stoneburg v. Hiatt* (D.C. Pa. 1943, 47 F. Supp. 596).

Municipal court could impose a sentence to commence at termination of that imposed for another distinct offense, irrespective of whether initial sentence was imposed by the municipal court or by the district court. *Williams v. United States* (D. C. Mun. App. 1957, 133 A. 2d 112).

The statute providing that when punishment for offense charged may be for more than one year, prosecution shall be in the United States District Court for the District of Columbia does not preclude the Criminal Division of the Municipal Court from giving sentence imposing a 120 day confinement to take effect after expiration of District Court sentence for a distinctly different offense, though the combined sentences would run for more than a year. *Id.*

"The provision relating to cumulative sentences 'has no reference to a sentence to pay a pecuniary fine, followed by imprisonment in default of payment, but relates only to cases in which the punishment is to be imprisonment.'" *Hartranft v. Mullowny* (43 App. D.C. 44, error dismissed 38 S. Ct. 518, 247 U.S. 295, 62 L. Ed. 1123).

Sentences are not cumulative "merely because two imprisonments are made successive in point of time, if it happens that the prisoner convicted upon two separate informations receives two separate definite sentences for the two separate offenses." *Harris v. Lang* (27 App. D.C. 84). See, also, *Harris v. Nixon* (27 App. D.C. 94).

3. Direction contrary to statute

A direction by Municipal Court of District of Columbia that sentences imposed should be served in a jail type institution, if not in accordance with statutes applicable to the particular situation, would have no effect. *Stoneburg v. Hiatt* (D.C. Pa. 1943, 47 F. Supp. 596).

4. Federal crimes

Intention of Congress was that the trial judge should be invested with the power to designate the type of penal institution in which persons convicted of Federal crimes should be confined. *Andreas v. Clark* (C.C.A. 9, 1934, 71 F. 2d 908).

5. Hard labor

When defendant had been tried upon an information in the juvenile court of the District and sentenced to imprisonment at hard labor for six months, the statute authorizing such punishment was unconstitutional, and juvenile court was without jurisdiction to try capital or other infamous crimes. *United States v. Moreland* (1922, 42 S. Ct. 368, 258 U.S. 433, 66 L. Ed. 700, 24 A.L.R. 992).

Police court will not sentence to imprisonment in any institution where hard labor is lawfully required of the prisoners therein because such a sentence would place the offense itself within the category of infamous crimes and thereby oust the court of its jurisdiction. *Cleveland v. Mattingly* (1923, 287 F. 948, 52 App. D.C. 374).

6. Probation

District Court had no power to release defendant on probation after he had entered upon the execution of his sentence when he was committed to jail to await transportation to the final place of imprisonment. *Moss v. United States* (C.C.A. 4, 1934, 72 F. 2d 30).

7. Sentence before repeal of Eighteenth Amendment

When person was committed to jail before Eighteenth Amendment and Prohibition Act were repealed, he was

not entitled to discharge by habeas corpus on theory that each day in prison was a new and distinct offense. *Rives v. O'Hearne* (1935, 73 F. 2d 984, 64 App. D.C. 48).

8. Term exceeding one year

"Section 934 (this section) provides generally that where the sentence on any conviction is for a term exceeding one year the imprisonment shall be in the penitentiary, and applies to section 810 (§ 22-2901) as directly as if it had been incorporated therein." *United States v. Evans* (28 App. D. C. 264).

§ 24-402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioners over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.

Whenever any person has been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than one year by the court, the imprisonment during the term for which he may have been sentenced or during the residue of said term may be in some suitable jail or penitentiary or in the reformatory of the District of Columbia; and it shall be sufficient for the court to sentence the defendant to imprisonment in the penitentiary without specifying the particular prison or the reformatory of the District of Columbia and the imprisonment shall be in such penitentiary, jail, or the reformatory of the District of Columbia as the Attorney-General shall from time to time designate: *Provided*, That the commissioners of the District of Columbia are vested with jurisdiction over such male and female prisoners as may be designated by the Attorney-General for confinement in the reformatory of the District of Columbia from the time they are delivered into their custody or into the custody of their authorized superintendent, deputy, or deputies, and until such prisoners are released or discharged under due process of law: *And provided further*, That the residue of the term of imprisonment of any person who has prior to July 1, 1916, been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than one year by the court may be in the reformatory of the District of Columbia instead of the penitentiary where such persons may be confined on July 1, 1916, and the Attorney-General, when so requested by the commissioners of the District of Columbia, is authorized to, and he shall, deliver into the custody of the superintendent of said reformatory or his deputy or deputies any such person confined in any penitentiary in pursuance of any judgment of conviction in and sentence by any court in the District of Columbia, and the commissioners of the District of Columbia are vested with jurisdiction over such prisoners from the time they are delivered into the custody of said superintendent or his duly authorized deputy or deputies, including the time when they are in transit between such penitentiary and the reformatory of the District of Columbia, and during the period they are in such reformatory or until they are released or discharged under due process of law. The Attorney-General shall pay the cost of the maintenance of said prisoners so transferred, said payment to be from appropriations for support of convicts, District of Columbia, in like manner as payments are made for the support of District convicts in federal penitentiaries. Nothing herein contained shall be construed as applying to the National Training School for Boys

or the National Training School for Girls. (Sept. 1, 1916, 39 Stat. 711, ch. 433.)

EFFECTIVE DATE

Act Sept. 1, 1916, provided in part that: "The provisions of this paragraph shall take effect on and after July first, nineteen hundred and sixteen."

CROSS REFERENCES

Place of imprisonment to be designated by Attorney General, see § 24-425.

NOTES TO DECISIONS

Constitutional law 1
Federal institutions 2
Penal or correctional institutions 3
Place of confinement 4
Transfer of prisoners 5

1. Constitutional law

Act giving Attorney General power to designate places of confinement for Federal prisoners does not violate Fifth Amendment. *Stewart v. Johnston* (C.C.A. 9, 1938, 97 F. 2d 548).

2. Federal institutions

This section impliedly recognizes the fact that District of Columbia prisoners may be incarcerated in Federal institutions. *Story v. Rives* (1938, 97 F. 2d 182, 68 App. D.C. 325).

Prisoner released on parole by Federal parole board as a matter of discretion but Congress adopted a new procedure of conditional release because it realized that society would be better served if prisoners were subjected to the same supervision as parolees. *Id.*

3. Penal or correctional institutions

A sentence to serve a term in a penal institution could not be served in a correctional institution, except under authority given to the Attorney General to transfer prisoners. *Wilson v. Aderhold* (C.C.A. 5, 1936, 84 F. 2d 806).

4. Place of confinement

The Attorney General of the United States had the authority to designate an institution located outside of the District of Columbia and beyond the control of local penal officials for service of sentence by one who was convicted in the District of Columbia of a violation of § 22-1504, since the offense punished thereby was an "offense against the United States" within meaning of this section. *Beard v. Bennett* (1940, 114 F. 2d 578, 72 App. D.C. 269).

Attorney General was duly authorized to designate the prison where a defendant was sentenced in the courts of the District of Columbia to imprisonment exceeding one year, and his designation was in proper form. (Decided under D.C. 1901, § 925). *Myers v. Morgan* (C.C.A. 8, 1915, 224 F. 413).

Attorney General, under the broad powers conferred upon him, had authority to cause appellee to be placed and held in the Atlanta penitentiary under any general sentence of imprisonment for more than a year, the court could have imposed. *Aderhold v. Edwards* (C.C.A. 5, 1934, 71 F. 2d 297).

5. Transfer of prisoners

Transfer of inmates of Atlanta penitentiary who are eligible to parole, to an institution in District of Columbia, can not be required by the courts. *Aderhold v. Lee* (C.C.A. 5, 1934, 68 F. 2d 824, certiorari denied 54 S. Ct. 718, 292 U.S. 633, 78 L. Ed. 1486).

Attorney General has authority to change the place of confinement from a Federal penitentiary to a local jail, when it is proper to do so, in the exercise of his discretion, and it is not necessary that a prisoner be remanded to the trial court merely for the purpose of having the designation of the jail changed. *Cox v. McConnell* (C.C.A. 5, 1936, 80 F. 2d 258).

In imposing sentences, courts are restricted to specifying the type of institution in which the prisoner is to be confined and he is committed to the custody of the Attorney General, who designates the place of confinement, and the Attorney General may transfer any prisoner from one institution to another for any reason sufficient to himself. *Zerbst v. Kidwell* (C.C.A. 5, 1938, 92 F. 2d 756).

U.S. Code, title 18, § 753f (now §§ 4082, 4083) if in any respect inconsistent with this section, is so only to the extent that it broadens the Attorney General's authority so that he may designate a place of confinement other than one of the District of Columbia. *Beard v. Bennett* (1940, 114 F. 2d 578, 72 App. D.C. 269).

§ 24-403. Transfer of prisoners from jail to workhouse.

The United States District Court for the District of Columbia, the Attorney-General, and the superintendent of the Washington Asylum and Jail, when so requested by the Commissioners of the District of Columbia, shall deliver into the custody of the superintendent or the authorized deputy or deputies of said superintendent of the workhouse, male and female prisoners sentenced to confinement in said jail for offenses against the common law or against statutes or ordinances relating to the District of Columbia, and, in the discretion of the United States District Court for the District of Columbia and the Attorney-General, male and female prisoners serving sentence in said jail for offenses against the United States, for such work or services as may be necessary, in the discretion of the commissioners of said District, in connection with the construction, maintenance, and operation of said workhouse, or the prosecution of any other public work at said institution or in the District of Columbia: *Provided*, That, on the direction of said commissioners, male and female prisoners confined in any existing workhouse existing on March 2, 1911, or in the Washington Asylum and Jail of the District of Columbia shall be delivered into the custody of said superintendent or the authorized deputy or deputies of said superintendent aforesaid, to perform similar work or services to those hereinbefore required of male and female prisoners serving sentences in the District of Columbia Jail: *Provided further*, That the Commissioners of the District of Columbia are hereby vested with jurisdiction over such male and female prisoners from the time they are so delivered into the custody of said superintendent or the duly authorized deputy or deputies of said superintendent, including the time when such prisoners are in transit between the District of Columbia and the site acquired for such workhouse, and during the period such prisoners are on such site or in the District of Columbia until they are released or discharged under due process of law. (Mar. 2, 1911, 36 Stat. 1002, ch. 192; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

1. Habeas corpus

District Court had jurisdiction to issue habeas corpus writ, for petitioner was committed by a court of the District to a jail of the District under the control of an official of the District who in turn was personally within the District and within the jurisdiction of the court. *Sanders v. Allen* (1939, 100 F. 2d 717, 69 App. D.C. 307).

2. Transfer to workhouse

Provision of this section authorizing transfer to the workhouse by direction of the commissioners was attached by law to the sentence, and had the same effect as if the court, under statutory authority, had expressed in the sentence that the convict might be transferred to the workhouse under order of the commissioners. *Whittaker v. Brannan* (C.C.A. 4, 1918, 252 F. 556).

§ 24-404. Commutation of fine.

In all cases in the District of Columbia where a defendant is sent to jail or to the workhouse in default of the payment of a fine he shall be released upon the payment of the balance of the fine due by him after crediting thereon as paid an amount equal to the proportion the time thus served by him in the jail or workhouse bears to the whole time he was to serve under the sentence. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 936.)

§ 24-405. Deduction for good conduct—Discharge.

All persons sentenced to and imprisoned in the jail or in the workhouse of the District of Columbia, and confined there for a term of one month or longer who conduct themselves so that no charge of misconduct shall be sustained against them shall have a deduction upon a sentence of not more than one year of five days for each month; upon a sentence of more than one year and less than three years, six days for each month; upon a sentence of not less than three years and less than five years, seven days for each month; upon a sentence of not less than five years and less than ten years, eight days for each month; and upon a sentence of ten years or more, ten days for each month, and shall be entitled to their discharge so much the earlier upon the certificate of the superintendent of the Washington Asylum and Jail for those confined in the jail, and upon the certificate of the superintendent of the workhouse for those confined in the workhouse, of their good conduct during their imprisonment. When a prisoner has two or more sentences the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated. (Mar. 3, 1901, 31 Stat. 1341, ch. 854, § 937; Mar. 2, 1911, 36 Stat. 1003, ch. 192; June 6, 1940, 54 Stat. 245, ch. 254, § 10.)

CODIFICATION

Act Mar. 2, 1911, combined as one institution, known as the Washington Asylum and Jail, the jail of the District of Columbia and the Washington Asylum, and created the position of Superintendent of the Washington Asylum and Jail and vested in him the powers theretofore vested in and exercised by the warden of the former jail and the superintendent of the former Washington Asylum.

AMENDMENT

1940—Act June 6, 1940, among other changes, substituted provisions prescribing the maximum deduction for good behavior for persons confined under particular sentences for provisions which authorized a deduction of 5 days for each month, inserted provisions requiring the aggregate of several sentences to be the basis for deduction, and eliminated provisions which required the judge to make a docket entry of the discharge.

NOTES TO DECISIONS

1. Good conduct allowance

The good conduct deduction under the District of Columbia Code does not apply to those sentenced to a penitentiary. *Johnson v. Ward, U.S. Marshal* (1960, 278 F. 2d 245, 107 U.S. App. D.C. 365).

An allowance on a sentence for good conduct is a privilege and not a vested right. It may be denied as to all cumulative sentences for an infraction of the rules occurring during the service of any of the sentences. *Aderhold v. Hudson* (C.C.A. 5, 1939, 84 F. 2d 559).

§ 24-406. Prisoners in workhouse and reformatory to be returned to and released in District of Columbia.

All inmates of the workhouse and reformatory for the District of Columbia shall be returned to and released in said District on the day of the expiration of sentence. (June 10, 1910, 36 Stat. 464, ch. 282.)

§ 24-407. Jail and Washington Asylum combined.

The jail of the District of Columbia and the Washington Asylum of said District shall be combined as one institution, known as the Washington Asylum and Jail. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

§ 24-408. Commitments to Washington Asylum and Jail.

Whenever and wherever authority of law exists to sentence, commit, order committed, or confine any person to or in the jail of the District of Columbia or the Washington Asylum of said District, said authority shall be exercised by sentence, commitment, order of commitment, or confinement to or in said Washington Asylum and Jail. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

§ 24-409. Board of Public Welfare to have exclusive management and control of workhouse, reformatory, and Washington Asylum and Jail.

The Board of Public Welfare shall have complete and exclusive management and control of (a) the workhouse at Occoquan in the State of Virginia; (b) the reformatory at Lorton, in the State of Virginia; (c) the Washington Asylum and Jail. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

CODIFICATION

This section is comprised of part of section 6 of act Mar. 16, 1926. Section 6 of said act is set out in its entirety as section 3-106.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

§ 24-410. Detention of United States prisoners in Washington Asylum and Jail.

The Board of Public Welfare is hereby authorized and directed to receive and keep in the Washington Asylum and Jail all prisoners committed thereto for offenses against the United States. (Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

§ 24-411. Superintendent and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.

The superintendents and all other employees engaged on March 16, 1926 in the operation of the institutions enumerated in section 24-409 shall after March 16, 1926 be subject to the supervision of the

Board. Each superintendent shall have the management and control of the institution to which he is appointed and shall be subordinate to the director of public welfare. The superintendent and all other employees of each of the institutions enumerated in section 24-409 shall be appointed by the Commissioners of the District of Columbia upon nomination by the Board and shall be subject to discharge by the Commissioners upon recommendation of the Board. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

Act Mar. 2, 1911, 36 Stat. 1003, ch. 192, transferred the functions, powers and duties of the warden of the jail and of the superintendent of the Washington Asylum to the superintendent of the Washington Asylum and Jail.

REPEAL OF INCONSISTENT ACTS

Section 15 of act Mar. 16, 1926, repealed all acts or parts of acts inconsistent therewith.

NOTES TO DECISIONS

1. Superintendent of District jail

Superintendent of District of Columbia Jail, in so far as he was custodian of federal prisoner, was an "officer or employee of the United States", within U.S. Code, title 28, § 1252 authorizing direct appeal to Supreme Court from interlocutory or final judgment, decree or order of any court of the United States holding act of Congress unconstitutional in any civil action, suit or proceeding to which United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party. *Reid, Superintendent v. Covert* (1956, 76 S. Ct. 880, 351 U.S. 487, 100 L. Ed. 1352, rehearing denied 77 S. Ct. 23, 352 U.S. 813, reversed on other grounds 77 S. Ct. 1222, 354 U.S. 1, 1 L. Ed. 2d 1148).

§ 24-412. Employment of prisoners.

Persons sentenced to imprisonment in the jail may be employed at such labor and under such regulations as may be prescribed by the Board of Public Welfare and the proceeds thereof applied to defray the expenses of the trial and conviction of any such person. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

AMENDMENT

1926—Act Mar. 16, 1926, substituted "Board of Public Welfare" for "Supreme Court of the District."

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

§ 24-413. Commitment by marshal.

Nothing in sections 24-412 and 24-415 shall be construed to impair or interfere with the authority of the marshal of the District to commit persons to the jail or to produce them in open court or before any judicial officer when thereto required. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1193.)

§ 24-414. Delivery of prisoners to marshal.

It shall be the duty of the superintendent of the Washington Asylum and Jail to receive such prisoners and to deliver them to the marshal or his duly authorized deputy, on the written request of either, for the purpose of taking them before any court or judicial officer, as provided in section 12-413. (Mar.

3, 1901, 31 Stat. 1379, ch. 854, § 1194; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

TRANSFER OF FUNCTIONS

Powers and duties of the warden of the jail were transferred to the superintendent of the Washington Asylum and Jail by act Mar 2, 1911. See note under section 24-411.

NOTES TO DECISIONS

1. Police custody

Where defendant had been duly committed to jail upon other charges and was being legally detained, and defendant was delivered to custody of policemen by jail officials for purpose of going to police headquarters to take a lie detector test, to which defendant had agreed to submit, though jailer exceeded his authority in surrendering defendant, fact that defendant was in temporary care of police at time of making written confession to murder charge did not render confession inadmissible at his trial. *Tyler v. United States* (1952, 193 F. 2d 24, 90 U.S. App. D.C. 2, certiorari denied 72 S. Ct. 639, 343 U.S. 908, 96 L. Ed. 1326).

§ 24-415. Superintendent of Washington Asylum and Jail accountable for safe-keeping of prisoners.

The superintendent of the Washington Asylum and Jail shall be accountable for the safe-keeping of all prisoners legally committed thereto. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1191; Mar. 2, 1911, 36 Stat. 1003, ch. 192; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

CODIFICATION

Provisions relating to the warden's exclusive supervision and control of the jail have been deleted in view of act Mar. 16, 1926, which vested complete and exclusive management of the Washington Asylum and Jail in the Board of Public Welfare.

TRANSFER OF FUNCTIONS

Powers and duties of the warden of the jail were transferred to the superintendent of the Washington Asylum and Jail by act Mar 2, 1911. See note under section 24-411.

NOTES TO DECISIONS

Appointment 1
Bond 2

1. Appointment

Defendant is superintendent by virtue of an appointment from the Commissioners of the District, and under his direction and control are the jail building itself and all other buildings used in connection with it, including the hospital building, where the plaintiff was received. All the subordinates of the superintendent receive their appointments from the Commissioners themselves, and are not subject to discharge by the superintendent. *Zinkhan v. District of Columbia* (1921, 271 F. 542, 50 App. D.C. 312).

2. Bond

Office of warden was abolished and a new office created, viz the office of Superintendent of the Washington Asylum and Jail, under appointment by the Commissioners of the District, and such officer's bond was required to be given to the District. Touching this bond there is no statutory provision that allows action thereon to be brought by a third party. *District of Columbia to Use of Langelotti v. Fidelity & Deposit Co.* (1921, 271 F. 383, 50 App. D.C. 309).

§ 24-416. Annual report by Superintendent of Washington Asylum and Jail.

The superintendent of the Washington Asylum and Jail shall annually, in the month of November, make a detailed report to the Attorney-General. (Mar. 3, 1901, 31 Stat. 1379, ch. 854, § 1197; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

TRANSFER OF FUNCTIONS

Powers and duties of the warden of the jail were transferred to the superintendent of the Washington Asylum

and Jail by act Mar 2, 1911. See note under section 24-411.

§ 24-417. Superintendent required to execute judgments in capital cases—Failure of Congress to make specific appropriation not abolition of position or repeal of authority.

The Superintendent of the Washington Asylum and Jail appointed by the commissioners of the District of Columbia is hereby directed, authorized, and required to execute the judgments of the law prior to March 4, 1923, pronounced and thereafter to be pronounced in the District of Columbia by the courts thereof in all capital cases, and the power prior to March 4, 1923, given to and now vested in such commissioners to appoint such superintendent and all appointments to the position of such superintendent made by such commissioners are hereby ratified and confirmed; and any failure on the part of Congress, either prior to or after March 4, 1923, to make a specific appropriation for the salary or compensation of such superintendent shall not be construed either as an abolition of such position of Superintendent of the Washington Asylum and Jail or as a repeal of the power and authority of such commissioners to appoint such superintendent. (Mar. 4, 1923, 42 Stat. 1533, ch. 292.)

CROSS REFERENCES

Method of capital punishment, duty to provide death chamber and apparatus, death sentence to be in writing, persons present at electrocution, see §§ 23-701 to 23-706.

§ 24-418. Sale of products of workhouse and reformatory.

The commissioners are authorized, under such regulations as they may prescribe, to sell the surplus products of the workhouse and the reformatory. All moneys derived from such sales shall be paid into the treasury of the United States to the credit of the United States and to the credit of the District of Columbia, in the same proportions as the appropriations for such institutions are paid from the treasury of the United States and the revenues of the District of Columbia. All moneys received at the reformatory as income thereof from the sale of brooms to the various branches of the government of the District of Columbia shall remain available for the purchase of material for the manufacture of additional brooms to be similarly disposed of. (June 5, 1920, 41 Stat. 869, ch. 234; Feb. 28, 1923, 42 Stat. 1357, ch. 148.)

CODIFICATION

Section consolidates parts of acts June 5, 1920, and Feb. 28, 1923.

CROSS REFERENCES

Credit for amounts paid in treasury, see § 47-130.
Lump-sum appropriation for District, see § 47-134.

§ 24-418a. Sale of gun mountings to States of the Union and their political subdivisions.

Any State of the United States or any political subdivision of any such State is authorized to purchase from the District of Columbia Reformatory located at Lorton, Virginia, at fair market prices determined by the Commissioners of the District of Columbia, gun mountings and carriages for guns for use at historic sites and for museum display purposes. Receipts from sales authorized under this section shall be deposited to the credit of the working capital fund established for the industrial

enterprises at the workhouse and reformatory of the District of Columbia to the same extent and in the same manner as provided for receipts from the sale of products and services of such industrial enterprises in section 47-131. (June 1, 1957, 71 Stat. 45, Pub. L. 85-45, § 1.)

§ 24-419. **Workhouse—Reformatory—Superintendents and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.**

CODIFICATION

Section, act Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7, which was previously classified to this section and section 24-411, is omitted since the sections are identical and there is no reason to duplicate the provisions in this Code.

§ 24-420. **Grounds of jail increased.**

The buildings and grounds adjoining the Washington Asylum in the District of Columbia, used prior to June 16, 1880, as a Naval and Army magazine are added to the grounds of the Washington Asylum and Jail and subjected to the control of the commissioners of the District of Columbia as part of the asylum until otherwise ordered. (June 16, 1880, 21 Stat. 270, ch. 235; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

CONSOLIDATION OF JAIL AND WASHINGTON ASYLUM

"Washington Asylum and Jail" was substituted for "asylum" to conform to act Mar. 2, 1911, which combined the jail of the District of Columbia and the Washington Asylum into one institution. See section 24-407.

§ 24-421. **Subsistence of prisoners—Payment by Attorney-General.**

There shall be allowed and paid by the Attorney-General for the subsistence of prisoners in the custody of any marshal of the United States and the Superintendent of the Washington Asylum and Jail in the District of Columbia such sum as it reasonably and actually costs to subsist them. And it shall be the duty of the Attorney-General to prescribe such regulations for the government of the marshals and the Superintendent of the Washington Asylum and Jail in the District of Columbia in relation to their duties under sections 24-412 to 24-416 and 24-421 as will enable him to determine the actual and reasonable expenses incurred. (Mar. 3, 1901, 31 Stat. 1380, ch. 854, § 1204; Mar. 2, 1911, 36 Stat. 1003, ch. 192.)

CONSOLIDATION OF JAIL AND WASHINGTON ASYLUM

"Washington Asylum and Jail" was substituted for "jail" to conform to act Mar. 2, 1911, which combined the jail of the District of Columbia and the Washington Asylum. See section 24-407.

§ 24-422. **Maintenance of jail—Support of prisoners—Estimates of expenses.**

All expenses incurred for maintenance of the jail of the District of Columbia and for support of prisoners therein shall be paid out of the revenues of the District of Columbia, and estimates for such expenses shall each year be submitted in the annual estimates for the expenses of the government of the District of Columbia. (Aug. 18, 1894, 28 Stat. 417, ch. 301; June 29, 1922, 42 Stat. 668, ch. 249.)

CODIFICATION

Provisions which related to apportionment of expenses were omitted in view of act May 16, 1938, 52 Stat. 375, ch. 223, § 8.

§ 24-423. **Cost of care of District of Columbia convicts charged against District—United States reimbursed—Miscellaneous receipts.**

The United States shall be reimbursed, as heretofore, for the maintenance of District of Columbia inmates, and all sums paid by such District for such maintenance for the service of the fiscal year 1927 and subsequent fiscal years shall be covered into the treasury as "Miscellaneous receipts." (Apr. 29, 1926, 44 Stat. 347, ch. 195, title II.)

§ 24-424. **Cost of care of District of Columbia convicts charged against District—Accounts.**

The cost of the care and custody of District of Columbia convicts in any federal penitentiary shall be charged against the District of Columbia in quarterly accounts to be rendered by the disbursing officer of said penitentiary; and the amount to be charged against the District of Columbia shall be ascertained by multiplying the average daily number of District of Columbia convicts confined in the penitentiary during the quarter by the per capita cost for all prisoners in such penitentiary for the same quarter but excluding expenses of construction or extraordinary repair of buildings. (Mar. 3, 1915, 38 Stat. 869, ch. 75, § 1.)

§ 24-425. **Place of imprisonment—Designation by Attorney General—Transfer.**

All prisoners convicted in the District of Columbia for any offense, including violations of municipal regulations and ordinances and Acts of Congress in the nature of municipal regulations and ordinances, shall be committed, for their terms of imprisonment, and to such types of institutions as the court may direct, to the custody of the Attorney General of the United States or his authorized representative, who shall designate the places of confinements where the sentences of all such persons shall be served. The Attorney General may designate any available, suitable, and appropriate institutions, whether maintained by the District of Columbia Government, the federal government, or otherwise, or whether within or without the District of Columbia. The Attorney General is also authorized to order the transfer of any such person from one institution to another if, in his judgment, it shall be for the well-being of the prisoner or relieve overcrowding or unhealthful conditions in the institution where such prisoner is confined, or for other reasons. (July 15, 1932, ch. 492, § 11, as added June 6, 1940, 54 Stat. 244, ch. 254, § 8.)

SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS

§ 24-441. **Department of Corrections created—Director.**

There is created in and for the District of Columbia a Department of Corrections to be in charge of a Director who shall be appointed by the Commissioners of the District of Columbia. (June 27, 1946, 60 Stat. 320, ch. 507, § 1.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 34 of the Board of Commissioners dated May 28, 1953, and effective June 21, 1953, established under the direction and control of a Commissioner, a Department of Corrections headed by a director. The Department was established to provide for the custody, care, discipline, and instruction of all persons com-

mitted to the Workhouse, Lorton Reformatory, Women's Reformatory, and the D.C. Jail. All positions under the previously existing Department of Corrections including the duties, powers, and authorities of all officers and employees were assigned to the new Department of Corrections and the previously existing Department was abolished. This order was issued pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Appendix.

CROSS REFERENCE

Director of Department of Corrections to designate officers of the Department to whom services of a psychiatrist and a psychologist are available, see § 24-106.

§ 24-442. Powers of Department over institutions—Rules and regulations.

Said Department of Corrections under the general direction and supervision of the Commissioners of the District of Columbia shall have charge of the management and regulation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail, and be responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to such institutions. The Department of Corrections with the approval of the Commissioners shall have power to promulgate rules and regulations for the government of such institutions and to establish and conduct industries, farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation. (June 27, 1946, 60 Stat. 320, ch. 507, § 2.)

TRANSFER OF FUNCTIONS

Department of Corrections under the direction and control of a Commissioner, and headed by a director, established to succeed the existing Department of Corrections, see note under section 24-441.

§ 24-443. Board of Public Welfare powers transferred to Department—Officers and employees.

With respect to the said institutions, the Commissioners of the District of Columbia shall succeed to all the powers and authority, and to all the duties and obligations vested in or imposed by law upon the Board of Public Welfare of the District of Columbia. Where powers are vested in or duties are imposed by existing law upon the Director of Public Welfare of the District of Columbia with respect to said institutions, such powers and duties are transferred to and shall be exercised by the Director of the Department of Corrections. The officers and employees and all plant and equipment, official records, furniture, and supplies of the said institutions are hereby transferred to the Department of Corrections. (June 27, 1946, 60 Stat. 321, ch. 507, § 3.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

§ 24-444. Rules and regulations of Board of Public Welfare in effect.

All rules and regulations promulgated by the Board of Public Welfare with respect to said institutions shall continue in force and effect until amended or repealed by the Department of Corrections with the approval of the Commissioners. (June 27, 1946, 60 Stat. 321, ch. 507, § 4.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

§ 24-445. Contracts of Board of Public Welfare not invalidated—Appropriations available.

No contract for services or supplies made by the Board pursuant to authority granted to it by law shall be invalidated by this enactment and the unexpended balances of all appropriations heretofore or hereafter made for the Board with respect to said institutions shall become available for use by the Department of Corrections under the direction of the Commissioners. (June 27, 1946, 60 Stat. 321, ch. 507, § 5.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

§ 24-446. Cost of care and custody of persons confined in institutions.

The cost of the care and custody of persons confined in the said institutions charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia shall be charged against the department or agency of the United States primarily responsible for the care and custody of such persons in quarterly accounts to be rendered by the Disbursing Officer of the District of Columbia. The amount to be charged for such care and custody shall be ascertained by multiplying the average daily number of such persons so confined during the quarter by the per capita cost for the same quarter for all prisoners in the institution where confined, excluding expenses of construction or extraordinary repair of buildings. The sum so derived shall be credited to the current appropriation for the maintenance and operation of such institutions. (June 27, 1946, 60 Stat. 321, ch. 507, § 6.)

§ 24-447. Advances to Director, Department of Corrections.

CODIFICATION

Section, acts July 5, 1955, 69 Stat. 262, ch. 272, § 9; Act July 31, 1953, 67 Stat. 295, ch. 299; § 11; Act July 5, 1952, 66 Stat. 391, ch. 576, § 11; Act Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11; July 13, 1950, 64 Stat. 347, ch. 467, § 1, which authorized advancements to the Director of the Department of Correction, is omitted as superseded by section 1-263.

Chapter 5.—REHABILITATION OF ALCOHOLICS

Sec.

24-501. Purpose.

24-502. "Chronic alcoholic" defined.

24-503. Alcoholic clinic.

24-504. Suspension of criminal proceedings—Hearing—Commitment to clinic.

24-505. Classification and diagnostic center.

24-506. Director's recommendation to committing judge—Court order—Designation of director as representative of Attorney General.

24-507. Discharge at expiration of term—Second hearing on director's recommendation—Recommitment.

25-508. Supervision by probation officer or other agency.

24-509. Certification of adequate facilities.

24-510. Voluntary submission for treatment—Admission—Payment of costs—Rules and regulations—Rights as citizen retained.

24-511. Contract for treatment by appropriate agency.

Sec.

24-512. Director of clinic—Personnel.

24-513. Director's recommendations—Publication of data.

24-514. Advisory committee.

§ 24-501. Purpose.

The purpose of this chapter is to establish a program for the rehabilitation of alcoholics, promote temperance, and provide for the medical, psychiatric, and other scientific treatment of chronic alcoholics; to minimize the deleterious effects of excessive drinking on those who pass through the courts of the District of Columbia; to reduce the financial burden imposed upon the people of the District of Columbia by the abusive use of alcoholic beverages, as is reflected in mounting accident rates, decreased personal efficiency, growing absenteeism, and a general increase in the amount and seriousness of crime in the District of Columbia, and to substitute for jail sentences for drunkenness medical and other scientific methods of treatment which will benefit the individual involved and more fully protect the public. In order to accomplish this purpose and alleviate the problem of chronic alcoholism, the courts of the District of Columbia are hereby authorized to take judicial notice of the fact that a chronic alcoholic is a sick person and in need of proper medical, institutional, advisory, and rehabilitative treatment, and the court is authorized to direct that he receive appropriate medical, psychiatric, or other treatment as provided under the terms of this chapter. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 1.)

§ 24-502. "Chronic alcoholic" defined.

The term "chronic alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or while under the influence of alcohol endangers the public morals, health, safety, or welfare. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 2.)

§ 24-503. Alcoholic clinic.

(a) The Commissioners of the District of Columbia are hereby authorized and directed to establish and equip a clinic in connection either with some existing hospital or with some correctional institution or other facility for the diagnosis, classification, hospitalization, confinement, treatment, and study of persons who are found to be chronic alcoholics, as defined herein, by the Municipal Court for the District of Columbia.

(b) The Commissioners of the District of Columbia are also directed to utilize the alcoholic clinic services for the treatment of the chronic alcoholic as authorized by this chapter and for the purpose of preparing and administering a program for the rehabilitation of alcoholics and the promotion of temperance through teaching and training of professional personnel and use through community organization. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 3.)

§ 24-504. Suspension of criminal proceedings—Hearing—Commitment to clinic.

In any criminal case, brought to trial before the Municipal Court for the District of Columbia, in which the evidence indicates that the defendant is a chronic alcoholic within the meaning of section

24-502, the judge may suspend the proceedings in the case and order that a hearing be held, upon sufficient notice, to determine whether the defendant is a chronic alcoholic. The hearing shall be conducted by the judge without a jury, unless the defendant requests a jury. The defendant shall be entitled to representation at the hearing by an attorney of his own choice, and if the defendant does not select an attorney, the court shall appoint an attorney to represent the defendant. If, after the hearing, the judge, or the jury, as the case may be, determines that the defendant is a chronic alcoholic, the court may order that he be committed to the clinic for diagnosis, classification, and treatment as his condition may require, provided the term of commitment shall not exceed ninety days. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 4.)

NOTES TO DECISIONS

1. Discretion of court

This section which provides that the court may order the defendant committed to a clinic clearly indicates that such commitment is generally a matter of discretion of the court. *Peeples v. District of Columbia* (D. C. Mun. App. 1950, 75 A. 2d 845).

§ 24-505. Classification and diagnostic center.

The director of the clinic shall provide a classification and diagnostic center. Every person committed to the clinic shall first be sent to this classification and diagnostic center for observation, examination, and classification. The classification center shall make a complete study of each person committed, including mental and physical condition, personal traits, pertinent circumstances of school and family life, and any delinquency, criminal experience, or other factors contributing to his addiction to alcohol. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 5.)

§ 24-506. Director's recommendation to committing judge—Court order—Designation of director as representative of Attorney General.

(a) The director may then recommend to the committing judge that the person committed (1) be permitted to remain at liberty conditionally and under supervision, or (2) be placed in an appropriate agency, hospital, institution in the District of Columbia for treatment as a chronic alcoholic, or (3) be returned to the court from which he was committed for trial upon the original offense charged or for such action as the court may deem proper. The court may thereupon, in its discretion, issue such orders as it deems necessary and proper in the case.

(b) The Attorney General of the United States may, in order to carry out the purposes of this chapter, designate the director of the clinic as his authorized representative under section 24-425. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 6.)

§ 24-507. Discharge at expiration of term—Second hearing on director's recommendation—Recommendation.

At the expiration of the term of commitment the chronic alcoholic must be discharged, unless the director of the clinic recommends to the court prior to the expiration of the term of commitment that he is in need of additional treatment in an appropriate hospital or institution, in which event the court will conduct a second hearing, in the same manner and upon the same conditions as provided

in section 24-504 for the first hearing, as to his condition, and may order the chronic alcoholic recommitted for an additional period of ninety days or less as his condition requires. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 7.)

§ 24-508. Supervision by probation officer or other agency.

A chronic alcoholic committed to the clinic and who is permitted to remain at liberty or conditionally released shall be under the supervision of the probation office of the court in which he was committed, or the clinic, or such other agency, public or private, as the court may determine. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 8.)

§ 24-509. Certification of adequate facilities.

No chronic alcoholic shall be committed to a clinic, agency, hospital, or institution under the terms of this chapter until the District Commissioners shall certify to the municipal court for the District of Columbia the extent to which proper and adequate treatment facilities and personnel have been provided to carry out the purposes of this chapter. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 9.)

§ 24-510. Voluntary submission for treatment—Admission—Payment of costs—Rules and regulations—Rights as citizen retained.

(a) Any resident of the District of Columbia who is a chronic alcoholic within the meaning of this chapter may voluntarily submit himself for admission, examination, and treatment in the clinic. If he is found to be a chronic alcoholic, the applicant may be admitted to the clinic for such period of time as is estimated by the director as necessary to effect a cure. He may be given such treatment, guidance, and help as the director deems appropriate except that he may not be committed to a correctional institution. Any such chronic alcoholic voluntarily applying may be required to pay the cost of his subsistence, care, and treatment. All such money shall be covered into the credit of the appropriation from which the expenditure was made. The Commissioners may establish or approve such rules and regulations as may be necessary to carry out the provisions of this section.

(b) Any resident of the District of Columbia who voluntarily submits himself for admission and treatment in the clinic shall not forfeit or abridge thereby any of his rights as a citizen of the United States, nor shall the fact that he has submitted himself for admission and treatment or that he has been given help or has submitted himself to any study, treatment, or guidance be used against him in any proceeding in any court. The record of any application under this section by any individual for admission and treatment in the clinic and the record of any study of, or treatment, guidance, or help furnished to, any individual admitted in the clinic under this section shall be confidential, and not be divulged except on order of the court. No order may be made under section 24-506 with respect to any such individual except as provided under the rules and regulations of the Commissioners in effect at the time such individual voluntarily submitted himself for admission and treatment in the clinic. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 10.)

§ 24-511. Contract for treatment by appropriate agency.

The Commissioners of the District of Columbia may contract with any appropriate agency not under its control, which has proper and adequate treatment facilities and personnel to carry out the purposes of this chapter, for the custody, care, subsistence, treatment, and training of persons committed to the alcoholic clinic herein authorized. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 11.)

§ 24-512. Director of clinic—Personnel.

The Commissioners of the District of Columbia are authorized and directed to appoint a director of the clinic, who shall be a qualified physician with such training in psychiatry as they may prescribe, the necessary medical officers, psychiatrists, probation officers, social-case workers, and other personnel needed to carry out the purposes of this chapter. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 12.)

§ 24-513. Director's recommendations—Publication of data.

The director of the clinic shall from time to time submit to the Commissioners such recommendations as will further the rehabilitation of chronic alcoholics, prevent the excessive and abusive use of alcoholic beverages, promote temperance, and he shall also gather and publish as complete and accurate data as is possible relating to the physiological, psychological, economic, and social effects of the abusive use of alcoholic beverages and shall prepare and publish materials, data, and information to be used in a program of public education in the District of Columbia directed toward the prevention and use of alcoholic beverages excessively and abusively. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 13.)

§ 24-514. Advisory committee.

The Commissioners shall appoint a committee, to be composed of six outstanding residents of the District of Columbia, to advise and consult with the Commissioners and to assist them in carrying out the provisions of this chapter. The members of the committee shall serve without compensation and shall serve for a period of one year and until their successors are appointed. (Aug. 4, 1947, 61 Stat. 747, ch. 472, § 15.)

Chapter 6.—REHABILITATION OF USERS OF NARCOTICS

Sec.

- 24-601. Purpose.
- 24-602. Definitions.
- 24-603. Order of examination.
- 24-604. Right to counsel.
- 24-605. Examinations by physicians.
- 24-606. When hearing is required.
- 24-607. Hearing.
- 24-608. Confinement of patient.
- 24-609. Release of patient.
- 24-610. Periodic examination of released patients.
- 24-611. Patient not deemed a criminal.
- 24-612. Patient not deemed a criminal.
- 24-613. Care and treatment of drug users—Authority of the Surgeon General.
- 24-614. Admittance into Public Health Service hospitals—Narcotics users from District of Columbia.
- 24-615. Release of patients.

§ 24-601. Purpose.

The purpose of sections 24-601 to 24-611 is to protect the health and safety of the people of the District of Columbia from the menace of drug addiction and to afford an opportunity to the drug user for rehabilitation. The Congress intends that Federal criminal laws shall be enforced against drug users as well as other persons, and sections 24-601 to 24-611 shall not be used to substitute treatment for punishment in cases of crime committed by drug users. (June 24, 1953, 67 Stat. 77, ch. 149, § 2; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101.)

CODIFICATION

Provisions of this section were contained in section 1 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 102 of act July 24, 1956, provided that: "This title [amending and renumbering §§ 24-601 to 24-611] shall take effect thirty days after the date of its enactment [July 24, 1956]."

SHORT TITLE OF 1956 AMENDMENT

Section 1 of act July 24, 1956, provided: "That this Act [amending and renumbering §§ 24-601, to 24-611, adding §§ 33-701 to 33-712, amending §§ 24-613, 33-401, 33-402, 33-405, 33-408 to 33-412, 33-414, 33-416a, 33-417, 33-423, and enacted provisions set out as a note under § 24-613] may be cited as the 'Dangerous Drug Control Act for the District of Columbia'."

Section 1 of act June 24, 1953, as added by section 101 of act July 24, 1956, provided that: "This Act [§§ 24-601 to 24-611] may be cited as the 'Hospital Treatment for Drug Addicts Act for the District of Columbia.'"

NOTES TO DECISIONS

Construction 1
Juveniles 2

1. Construction

This chapter is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Whisaker* (1955, 134 F. Supp. 864).

This chapter providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, § 11-901 et seq., insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *Id.*

2. Juveniles

The intention of Congress was to include juveniles within the operation of this chapter. *In re Whisaker* (1955, 134 F. Supp. 864).

Under this chapter, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

§ 24-602. Definitions.

For the purpose of sections 24-601 to 24-611—

(a) The term "drug user" means any person, including a person under eighteen years of age, notwithstanding the provisions of the Juvenile Court Act of the District of Columbia, as amended, who uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.

(b) The term "narcotic drugs" shall have the

same meaning as that given to such term by section 4731 of the Internal Revenue Code of 1954.

(c) The term "patient" means any person ordered to appear before the Commissioners, pursuant to the provisions of section 24-603.

(d) The term "Commissioners" means the Commissioners of the District of Columbia, sitting as a Board, or their designated agent or agents. (June 24, 1953, 67 Stat. 77, ch. 149, § 3; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101.)

REFERENCE IN TEXT

The Juvenile Court Act of the District of Columbia, referred to in the text, is classified to § 11-901 et seq.

CODIFICATION

Provisions of this section were contained in section 2 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

AMENDMENT

1956—Act July 24, 1956, amended section generally, and among other changes, inserted provisions relating to persons under eighteen years of age in the definition of "drug user", and added the definitions of "narcotic drugs" and "Commissioners."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

NOTES TO DECISIONS

1. Juveniles

The intention of Congress was to include juveniles within the operation of this chapter. *In re Whisaker* (1955, 134 F. Supp. 864).

Under this chapter, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

This chapter is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *Id.*

This chapter providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, § 11-901 et seq., insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *Id.*

§ 24-603. Order of examination.

(a) Whenever the Commissioners have probable cause to believe that any person within the District of Columbia, other than a person referred to in subsection (b) hereof, is a drug user, they forthwith shall order any law enforcement officer of the District of Columbia to bring that person before them, to conduct a preliminary examination, and if they find sufficient evidence of addiction, as hereinbefore defined, they shall cause that person to be placed in an institution to be designated by them for an examination by physicians pursuant to section 24-605.

(b) The Commissioners shall not order any person brought before them if the said person is charged with a criminal offense, whether by indictment, information, or otherwise, or if the said person is under sentence for a criminal offense, whether he is serving the sentence, or is on probation or parole, or has been released on bond pending appeal. (June 24, 1953, 67 Stat. 77, ch. 149, § 4; July 24, 1956, 70 Stat. 609, ch. 676, title I, § 101.)

CODIFICATION

Provisions of this section were contained in sections 3 and 4 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

AMENDMENT

1956—Act July 24, 1956, amended section generally, and among other changes, substituted "Commissioners" for "United States attorney" wherever appearing, inserted references to the institutionalizing of drug users for examination, and deleted references to filing a statement with the United States District Court stating facts tending to show that a person was a drug user.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

§ 24-604. Right to counsel.

(a) A patient shall have the right to the assistance of counsel at every stage of the judicial proceeding under sections 24-601 to 24-611, and the court shall assign counsel to represent him if the patient is unable to obtain counsel.

(b) The counsel for a patient may inspect the reports of the examination made pursuant to the authority contained in section 24-605. No such report and no evidence resulting from such personal examination or evidence offered by the patient shall be admissible against him in any judicial proceeding except a proceeding under sections 24-601 to 24-611.

(c) The patient may, prior to the examination made pursuant to the provisions of section 24-605 or prior to the hearing provided for by section 24-607, waive his rights to an examination, to counsel, or to such hearing, and voluntarily submit himself to commitment pursuant to the provisions of sections 24-601 to 24-611. (June 24, 1953, 67 Stat. 78, ch. 149, § 7; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

CODIFICATION

Provisions of this section were contained in section 5 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

AMENDMENT

1956—Act July 24, 1956, designated existing provisions as subsec. (a), deleted references therefrom relating to the advising of the patient of his right to counsel, and added subssecs. (b) and (c).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

§ 24-605. Examinations by physicians.

(a) Whenever the Commissioners order a patient into an institution pursuant to the provisions of section 24-603, they shall immediately appoint two qualified physicians, one of whom shall be a psychiatrist, to examine the said patient, and within five days after such appointment, each physician shall file with the United States Attorney for the District of Columbia, a written report of such examination, which shall include a statement of his conclusion as to whether the patient is a drug user.

(b) The United States Attorney for the District of Columbia shall review the facts and circumstances of each case submitted to him and present by petition those in which he feels justification exists in the public interest to the United States District Court for the District of Columbia for determina-

tion and disposition, or dismiss the patient from custody. A copy of such petition shall be served on the patient in open court, at which time the court shall set a hearing date and advise the patient of his right to counsel and his right to demand within five days a trial by jury. (June 24, 1956, 67 Stat. 78, ch. 149, § 5; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

CODIFICATION

Provisions of this section were contained in section 6 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

AMENDMENT

1956—Act July 24, 1956, amended section generally, and among other changes, provided, that the commissioners are to appoint the physicians, that said physicians are to file a report within five days with the United States Attorney who is to examine the facts and either dismiss the patient, or petition the District Court for determination and disposition of the case.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

§ 24-606. When hearing is required.

If, in a report filed pursuant to section 24-605, either of the examining physicians states that the patient is a drug user, or that he is unable to reach any conclusion by reason of the refusal of the patient to submit to thorough examination, the court shall conduct a hearing upon petition of the United States Attorney in the manner provided in section 24-607. (June 24, 1953, 67 Stat. 78, ch. 149, § 6; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

CODIFICATION

Provisions of this section were contained in section 7 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

AMENDMENT

1956—Act July 24, 1956, inserted the reference to the petition of the United States Attorney, and deleted provisions relating to an order dismissing the proceeding on the basis of the report, or when a hearing was deemed necessary, for personal service of notice upon the patient.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

§ 24-607. Hearing.

(a) Upon the evidence introduced at a hearing held for that purpose the court shall determine whether the patient is a drug user. The hearing shall be conducted without a jury unless, before such hearing and within five days after the date on which the petition is filed pursuant to section 24-605, a jury is demanded by the patient or by the United States Attorney for the District of Columbia. Each patient concerning whom a report is filed shall be detained at such place as the Commissioners may designate until the completion of such hearing or until released as provided in section 24-605 (b).

(b) The rules of evidence applicable in civil judicial proceedings shall be applicable to hearings pursuant to this section, including the right of the patient to present evidence in his own behalf and to subpoena and cross-examine witnesses. However, no patient examined pursuant to the provisions of sections 24-601 to 24-611, shall be permitted at any

hearing ordered pursuant to this section to object to the submission of testimony concerning such examination on the ground of privilege. (June 24, 1953, 67 Stat. 78, ch. 149, § 8; July 24, 1956, 70 Stat. 610, ch. 676, title I, § 101.)

CODIFICATION

Provisions of this section were contained in section 8 of act June 24, 1953, prior to the general amendment of act June 24, 1953, by act July 24, 1956.

AMENDMENT

1956—Act July 24, 1956, substituted “five days” for “fifteen days”, and “petition” for “second report”, permitted the Commissioners to detain the patient until the end of the hearing, or until his release, denied the patient any objection for privilege to the submission of testimony concerning his examination, and deleted references to the patient waiving his hearing and to his subsequent direct commitment by the Commissioners.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act June 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

§ 24-608. Confinement of patient.

If the court finds the patient to be a drug user, it may commit him to a hospital designated by the patient or the Commissioners and approved by the court, to be confined there for rehabilitation until released in accordance with section 24-609. In the event a patient elects to designate a hospital to which he wishes to be committed, he shall be required to satisfy the court that such hospital has medical, rehabilitation, and security facilities comparable to the institutions designated by the Commissioners and, in addition, the cost of such hospitalization shall be borne by the patient. The head of the hospital shall submit written reports within such periods as the court may direct, but no longer than six months after the commitment and for successive intervals of time thereafter, and state reasons why the patient has not been released. (June 24, 1953, 67 Stat. 79, ch. 149, § 9; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

AMENDMENT

1956—Act July 24, 1956, added provisions relating to the patient's designation of a hospital, and deleted “of the District of Columbia, or their designated agent,” following “patient or the Commissioners.”

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

§ 24-609. Release of patient.

(a) When the head of the hospital to which the patient is committed finds that the patient appears to be no longer in need of confinement for treatment purposes, or has received maximum benefits, he shall give notice to the judge of the committing court, and said patient shall be delivered to the said court for such further action as the court may deem necessary and proper under the provisions of sections 24-601 to 24-611.

(b) The court, upon petition of the patient after confinement for one year, shall inquire into the refusal or failure of the head of the hospital to release him. If the court finds that the patient is no longer in need of care, treatment, guidance, or rehabilitation, or has received maximum benefits, it

shall order the patient released, in accordance with the provisions of section 24-610. (June 24, 1953, 67 Stat. 79, ch. 149, § 10; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

AMENDMENT

1956—Act July 24, 1956, substituted “confinement for treatment purposes” for “rehabilitation” and “he shall give notice” for “they shall give notice.”

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

§ 24-610. Periodic examination of released patients.

(a) For two years after his release, the patient shall report to the Commissioners at such times and places as required, for a physical examination to determine whether the patient has again become a drug user. If the Commissioners determine that the person examined is a drug user, they shall then order the patient into an institution in accordance with the provisions of sections 24-601 to 24-611.

(b) Upon the failure of any patient to report in accordance with the provisions of subsection (a) hereof, the United States attorney for the District of Columbia shall be notified of such failure, and a statement of such failure to report shall be filed with the court. The court shall issue an attachment for the patient and order him confined forthwith for examination and such further action as the court may deem necessary and proper under the provisions of sections 24-601 to 24-611. (June 24, 1953, 67 Stat. 79, ch. 149, § 11; July 24, 1956, 70 Stat. 611, ch. 676, title I, § 101.)

AMENDMENT

1956—Act July 24, 1956, redesignated existing provisions as subsec. (a), and amended such subsection to permit the Commissioners to order the patient into an institution, and to delete references to the Commissioners designated agent, and added subsec. (b).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective thirty days after July 24, 1956, see § 102 of act July 24, 1956, set out as a note under § 24-601.

§ 24-611. Patient not deemed a criminal.

The patient in any proceedings under sections 24-601 to 24-611 shall not be deemed a criminal and the commitment of any such patient shall not be deemed a conviction. (June 24, 1953, 67 Stat. 79, ch. 149, § 12; July 24, 1956, 70 Stat. 612, ch. 676, title I, § 101.)

AMENDMENT

1956—Act July 24, 1956, reenacted section without change.

NOTES TO DECISIONS

1. In general

This chapter is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Whisaker* (1955, 134 F. Supp. 864).

§ 24-612. Patient not deemed a criminal.

CODIFICATION

Section, act June 24, 1953, 67 Stat. 79, ch. 149, § 12, is now classified to section 24-611.

§ 24-613. Care and treatment of drug users—Authority of the Surgeon General.

The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-forming narcotic drugs who voluntarily submit themselves for treatment, addicts who have been or are hereafter convicted of offenses against the United States, including persons convicted by general courts-martial and consular courts, and addicts who are committed to the Service or to a hospital thereof pursuant to section 24-614. Such care and treatment shall be provided at hospitals of the Service especially equipped for the accommodation of such patients and shall be designed to rehabilitate such persons, to restore them to health, and where necessary, to train them to be self-supporting and self-reliant. Upon the admittance to, and departure from, a hospital of the Service of a person who voluntarily submitted himself for treatment pursuant to the provisions of this section and who at the time of his admittance to such hospital was a resident of the District of Columbia, the Surgeon General shall furnish to the Commissioners of the District of Columbia, or their designated agent, the name, address, and such other pertinent information as may be useful in the rehabilitation to society of such person. (July 1, 1944, 58 Stat. 698, ch. 373, § 341; May 8, 1954, 68 Stat. 80, ch. 195, § 3; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 302(a).)

CODIFICATION

Section is also classified to U.S. Code, title 42, § 257.

AMENDMENTS

1956—Act July 24, 1956, required the Surgeon General to furnish to the Commissioners or their designated agent, the name, address, and any other useful information relating to persons who voluntarily submit themselves for treatment and who, at the time of submission, are residents of the District of Columbia.

1954—Act May 8, 1954, added the reference to addicts committed pursuant to section 24-614.

STATEMENT OF PURPOSE

Act May 8, 1954, § 1, as amended by act July 24, 1956, § 303, provides that:

"In order to afford the District of Columbia the facilities required to carry out the Act of June 24, 1953 (Public Law 76, Eighty-third Congress), as amended, and to help it meet its responsibility for the detention, care, and treatment of noncriminal narcotic addicts, it is hereby declared to be the purpose of this Act [§§ 24-613 to 24-615] to authorize the limited use of suitable Public Health Service facilities at the expense of the District of Columbia for such detention, care, and treatment."

§ 24-614. Admittance into Public Health Service hospitals—Narcotics users from District of Columbia.

(a) The Surgeon General is authorized to admit for care and treatment in any hospital of the Service suitably equipped therefor, and thereafter to transfer between hospitals of the Service in accordance with section 248(b) of title 42, U.S. Code, any addict who is committed, under the provisions of sections 24-601 to 24-611, to the Service or to a hospital thereof for care and treatment and who the Surgeon General determines is a proper subject for such care and treatment. No such addict shall be admitted unless (1) he is committed prior to July 1, 1956; and (2) at the time of his commitment, the number of persons in hospitals of the Service who have been

admitted pursuant to this subsection is less than fifty; and (3) suitable accommodations are available after all eligible addicts convicted of offenses against the United States have been admitted.

(b) Any person admitted to a hospital of the Service pursuant to subsection (a) shall be discharged therefrom (1) upon order of the United States District Court for the District of Columbia, or (2) when he is found by the Surgeon General to be cured and rehabilitated. When any such person is so discharged, the Surgeon General shall give notice thereof to the United States District Court for the District of Columbia and shall deliver such person to such court for such further action as such court may deem necessary and proper under the provisions of sections 24-601 to 24-611.

(c) With respect to the detention, transfer, parole, or discharge of any person committed to a hospital of the Service in accordance with subsection (a), the Surgeon General and the officer in charge of the hospital, in addition to authority otherwise vested in them, shall have such authority as may be conferred upon them, respectively, by the order of the committing court.

(d) The cost of providing care and treatment for persons admitted to a hospital of the Service pursuant to subsection (a) shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to the Public Health Service, either in advance or otherwise, as may be determined by the Surgeon General. Such cost may be determined for each addict or on the basis of rates established for all or particular classes of patients, and shall include the cost of transportation to and from facilities of the Public Health Service. Moneys so paid to the Public Health Service shall be covered into the Treasury of the United States as miscellaneous receipts. Appropriations available for the care and treatment of addicts admitted to a hospital of the Service under this section shall be available, subject to regulations, for paying the cost of transportation to the District of Columbia, including subsistence allowance while traveling, for any such addict who is discharged. (July 1, 1944, ch. 373, title III, § 345, as added May 8, 1954, 68 Stat. 80, ch. 195, § 2 and amended July 24, 1956, ch. 676, title III, § 302(c), 70 Stat. 622.)

CODIFICATION

Section is also classified to U.S. Code, title 42, § 260a.

AMENDMENT

1956—Act July 24, 1956, substituted "July 1, 1958" for "July 1, 1956", and "one hundred" for fifty."

§ 24-615. Release of patients.

For purposes of sections 24-613 to 24-615, an individual shall be deemed cured of his addiction and rehabilitated if the Surgeon General determines that he has received the maximum benefits of treatment and care by the Service for his addiction or if the Surgeon General determines that his further treatment and care for such purpose would be detrimental to the interests of the Service. (July 1, 1944, ch. 373, title III, § 347, as added May 8, 1954, 68 Stat. 81, ch. 195, § 4.)

CODIFICATION

Section is also classified to U.S. Code, title 42, § 261a.

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PART V

GENERAL STATUTES

TITLE 25.—ALCOHOLIC BEVERAGES

Chap.	Sec.
1. Alcoholic Beverage Control.....	25-101

Chapter 1.—ALCOHOLIC BEVERAGE CONTROL

Sec.	25-101
25-101. Partial repeal of National Prohibition Act.	
25-102. Short title—Application.	
25-103. Definitions.	
25-104. Alcoholic Beverage Control Board—Appointment—Term—Employees.	
25-104a. Classification of positions of members of Board.	
25-105. Interest of Board member or employee in manufacture, transporting, or storing of alcoholic beverages forbidden.	
26-106. Jurisdiction of Board over licenses—Appeal from revocation—Duties.	
25-107. Powers of Commissioners—Rules and regulations—Licenses.	
25-108. Alcohol for nonbeverage purposes not affected—Penalty for unlawful sales.	
25-109. Sale without license prohibited—Exceptions.	
25-110. Licenses—Applications for—To whom granted—Records.	
25-111. License classifications—Fees.	
25-111a. Appropriation of portion of license fees for rehabilitation of alcoholics.	
25-112. Authority of Commissioners to forbid transportation of liquor into District—Permit may be granted.	
25-113. Holding of license of more than one class forbidden—Definition of "licensee."	
25-114. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.	
25-115. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property-owners—Removal of bonded liquor from government warehouses—Penalty.	
25-116. Issuing licenses in certain districts restricted.	
25-117. Transfer of license—Fee—Conditions imposed.	
25-118. Revocation of license—Causes—Hearing—Discretionary closing for one year.	
25-119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.	
25-120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.	
25-121. Sale to minors or intoxicated persons—Liability of licensee.	
25-122. License forfeited on licensee becoming bail.	
25-123. Monthly reports of sales and purchases.	
25-124. Beverage tax—Stamps—Seizure and disposition of beverage upon which tax not paid—Absence of stamp prima facie evidence of nonpayment—Penalty for counterfeiting or forging stamps—Class C or D licensees—Reports.	

Sec.	25-125
25-125. Sale, distribution, furnishing of beverages by convicted persons and minors.	
25-126. Power of Board to compel testimony—Witness fees—Perjury.	
25-127. Intoxicated person not to operate locomotive, streetcar, elevator, watercraft or horse-drawn vehicle—Penalty—Traffic acts not affected.	
25-128. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park or parking forbidden—Penalty.	
25-129. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.	
25-130. Minor misrepresenting age to procure beverage—Penalty.	
25-131. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.	
25-132. Penalty for violation where no specific penalty provided—Prosecutions.	
25-133. Sale by retailer of beverages on credit prohibited—Exceptions.	
25-134. Containers to be labeled—Content.	
25-135. Offenses under National Prohibition Act to be prosecuted.	
25-136. Separability of provisions.	
25-137. Unlawful transportation—Penalty.	
25-138. Tax on beer.	
25-139. Building or place of violation declared a nuisance—Procedure to enjoin or abate.	

§ 25-101. Partial repeal of National Prohibition Act.

The National Prohibition Act, as amended and supplemented, insofar as it affects the manufacture, sale, and possession in the District of Columbia, and the transportation in, into, and from the District of Columbia, of alcoholic beverages, is hereby repealed, with the exception of title III, and section 4 of title II insofar as it affects denatured alcohol. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 1.)

REFERENCES IN TEXT

The National Prohibition Act, as amended and supplemented, referred to in the text, is act Oct. 28, 1919, 41 Stat. 305, ch. 85, which was formerly classified to U.S. Code, title 27.

CROSS REFERENCE

Previous violation or seizures under National Prohibition Act not affected, see § 25-135.

NOTES TO DECISIONS

1. In general

This act did not repeal the Liquor Taxing Act of 1934. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

§ 25-102. Short title—Application.

This chapter may be cited as the "District of Columbia Alcoholic Beverage Control Act." It shall apply only to the District of Columbia and shall not authorize the delivery of alcoholic beverages

outside of the District of Columbia in violation of the law of the place of delivery. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 2.)

CROSS REFERENCE

Application and exemptions from chapter, see §§ 25-108, 25-109, 25-115, 25-127, 25-137.

§ 25-103. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

(a) The word "alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever processes produced.

(b) The word "spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including brandy, rum, whisky, cordials, and gin.

(c) The word "wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling, artificially carbonated and fortified wine. No other product obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar shall be called "wine" unless designated by appropriate prefix descriptions of the fruit or other product from which the same was predominantly produced, or as artificial or imitation wine. Light wines shall mean wines containing 14 per centum or less of alcohol by volume, other than champagne.

(d) The word "beer" means any fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor.

(e) The words "alcoholic beverage" or "beverage" include the four varieties of liquor above defined (alcohol, spirits, wine, and beer) and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties above defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the order in which they are above defined, except as provided in subsection (c) hereof. The provisions of this section and of this chapter shall not apply to any liquid or solid containing less than one half of 1 per centum of alcohol by volume, nor shall anything contained in this chapter be construed as affecting the manufacture of apple cider or the sale thereof.

(f) The word "Board" shall mean the Alcoholic Beverage Control Board created by this chapter.

(g) The word "club" means a corporation for the promotion of some common object (not including corporations organized for any commercial or business purpose, the object of which is money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the Board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests, and including such space outside of the building and adjoining it as may be approved by the Board, and provided with such suitable and adequate kitchen and dining-

room space and equipment, implements, and facilities, and employing such a sufficient number of employees for cooking, preparing, and serving meals for its members and their guests, as shall satisfy the Board that the sale of beverages intended is not more than an incident to and is not the prime source of revenue from such space; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year and no officer, agent, or employee of the club is paid directly or indirectly, or receives in the form of salary or other compensation, any profit from the disposition or sale of beverages to the club or to the members of the club or guests introduced by members beyond the amount of such salary as may be fixed and voted by the members, or by its directors, or other governing body.

(h) The word "Commissioners" shall mean the Commissioners of the District of Columbia.

(i) The word "District" shall mean the District of Columbia.

(j) The word "hotel" means a suitable building or other structure, approved by the Board, including such suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served and sleeping accommodations offered for pay to transient guests; in which thirty or more rooms are used for the sleeping accommodations of such transient guests, and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building or in connecting buildings, and such building or buildings, structure or structures being provided with such adequate kitchen and dining-room equipment and capacity and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the Board that such dining room is intended for use primarily as a place for preparing, cooking, and serving meals and that the chief source of revenue to be derived from the operation of such dining room shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such dining room shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide dining room.

(k) The word "manufacture" shall include rectification.

(l) The word "meals" means the usual assortment of foods commonly ordered at various hours of the day; and such food and victuals as sandwiches and salads shall not be regarded as a "meal."

(m) The word "person" includes an individual, partnership, corporation, and association.

(n) The word "restaurant" means a suitable space in a suitable building, approved by the Board, including such suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served, such space being provided with such adequate kitchen and

dining-room equipment and capacity, and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the Board that such space is intended for use primarily as a place for preparing, cooking, and serving meals, and that the chief source of revenue to be derived from the operation of such place shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such space shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide restaurant.

(o) The word "sell" or "sale" shall include offering for sale, keeping for sale, trafficking in, bartering, delivering for value, exchanging for goods, or in any way other than purely gratuitously, and every delivery of any alcoholic beverage made otherwise than by purely gratuitous title shall constitute a sale.

(p) The word "table" shall not include a counter, bar, or similar contrivance.

(q) The word "tavern" means a suitable space in a suitable building approved by the Board, including such suitable space outside the building and adjoining it, as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where sandwiches or light lunches are prepared and served for consumption on the premises in such quantities as to satisfy the Board that the sale of beer and light wines intended is no more than an incident to and not the prime source of revenue of such "tavern." (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1.)

AMENDMENT

1935—Subsec. (q) amended by act Aug. 27, 1935, to include "light wines."

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCES

Licensee defined, see § 25-113.

Manufacturer defined, see § 25-119.

Wholesaler defined, see § 25-120.

NOTES TO DECISIONS

Barroom 1
Evidence 2
Hotel 4
Judicial notice 3

1. Barroom

A barroom is a place in which intoxicating liquors are sold to be drunk on the premises. *Army & Navy Club v. District of Columbia* (8 App. D. C. 544).

2. Evidence

In prosecution for keeping for sale and selling alcoholic beverages without license, testimony of officers that from their experience in tasting and smelling liquor, it was their conclusion that liquid purchased at club was liquor, and that they tasted liquid and it contained whiskey, was sufficient proof of corpus delicti, notwithstanding failure to prove alcoholic content by chemical analysis. *Stagecrafters Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

3. Judicial notice

From testimony that officers, from their experience in tasting and smelling liquor, concluded that liquid purchased was liquor, and that they tasted liquid and that it contained whiskey, courts may take judicial notice of alcoholic content of whiskey. *Stagecrafters Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

4. Hotel

Requirement in District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was within licensing authority of Commissioners of the District of Columbia. *Courembis v. District of Columbia et al.* (1951, 193 F. 2d 18, 89 U.S. App. D.C. 372).

Requirement of District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was not arbitrary. *Id.*

Where plaintiff's application for building permit showed that he wished to operate a hotel but two weeks before plaintiff got his permit Commissioners of District of Columbia had given public notice of a hearing with regard to proposed new licensing regulations, and a month after he got permit and several months before he completed his alterations, new licensing regulations were adopted providing that a building must have at least 30 bedrooms to be licensed as a hotel, and it did not appear that plaintiff was prevented from continuing to use his 18 bedroom property as before, there was no basis for estoppel against refusal to grant license to operate a hotel. *Id.*

§ 25-104. Alcoholic Beverage Control Board—Appointment—Term—Employees.

The Commissioners of the District of Columbia shall appoint a Board of three persons, subject to removal by the Commissioners, to be called the "Alcoholic Beverage Control Board," each of the members of which shall be a citizen of the United States and a resident of the District of Columbia for at least three years immediately preceding his appointment and have during that period claimed residence nowhere else. Of the three persons first appointed as members of said Board, one shall be appointed for two years, one for three years and one for four years, and thereafter all appointments shall be for the term of four years, except such appointments as may be made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Commissioners only for the unexpired terms. Members shall be eligible for reappointment. The Commissioner shall designate one of the members of the Board to be chairman thereof. The Commissioners are authorized to employ such other personal services, including three additional assistant corporation counsel, as may be necessary to carry out the provisions of this chapter, and to provide for the expenses of the Board. The salaries of employees, other than members of the Board, shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended. The Commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (Jan. 24, 1934, 48 Stat. 321, ch. 4, § 4; Apr. 20, 1948, 62 Stat. 176, ch. 217, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

1948—Act Apr. 20, 1948, eliminated sentence reading "The salary of each of the members of the Board shall be five thousand dollars per annum" following provision for designation of a chairman.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 2 of act Apr. 20, 1948, provided in part that the amendment of this section shall be effective when the

classifications provided for by section 25-104a shall have been effected.

TRANSFER OF FUNCTIONS

All functions of the Alcoholic Beverage Control Board, including functions of all officers and employees, were transferred to the Board of Commissioners, the Alcoholic Beverage Control Board, including the office of the chairman of the Board, was abolished effective at such time as the Board of Commissioners should specify but not later than June 30, 1953, a new office or agency was authorized to be established with such name or title as the Board of Commissioners should determine, and the Board of Commissioners was empowered to delegate the performance of any of its functions with stated exceptions, including the transferred functions, to any member of the Board of Commissioners or any other officer, employee or agency of the Government of the District of Columbia and to transfer personnel, property, records and funds by 1952 Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824.

All functions, duties, powers and authority vested in the Alcoholic Beverage Control Board and the chairman thereof on July 1, 1952, the effective date of 1952 Reorg. Plan No. 5, and transferred to the Board of Commissioners were delegated to and continued to be vested in the Alcoholic Beverage Control Board and the chairman thereof, until otherwise ordered, by Reorg. Order No. 1 of the Board of Commissioners, dated July 1, 1952.

Reorg. Order No. 35 of the Board of Commissioners dated and effective June 16, 1953, established under the direction and control of a Commissioner, an Alcoholic Beverage Control Board consisting of three members appointed by the Board of Commissioners. The order provided that all powers and authorities authorized by statute or by the Board of Commissioners to be exercised by the previously existing Alcoholic Beverage Control Board would thereafter be vested in the new Alcoholic Beverage Control Board, and the members of the previous board were reappointed to the new board. The order abolished the previously existing Alcoholic Beverage Control Board. This order was issued pursuant to 1952 Reorg. No. 5.

The Reorganization Orders and Plan are set out in the Appendix to title 1, Administration.

CROSS REFERENCE

Federal Alcohol Administration Act, see U.S.C. title 27, § 201 et seq.

NOTES TO DECISION

1. Injunction

Where there was no genuine issue of material fact as to whether alcoholic beverage control board had discriminated against liquor licensee in deciding not to renew his license, suit to enjoin board from putting such decision into effect was properly resolved by summary judgment procedure. *Minkoff v. Payne et al.* (1954, 210 F. 2d 689, 93 U.S. App. D.C. 123).

§ 25-104a. Classification of positions of members of Board.

The positions of members of the Alcoholic Beverage Control Board for the District of Columbia shall be classified in accordance with the Classification Act of 1949, as amended. (April 20, 1948, 62 Stat. 176, ch. 217, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENT

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

§ 25-105. Interest of Board member or employee in manufacture, transporting, or storing of alcoholic beverages forbidden.

No member or employee of the Board, directly or indirectly, individually, or as a member of a partnership or association, or stockholder in a corporation shall have any interest whatsoever in dealing in, manufacturing, transporting, or storing alcoholic beverages, nor receive any commission or profit whatsoever from any person authorized by virtue of this chapter to manufacture or sell alcoholic beverages. No provision of this section, however, shall prevent any such member or such employee from purchasing, transporting, and keeping in his possession any alcoholic beverage for the personal use of himself or members of his family or guests. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 5.)

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCE

Business interests forbidden, see §§ 25-113, 25-115, 25-119, 25-120.

§ 25-106. Jurisdiction of Board over licenses—Appeal from revocation—Duties.

The right, power, and jurisdiction to issue, transfer, revoke, and suspend all licenses under this chapter shall be vested solely in the Board, and the action of the Board on any question of fact shall be final and conclusive; except that, in case a license is revoked or is suspended for a period of more than thirty days by the Board, the licensee may, within ten days after the order of revocation, or the order of suspension for a period of more than thirty days is entered, appeal in writing to the Commissioners to review said action of the Board, the hearings on said appeal to be submitted either orally or in writing at the discretion of the Commissioners, and the Commissioners shall not be required to take evidence, either oral, written, or documentary. The decision of the Commissioners on any question of fact involved in such appeal shall be final and conclusive. Pending such appeal, the license shall stand suspended unless the Commissioners shall otherwise order.

The right and power shall be vested in the Board, for good cause shown, to issue permits for the sales of stocks of beverages located in the District of Columbia by individuals, corporations or associations, partnerships, executors, administrators, being owners thereof, receivers or other representatives of a court, to persons licensed under this chapter.

Said Board shall have such other authority and perform such other duties as the Commissioners may, by regulation, prescribe. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 6; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 2.)

AMENDMENT

1935—Act Aug. 27, 1935, inserted provisions relating to suspension of licenses, and added the entire second paragraph.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCES

Causes for revocation or suspension of licenses, see §§ 25-115, 25-118 to 25-120, 25-122.

General license provisions for regulation, modification or elimination of license requirements and promulgation of regulations, see §§ 47-2344, 47-2345.

Other provisions concerning rules and regulations, see § 25-107.

Permits under Beverage License Law, see § 25-131.

Refund of fees when license is refused, see § 47-1017.

Rules and regulations in general, see § 1-226.

Suspension or revocation of license for violation of the Uniform Narcotic Drug Act, see § 33-418.

NOTES TO DECISIONS

Administrative review	7
Examination of witnesses	1
Injunction	2
Interim affirmance	3
Judicial review	8
Mandamus	4
Procedure for renewal of license	5
Questions of fact	6
Review	
Administrative	7
Judicial	8
Suspension	9

1. Examination of witnesses

In hearing on application for renewal of liquor license, which alcoholic beverage control board refused to renew on ground that applicant was not generally fit and did not have necessary good moral character, which conclusion was based in part upon alleged conspiracy with bootleggers not to make bookkeeping entries required by Internal Revenue Code, applicant's cross-examination of one of the alleged bootleggers, on question of bias, was not so restricted as to constitute lack of procedural due process. *Minkoff v. Payne et al.* (1954, 210 F. 2d 689, 93 U.S. App. D.C. 123).

2. Injunction

Where this section provided that decision of Board of Commissioners of District of Columbia on questions of fact on appeal from Alcoholic Beverage Control Board should be final, but order revoking liquor license was upheld by a one to one vote, an injunction would be granted against enforcement of order which would terminate when appeal was reinstated, and after appeal was reinstated the license would stand suspended during time reasonably necessary for commissioners to reach a final decision. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U.S. App. D. C. 247).

Under circumstances disclosed, including showing that net effect of board's failure to prescribe adequate rules and regulations had been to by-pass wishes of community, plaintiffs were entitled to preliminary injunction against operation of liquor store pending review of board's grant of application for transfer of liquor license. *Palisades Citizens Association Inc., et al. v. Weakly et al.* (1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

3. Interim affirmance

The effect of a one to one vote of Board of Commissioners of District of Columbia upholding order of Alcoholic Beverage Control Board revoking liquor license is an interim affirmance of the Board which suspends the license until final decision of the commissioners. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U.S. App. D.C. 247).

4. Mandamus

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Clore Restaurant v. Payne* (1947, 72 F. Supp. 677).

5. Procedure for renewal of license

In application for renewal of liquor license, board properly followed procedure applicable to application for license in first instance, rather than that prescribed for revocation or suspension of license already issued. *Minkoff v. Payne et al.* (1954, 210 F. 2d 689, 93 U.S. App. D.C. 123).

6. Questions of fact

Under this section governing appeal to Board of Commissioners of District of Columbia from Alcoholic Beverage Control Board, provision that decision of commissioners on questions of fact should be final means that

the Board of Commissioners must actually make a decision. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U.S. App. D. C. 247).

A one to one vote of Board of Commissioners of District of Columbia upholding order of Alcoholic Beverage Control Board revoking liquor license did not constitute a "decision of fact" within this section providing that decision of commissioners on question of fact should be final. *Id.*

7. Review—Administrative

Decision of alcoholic beverage control board rejecting application for renewal of liquor license was not reviewable by commissioners of the District of Columbia. *Minkoff v. Payne et al.* (1954, 210 F. 2d 689, 93 U.S. App. D.C. 123).

8. — Judicial

Right of review in liquor license case was not restricted to owners of stores immediately adjacent to licensed premises nor to unsuccessful applicants, and property owners who had taken an active interest at hearing and had presented the "wishes of the neighborhood" were entitled to seek judicial review under District of Columbia Alcoholic Beverage Control Act. *Palisades Citizens Association Inc., et al. v. Weakly et al.* (1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

Where the ruling of the majority of the Alcoholic Beverage Control Board denying application for a retailers' Class "C" license is based upon sound legal principles and upon substantial evidence, the federal court would not be justified in interfering, but if there is no substantial evidence upon which to predicate a rejection, the action of the Board is subject to judicial review. *Clore Restaurant v. Payne* (1947, 72 F. Supp. 677).

9. Suspension

While license of any person appealing from order of Board revoking license is suspended until final decision of Board of Commissioners, the commissioners have no right to cause suspension of license to continue indefinitely by arbitrarily refusing to decide issue of fact. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U.S. App. D.C. 247).

§ 25-107. Powers of Commissioners—Rules and regulations—Licenses.

The Commissioners are hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale, importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals, and the Commissioners are further authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to properly and adequately control the consumption of alcoholic beverages on premises licensed under paragraph (1) of section 25-111, with specific authority to prescribe the hours during which alcoholic beverages may be consumed on such premises.

The Commissioners shall have specific authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as they may deem

proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of, the District of Columbia as they may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as they, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934, near or around schools, colleges, universities, churches, or public institutions, to prescribe the hours during which beverages may be sold and to forbid the sale on Sundays; but the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on Sundays other than light wines and beer, and any such sale is hereby prohibited. The powers and authorities expressly enumerated are to be construed as in addition to, and not by way of limitation of, the general powers herein granted. Different regulations may be prescribed for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

Any regulations promulgated hereunder shall become effective five days after being published in any daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the Commissioners may deem desirable. The Commissioners shall also have authority in any time of public emergency, without previous notice or advertisement, to prohibit the sale of any or all beverages during the period of such emergency. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7; June 29, 1953, 67 Stat. 102, ch. 159, § 404(a).)

AMENDMENT

1953—Act June 29, 1953, amended section by adding after the word "morals" in the first paragraph the provision authorizing the Commissioners to prescribe rules and regulations necessary to control consumption of alcoholic beverages on licensed premises.

CROSS REFERENCES

District of Columbia Revenue Act of 1956, authority of Commissioners to make rules and regulations under, see § 47-1595a.

Other provisions for rules and regulations under this chapter, see §§ 25-106, 25-112, 25-115, 25-138.

Penalties for violations of chapter or rules and regulations, see §§ 25-118, 25-132.

Rules and regulations generally, see § 1-226.

NOTES TO DECISIONS

1. Double jeopardy

Convictions for violations of this act and the Liquor Taxing Act of 1934, did not place defendant in double jeopardy, the evidence required in the two cases being different. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D.C. 24, certiorari denied 56 S. Ct. 960, 298 U.S. 682, 80 L. Ed. 1402).

§ 25-108. Alcohol for nonbeverage purposes not affected—Penalty for unlawful sales.

No provision of this chapter shall apply to alcohol intended for use in the manufacture and sale of any of the following when they are unfit for beverage purposes, namely:

(a) Denatured alcohol produced and used pursuant to Acts of Congress and regulations promulgated thereunder;

(b) Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(c) Flavoring extracts, syrups, and food products;

(d) Scientific, chemical, mechanical, and industrial products.

Any person who shall knowingly sell any of the products enumerated in paragraphs (a), (b), (c), or (d) for beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be subject to the penalties provided for in section 25-132. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 8.)

CROSS REFERENCES

Distilled spirits, wines, and beer, see U. S. Code, title 26, chapter 51.

Exemption from taxation, see § 25-124.

§ 25-109. Sale without license prohibited—Exceptions.

(a) No individual, partnership, association, or corporation shall, within the District of Columbia, manufacture for sale, keep for sale, or sell any alcoholic beverage without having first obtained a license under this chapter for such manufacture or sale, except as provided in section 25-131.

It shall be unlawful for any person operating any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, and where facilities are especially provided and service is rendered for the consumption of alcoholic beverages, who does not possess a license under this chapter, to permit the consumption of such alcoholic beverages on such premises.

(b) No individual shall, within the District of Columbia, offer for sale or solicit any order for the sale of any alcoholic beverage, irrespective of whether such sale is to be made within or without the District of Columbia, unless such individual has first obtained a license of the character described in section 25-111, subsection (k).

Nothing in this subsection shall apply to any offer for sale or solicitation made upon the premises designated in the license of the vendor.

No individual shall within the District of Columbia offer any beverage for sale to, or solicit orders for the sale of any beverage from, any person not a licensee under this chapter, irrespective of whether such sale is to be made within or without the District of Columbia.

(c) A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when, in the judgment of the physician, the use of alcoholic beverages is necessary.

(d) A dentist who deems it necessary that a bona fide patient being then under treatment by him is in actual need of and should be supplied with alcoholic beverages as a stimulant or restorative, may administer to the patient alcoholic beverages.

(e) A veterinarian who deems it necessary may, in the course of his practice, administer or cause to be administered alcoholic beverages to a dumb animal.

(f) A person in charge of an institution regularly conducted as a hospital or sanatorium for the care

of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer or cause to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes, and may charge for the alcoholic beverages so administered. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 9; June 29, 1953, 67 Stat. 102, ch. 159, § 404(b).)

CODIFICATION

As originally enacted, the exception set forth included section 32 of act Jan. 24, 1934, which dealt with manufacturer's permits under the National Prohibition Act, and has been omitted as obsolete.

AMENDMENT

1953—Subsec. (a) amended by act June 29, 1953, which added paragraph making unlawful the consumption of alcoholic beverages on unlicensed premises as therein described.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 404 (k) of act June 29, 1953, provided that "Subsections (b) and (h) of this section [amending this section and section 25-128] shall take effect sixty days after the enactment of the Act [June 29, 1953]."

CROSS REFERENCE

Presence or employment in illegal establishments, see § 22-1515.

NOTES TO DECISIONS

Admissibility of evidence 1
Affidavits of juror 2
Argument to jury 3
Arrest, search and seizure 4
Cross-examination 5
Forfeiture of lease 6
Instructions 7
Joint trial 8
Motion to quash information 9
Place of committing offense 10
Separate offenses 11
Sufficiency of evidence 12
Suppression of evidence 13
Witnesses, competency of 14

1. Admissibility of evidence

Where sole issue determined by convictions of corporate tenant and its officers was sale of liquor on leased premises in violation of statute, judgments of conviction were admissible as prima facie evidence of unlawful use of premises by tenant in subsequent civil suit by tenant. *Stagecrafters' Club v. District of Columbia Division of American Legion* (1953, 111 F. Supp. 127).

In prosecution for keeping for sale and selling alcoholic beverages without a license, Municipal Court properly permitted police officer, who participated in arrest of defendant, to testify that, when defendant was arrested, defendant complained that the police had arrested him before for selling whiskey, since the statement by the defendant to the police officer was part of the res gestae and admissible though it tended to show the commission of an independent crime. *Jackson v. District of Columbia* (D.C. Mun. App. 1956, 125 A. 2d 50).

Where police officer under assumed name joined non-profit social club operating "after-hours bottle club" which would not have given him membership card had they known he was police officer and purpose of his mission, but membership was available to any one who walked up to door and paid membership fee, and officer did not obtain membership card surreptitiously, there was no fraudulent entry or entry by false representation which would warrant suppression of evidence in prosecution for keeping for sale and selling alcoholic beverages without license. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

2. Affidavits of juror

Affidavit in present case does not present facts justifying an exception to the rule that jurors in the federal courts will not be heard for the purpose of impeaching the verdict returned where the facts sought to be shown are such that they essentially inhere in the verdict and only an ex-

treme case will bring about an exception. *Edwards v. District of Columbia* (D. C. Mun. App. 1949, 68 A. 2d 286).

3. Argument to jury

No prejudicial error was committed by the prosecuting attorney, who, in his argument to the jury, explained the failure to introduce the marked money by saying "it had not been introduced because it could not be determined which was used for the purchase of the whiskey and which was used for other purposes" and assuming that "other purposes" referred to the purchase of lottery tickets, there was no prejudicial error since there was no testimony in respect of claim that defendants were anywhere connected with the sale of lottery tickets. *Edwards v. District of Columbia* (D. C. Mun. App. 1949, 68 A. 2d 286).

4. Arrest, search and seizure

Where police officer purchased whiskey from certain party with marked money in attempt to locate his source of supply, and as purchase was being completed, another officer appeared with warrant for party's arrest, arrested party stated he had purchased the whiskey from defendant, and officers searched defendant, found part of the marked money on him, and arrested him, officers had no right to search defendant, and evidence found in such search should have been excluded in prosecution for keeping for sale and selling alcohol beverage without license to do so. *Smallwood v. District of Columbia* (D.C. Mun. App. 1955, 116 A. 2d 599).

Right to search person incident to lawful arrest is beyond question, but search of body is illegal when purpose of search is to discover grounds as yet unknown for arrest or accusation. *Id.*

Where defendants were charged with violating statute in the sale of alcoholic beverages, the intervention of Sunday did not prevent a valid execution of the search warrant but the relevancy of the validity of the search warrant was not apparent where under the ruling of the trial court, no evidence seized under the warrant was used in evidence against defendant. *Edwards v. District of Columbia* (D.C. Mun. App. 1949, 68 A. 2d 286).

5. Cross-examination

In prosecution for keeping and selling alcoholic beverages without license, defendant, whose counsel elicited police detective's testimony that he did not ask defendant for written statement because he knew from defendant's record that she had been around and would not have given him such a statement in answer to question on cross-examination as to whether reason why witness did not ask for statement was because defendant denied her guilt at all times, was in no position to complain of such testimony as to defendant's record on appeal from judgment on verdict of conviction. *Young v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 754).

6. Forfeiture of lease

Landlord's acceptance of rent after tenant's conviction for selling liquor on leased premises without license did not constitute waiver of landlord's right, under lease, to forfeit lease for breach of tenant's covenant that premises would not be used for any unlawful purpose in view of facts that landlord had specifically reserved its right to declare a forfeiture if conviction were affirmed on appeal and that no rent was accepted after affirmance of conviction. *Stagecrafters' Club, Inc. v. District of Columbia Division of American Legion* (1953, 110 F. Supp. 481, supplemented 111 F. Supp. 127).

7. Instructions

In prosecution for keeping and selling alcoholic beverages without license, instructions to jury that seller's transfer of goods to buyer through means of another person in seller's presence is a sale, in answer to jury's inquiry as to whether accused must have physically delivered merchandise and physically received money therefor from consumer to be considered the seller, was not erroneous as peremptorily directing jury to find defendant guilty nor as misleading or inaccurate. *Young v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 754).

8. Joint trial

In prosecution for violations of the Alcoholic Beverage Control Law, defendants were properly charged and tried

together since it would be assumed that average jury would not be so bereft of intelligence and discrimination that it would be unable to properly decide if any of the defendants had violated law. *Simato et al. v. District of Columbia* (D. C. Mun. App. 1954, 108 A. 2d 376).

9. Motion to quash information

On hearing on motion to quash information charging keeping for sale and selling alcoholic beverages without license, testimony of officers that they bought drinks of whiskey at club was sufficient to warrant denial of motion, apart from allegedly improperly obtained evidence under warrant. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

10. Place of committing offense

Failure of government in prosecution for keeping and selling alcoholic beverages without a license, to offer specific proof offenses were committed in District of Columbia, but merely giving location of house by its street number, was not ground for reversal. *Hoover v. District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

11. Separate offenses

In prosecution for keeping and selling alcoholic beverages without a license, the admission of evidence that defendant, who had been identified as person who paid rent for house and one by whose bedside whiskey and marked money were found, had come from an adjoining bedroom into room where liquor was being sold and consumed, and joined in a crap game, was not erroneous as allowing proof of separate offense. *Hoover v. District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

12. Sufficiency of evidence

Evidence sustained conviction for selling and keeping for sale alcoholic beverages without a license. *Turner v. District of Columbia* (D. C. Mun. App. 1957, 132 A. 2d 149).

In prosecution for unlicensed sale of alcoholic beverages, evidence established sufficient proof of continuous possession by the Government of the bottled evidence by the Bureau of Internal Revenue so as to justify denial of directed verdict of acquittal though there was no testimony by receiving clerk as to his possession and disposition of the bottles. *Kelly v. District of Columbia* (D. C. Mun. App. 1954, 102 A. 2d 308).

In prosecution for keeping for sale and selling alcoholic beverages without license, evidence was sufficient to submit case to jury. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

13. Suppression of evidence

Where counsel for defendant charged with keeping and selling alcoholic beverages without a license objected to admission of bottles of liquor and marked money on ground search warrant had not been produced in evidence, without moving to suppress during more than two weeks between arraignment and trial, admission of testimony that raiding officers who came upon premises after the first group of officers had made their purchases were there pursuant to a search warrant, was not error. *Hoover v. District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

14. Witnesses, competency of

On hearing on motion to quash information charging keeping for sale and selling alcoholic beverages without license, fact that officers who testified that they bought drinks at club were unable to recall from unprompted memory, and that parts of testimony gave conclusions of law, would not justify calling officers legally incompetent. *Stagecrafters' Club v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 876).

§ 25-110. Licenses — Applications for — To whom granted—Records.

The Board is authorized to issue licenses to individuals, partnerships, or corporations, but not to unincorporated associations, on application duly made therefor, for the manufacture, sale, offer for sale, consumption on premises of clubs where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, or solicitation of orders for sale of alcoholic beverages within the Dis-

trict of Columbia. The Board shall keep a full record of all applications for licenses, and of all recommendations for and remonstrances against the granting of licenses and of the action taken thereon. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 10; June 29, 1953, 67 Stat. 103, ch. 159, § 404(c).)

AMENDMENT

1953—Act June 29, 1953, amended section to empower the Board to issue licenses to permit the consumption of alcoholic beverages on premises of clubs where food, non-alcoholic beverages or entertainment are sold or provided for compensation.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

NOTES TO DECISIONS

1. Mandamus

Rejection by the Alcoholic Beverage Control Board, of application for a retailers' Class "C" license on ground that area was adequately serviced, was arbitrary and capricious, in absence of any evidence on the point. *Clore Restaurant v. Payne* (1947, 72 F. Supp. 677).

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Id.*

§ 25-111. License classifications—Fees.

Licenses issued under authority of this chapter shall be of twelve kinds:

(a) *Manufacturer's license, class A.*—To operate a rectifying plant, a distillery, or a winery. Such a license shall authorize the holder thereof to operate a rectifying plant for the manufacture of the products of rectification by purifying or combining alcohol, spirits, wine, or beer; a distillery for the manufacture of alcohol or spirits by distillation or redistillation; or a winery for the manufacture of wine; at the place therein described, but such license shall not authorize more than one of said activities, namely, that of a rectifying plant, a distillery, or a winery, and a separate license shall be required for each such plant. Such a license shall also authorize the sale from the licensed place of the products manufactured under such license by the licensee to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter. The annual fee for such license for a rectifying plant shall be \$5,775; for a distillery shall be \$5,775; and for a winery shall be \$825: *Provided*, however, That if a manufacturer shall operate a distillery only for the manufacture of alcohol and more than 50 per centum of such alcohol is sold for nonbeverage purposes, the annual fee shall be \$1,650. If said manufacturer holding a license issued at the rate last mentioned shall sell during any license period 50 per centum or more of said alcohol for beverage purposes, he shall pay to the Collector of Taxes the difference between the license fee paid and the license fee for a distiller of spirits.

(b) *Manufacturer's license, class B.*—To operate a brewery. Such a license shall authorize the holder thereof to operate a brewery for the manufacture of beer at the place therein described. It shall also authorize the sale from the licensed place of the beer manufactured under such license to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer. Said manufacturer may sell beer to the consumer only in barrels, kegs, and sealed bottles and said barrels, kegs, and bottles shall not be opened after sale, nor the contents consumed, on the premises where sold. The annual fee for such license shall be \$4,125.

(c) *Wholesaler's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, and, in addition, in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter.

No holder of such a license except a wholesale druggist or a wholesale grocer shall be engaged in any business on the premises for which the license is issued other than the sale of alcoholic and non-alcoholic beverages.

The annual fee for such license shall be \$2,475.

(d) *Wholesaler's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described to another license holder for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale nor the contents consumed on the premises where sold.

The annual fee for such license shall be \$1,250.

(e) *Retailer's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$1,250.

(f) *Retailer's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed

bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$165.

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of restaurants and passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wines shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, said beverages may be sold and served only in the private room of a registered guest or to persons seated at public tables or to assemblages of more than six individuals in a private room, when such room has been previously approved by the Board. Beer and light wines may also be sold and served to persons seated in bona fide lunch counters. And in the case of clubs, said beverages may be sold and served in the private room of a member or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$825 per annum; for a hotel, under one hundred rooms, \$825 per annum; for a hotel of one hundred or more rooms, \$1,650 per annum; for a club, \$425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$3 per month or \$20 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$100; for all other passenger-carrying marine vessels serving meals, \$75 per month or \$825 per annum.

(h) *Retailer's license, class D.*—Such a license shall be issued only for a bona fide restaurant, tavern, hotel, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. sell beer and light wines at the place therein described for consumption only in said place. Except Such a license shall authorize the holder thereof to in the case of clubs and hotels, no beer or light wines

shall be sold or served to a customer in any closed container. In the case of restaurants, taverns, and passenger-carrying marine vessels and club cars or dining cars on a railroad, said beer and light wines shall be sold or served only to persons seated at public tables or at bona fide lunch counters, except that beer and light wines may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, beer and light wines may be sold and served only in the private room of a registered guest or to persons seated at public tables or at bona fide lunch counters or to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. And in the case of clubs, beer and light wines may be sold and served in the private room of a member, or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license.

The annual fee for such a license shall be \$330 except that in the case of a marine vessel the fee shall be \$30 per month or \$330 per annum, and in the case of each railroad dining car or club car \$1.50 per month or \$15 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$50.

(i) *Retailer's license, class E.*—Such a license shall authorize a person entitled to retail, compound, and dispense medicines and poisons, to sell from the place therein described, beverages in sealed packages, not to exceed one quart each, for medical purposes, and only upon prescription of a duly-licensed practicing physician for liquors as defined by the United States Pharmacopoeia. Such package shall not be opened after sale, nor its contents consumed, on the premises where sold. Such prescription, when filled, shall be canceled by writing across its face the word "Canceled" together with the date on which it is presented and filled, and such prescriptions shall be numbered consecutively as filled and kept on file in consecutive order. No such prescription shall be refilled. The annual fee for such license shall be \$40.

(j) *Retailer's license, class F.*—Such license shall authorize the holder thereof temporarily to sell beer and light wines on the premises therein described for consumption on the premises where sold. Such permits may be issued for a banquet, picnic, bazaar, fair, or similar public or private gathering, where food is served for consumption on the premises. No beer or light wines shall be sold or served to a customer in any unopened container. The issuance of such a permit shall be solely in the discretion of the Board. The fee for each such license shall be \$7.50 per day.

(k) *Solicitor's licenses.*—Such a license shall authorize the licensee to offer for sale to or solicit orders from licensees for the sale of any beverage on behalf of the vendor whose name appears upon such license and whom the solicitor represents. The name of only one vendor shall appear upon the li-

cense but if solicitor represents more than one vendor a license may be issued such solicitor for each vendor such solicitor represents.

The annual fee for such license shall be \$100.

(l) *Consumption License for a Club.*—Such a license shall be issued only for a club. The word "club" within the meaning of this paragraph is a corporation for the promotion of some common object (not including corporations organized or conducted for any commercial or business purpose, or for money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the Board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year, and no officer, agent, or employee of the club is paid, directly or indirectly, or receives in the form of salary or other compensation, any profit from the conduct and operation of the club beyond the amount of such salary as may be fixed and voted by the members or by its directors or other governing body. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. Such a license shall authorize the holder thereof to permit consumption of alcoholic beverages on such parts of the licensed premises as may be approved by the Board. The annual fee for such a license shall be \$100.

Nothing in this chapter shall be construed as repealing any portion of section 7 of the District of Columbia Appropriation Act for the fiscal year ending June 30, 1903, approved July 1, 1902, as amended (32 Stat. 622, ch. 1352, § 7). (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 398, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d).)

AMENDMENTS

1953—Introductory sentence amended by act June 29, 1953, which substituted "twelve" for "eleven".

Subsec. (l) added by Act June 29, 1953.

1949—Subsec. (a) amended by act May 27, 1949, § 501 (a), which increased the annual license fee for rectifying plant from \$3,500 to \$5,775, distillery from \$3,500 to \$5,775, winery from \$500 to \$825, and distillery for manufacture of alcohol more than fifty per centum of which is sold for nonbeverage purposes from \$1,000 to \$1,650.

Subsec. (b) amended by act May 27, 1949, § 501(b), which increased the annual license fee for a brewery from \$2,500 to \$4,125.

Subsec. (c) amended by act May 27, 1949, § 501(c), which increased the annual license fee for wholesaler's license, class A, from \$1,500 to \$2,475.

Subsec. (d) amended by act May 27, 1949, § 501(d), which increased the annual license fee for wholesaler's license, class B, from \$750 to \$1,250.

Subsec. (e) amended by act May 27, 1949, § 501(e), which increased the annual license fee for retailer's license, class A, from \$750 to \$1,250.

Subsec. (f) amended by act May 27, 1949, § 501(f), which increased the annual license fee for retailer's license, class B, from \$100 to \$165.

Subsec. (g) amended by act May 27, 1949, § 501(g), which increased the annual license fee for restaurant

from \$500 to \$825, hotel with less than 100 rooms from \$500 to \$825, hotel with 100 or more rooms from \$1,000 to \$1,650, and club from \$250 to \$425, the monthly and annual license fee for certain marine vessels, railroad dining cars or club cars from \$2 to \$3 per month and \$10 to \$20 per annum, and the annual license fee for company in interstate commerce covering cars operated on railroads within the District of Columbia from \$60 to \$100 and added "for all other passenger-carrying marine vessels serving meals, \$75 per month or \$825 per annum" following the proviso in the second par.

Subsec. (h) amended by act May 27, 1949, § 501(h), which increased the annual license fee for retailer's license, class D, from \$200 to \$330, marine vessel from \$20 per month or \$200 per annum to \$30 per month or \$330 per annum, railroad dining car or club car from \$1 per month or \$10 per annum to \$1.50 per month or \$15 per annum and the annual license fee for company in interstate commerce covering cars operated on railroads within the District of Columbia from \$30 to \$50.

Subsec. (i) amended by act May 27, 1949, § 501(i), which increased the annual license fee for retailer's license, class E, from \$25 to \$40.

Subsec. (j) amended by act May 27, 1949, § 501(j), which increased the annual license fee for retailer's license, class F, from \$5 to \$7.50.

Subsec. (k) amended by act May 27, 1949, § 501(k), which added at the end of the first par. "on behalf of the vendor whose name appears upon such license and whom the solicitor represents. The name of only one vendor shall appear upon the license but if a solicitor represents more than one vendor a license may be issued such solicitor for each vendor such solicitor represents" and deleted former second par. which read: "A solicitor's license shall set forth the name of the vendor whom the solicitor represents and such solicitor shall not represent any vendor whose name does not appear upon such license."

1938—Subsec. (g) amended by act June 15, 1938, § 1, which decreased the annual license fee for certain marine vessels, railroad dining cars or club cars from \$20 to \$10 and added the proviso in the second par.

Subsec. (h) amended by act June 15, 1938, § 2, which added the proviso in the second par.

1935—Subsec. (a) amended by act Aug. 27, 1935, § 3, which inserted "under this chapter" following "license holder" and substituted "dealer licensed under the laws of any State or Territory of the United States" for "dealer outside of the District of Columbia."

Subsec. (b) amended by act Aug. 27, 1935, § 4, which inserted "under this chapter" following "license holder" and substituted "dealer licensed under the laws of any State or Territory of the United States" for "dealer outside of the District of Columbia."

Subsec. (c) amended by act Aug. 27, 1935, § 5, which inserted "under this chapter" following "license holder", substituted "dealer licensed under the laws of any State or Territory of the United States" for "dealer outside of the District of Columbia" and prohibited the sale of beverages to certain other persons except as may be provided by regulations promulgated by the Commissioners under this chapter.

Subsec. (c) amended by act Aug. 27, 1935, § 6, which inserted "under this chapter" following "license holder" and substituted "dealer licensed under the laws of any State or Territory of the United States" for "dealer outside of the District of Columbia."

Subsec. (g) amended by act July 2, 1935, which added to the first paragraph the sentence "All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser."

Subsec. (h) amended by acts Aug. 27, 1935, § 7 and July 2, 1935. Act Aug. 27, 1935, inserted "and light wines" in the expressions "In the case of restaurants, taverns, and passenger-carrying marine vessels and club cars or dining cars on a railroad, said beer and light wines" and "In the case of hotels, beer and light wines" and failed to repeat at the end of the first paragraph the sentence "All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser." Act July 2, 1935, had previously added such sentence to the first paragraph.

1934—Subsec. (c) amended by act Apr. 30, 1934, which added at the end of the first par. the sentence reading: "It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter."

Subsec. (g) amended by act June 18, 1934, which substituted "Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more" for "Except in the case of clubs and hotels" in the first par. and "for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$2 per month or \$20 per annum; for all other passenger-carrying marine vessels serving meals, \$50 per month or \$500 per annum" for "for a marine vessel serving meals, \$50 per month or \$500 per annum; and for each railroad dining car or club car, \$2 per month or \$20 per annum" in the second par.

EFFECTIVE DATE OF 1949 AMENDMENT

Section 509 of act May 27, 1949, provided that: "The provisions of this title [amendment of sections 25-111, 25-111a, 25-117, 25-124, and 25-138 and notes under sections 25-111 and 25-124] shall become effective on the first day of the first month succeeding the sixtieth day after the approval of this Act [May 27, 1949]."

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

SOLICITOR'S LICENSE

Section 502 of act May 27, 1949, provided that: "Notwithstanding the provisions of this Act [May 27, 1949], where prior to the effective date of this Act a solicitor's license has been issued which sets forth the name of more than one vendor the solicitor may continue to offer for sale or to solicit orders from licensees for the sale of any beverage on behalf of any vendor named in such license until the expiration of such license."

CROSS REFERENCES

Refund of fees under Beverage License Act, see § 25-131.
Refund of fees when license refused, see § 47-1018.

§ 25-111a. Appropriation of portion of license fees for rehabilitation of alcoholics.

Six per centum of the annual fees for licenses for the manufacture or sale of alcoholic beverages, except for retailer's license, class E, imposed by section 25-111, is hereby permanently appropriated to carry out the purposes of chapter 5 of Title 24. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 14; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 504.)

CODIFICATION

Section was not enacted as part of the District of Columbia Alcoholic Beverage Control Act, which comprises this chapter.

AMENDMENT

1949—Act May 27, 1949, substituted the present language for the previous 10 per centum tax by which license fees, except retailer's license, class E, were increased to carry out the provisions of chapter 5 of title 24.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, effective on the first day of first month succeeding sixtieth day after May 27, 1949, see section 509 of act May 27, 1949, set out as a note under section 25-111.

§ 25-112. Authority of Commissioners to forbid transportation of liquor into District—Permit may be granted.

The Commissioners of the District of Columbia are hereby authorized in their discretion to require by regulation that no licensee holding a retailer's license, class A, B, C, D, or E, as provided in this chapter, shall transport, or cause to be transported, in any manner

whatsoever into the District of Columbia any alcoholic beverage (except the regular stock on hand in a licensed railroad club or dining car or passenger-carrying marine vessel); and said Commissioners are also authorized to permit such importation under a special permit or permits, to be issued by the Alcoholic Beverage Control Board, upon application by licensee and upon such terms and conditions and in such manner as may be prescribed by the said Commissioners. Any such regulation, permit, or system of permits may be suspended, amended, revoked, or abolished at any time by the said Commissioners. (Aug. 27, 1935, 49 Stat. 903, ch. 756, § 18.)

CODIFICATION

Section was not enacted as part of the District of Columbia Alcoholic Beverage Control Act, which comprises this chapter.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCES

Other provisions concerning rules and regulations, see § 25-107.

Other provisions concerning transportation, see §§ 25-137, 25-138.

§ 25-113. Holding of license of more than one class forbidden—Definition of "licensee."

(a) The holder of a manufacturer's or wholesaler's license issued hereunder shall not be entitled to hold any other class of license. A person, not licensed hereunder, owning an establishment for the manufacture of beverages located outside the District of Columbia may hold one wholesale license, and shall not be entitled to hold any other license.

(b) No licensee holding a retailer's license, class C or class D, shall, by direct ownership, stock ownership, or interlocking directors, hold, directly or indirectly, any license other than retailer's licenses class C, class D, or class E. No licensee holding a retailer's license class A or class B shall, by direct ownership, stock ownership, or interlocking directors, hold, directly or indirectly, more than one license except retailer's licenses class E. When used in this subsection the word "licensee" shall include any stockholder holding directly or indirectly twenty-five per centum or more of the common stock or any officer of such licensee if such licensee is a corporation. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 12.)

CROSS REFERENCE

Business interests forbidden, see §§ 25-105, 25-115, 25-119, 25-120.

§ 25-114. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.

Every license shall particularly describe the place where the rights thereunder are to be exercised, and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place so described in his license: *Provided, however,* That the holder of a manufacturer's or wholesaler's license or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad may store beverages, with the consent of the Board, upon premises other than the premises designated in the license. Every annual license shall date from the

1st day of February in each year and expire on the 31st day of January next after its issuance, except as hereinafter provided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above described, and payments shall be made of the proportionate amount of the annual license fee. Every monthly license shall date from the first day of the month in which it is issued and expire on the last day of the month named in the license. Monthly licenses shall not be issued for periods exceeding six months. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 13; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 8.)

AMENDMENT

1935—Act Aug. 27, 1935, inserted "or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad" in the proviso.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

§ 25-115. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property owners—Removal of bonded liquor from Government warehouses—Penalty.

(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailer's license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed.

2. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers, is a citizen of the United States, not less than twenty-one years of age, and has not, within five years prior to the filing of such application, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior to such filing, been convicted of any felony.

3. Except in the case of an application for a solicitor's license, that the applicant is the true and actual owner of the business for which the license is desired, and that he intends to carry on the business authorized by the license for himself and not as the agent of any individual, partnership, association, or corporation, and that he intends to superintend in person the management of the business licensed, or intends to have some other person, to be approved by the Board, manage the business for

him, which said manager must possess all of the qualifications required of a licensee hereunder.

4. That in the case of an applicant for a wholesaler's license or a retailer's license (except a retailer's license class E), no manufacturer or wholesaler of beverages other than the applicant (including a stockholder holding 25 per centum or more of the common stock, or an officer of any manufacturer or wholesaler of beverages, if such manufacturer or wholesaler is a corporation), has such a substantial interest, direct or indirect, in the business for which the license is requested, or in the premises in respect of which such license is to be issued, as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer or wholesaler, and that such business will not be conducted with any money, equipment, furniture, fixtures, or property rented from or loaned or given by any such manufacturer or wholesaler (including such stockholder or officer) or sold by such manufacturer or wholesaler (including such stockholder or officer) to any such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust.

5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.

(b) Before granting a license under section 25-111(1) or a retailer's license, except a retailer's license class E or class F, the Board shall give notice by advertisement published once a week and for at least two weeks in some newspaper of general circulation published in the District of Columbia. The advertisement so published shall contain the name of the applicant and a description by street and number, or other plain designation, of the particular location for which the license is requested and the class of license desired. Such notice shall state that remonstrants are entitled to be heard before the granting of such licenses and shall name the time and place of such hearing. There shall also be posted by the Board a notice, in a conspicuous place, on the outside of the premises. This notice shall state that remonstrants are entitled to be heard before the granting of such license and shall name the same time and place for such hearing as set out in the public advertisement; and, if remonstrance against the granting of such license is filed, no final action shall be taken by the Board until the remonstrant shall have had an opportunity to be heard, under rules and regulations prescribed by said Board. Any person wilfully removing, obliterating, marring, or defacing said notice shall be deemed guilty of a violation of this chapter. The provisions of this subsection relating to notice by advertisement in some newspaper of general circulation shall not apply to the issuance of a license to a retailer for any place of business if such retailer is the holder of a license of the same class for the same place and if said last-mentioned license is in effect on the date the application for the new license is filed.

(c) Except in the case of a retailer's license class C or class D or a license issued under section 25-111(1) to be issued for a hotel or club or a retailer's license class B or class E, no place for which a license under this chapter has not been issued and in effect on the date the written objections hereinafter provided for are filed, shall be deemed appropriate if the owners of a majority of the real property within a radius of six hundred feet of the boundary lines of the lot or parcel of ground upon which is situated the place for which the license is desired, shall, on a form to be prescribed by the Commissioners filed with the Board, object to the granting of such license. In determining the sufficiency of such objections the owners of all such property not lying within a residential use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission shall be taken as consenting to the granting of such license, except that the Commissioners shall have power to file objections on behalf of any property lying within such radius owned by the United States or the District of Columbia. This subsection shall be construed as a limitation upon the discretion of the Board in granting a license and not as a limitation upon the discretion of the Board in refusing a license: *Provided, however*, That none of the provisions of this chapter shall prevent the Board from promulgating regulations to permit the lawful bona fide owners of warehouse receipts for bonded liquors stored in Government warehouses either in the District of Columbia or elsewhere from withdrawing such bonded liquors for personal use on payment to the Collector of Taxes for the District of Columbia, taxes at such rates as provided in this chapter: *Provided*, That such bona fide holder of such warehouse receipts held legal title to such warehouse receipts prior to the passage of this chapter.

(d) A separate application shall be filed with respect to each place of business, except that a company engaged in interstate commerce may file one application for a license for the operation thereunder of all of its dining, club, and lounge cars operated on railroads within the District of Columbia. The required license fee shall be paid to the collector of taxes and his duplicate receipt shall accompany the application for license. In the event the license is denied the fee shall be returned. Every such application shall be verified by the affidavit of the applicant, if an individual, or by all of the members of a partnership, or by the president or vice president of a corporation. If any false statement is knowingly made in such application, or in any accompanying statement under oath which may be required by the Commissioners or the Board, the person making the same shall be deemed guilty of perjury. The making of a false statement in any such application, or in any such accompanying statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for the revocation of the license. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691,

ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404 (e), (f).)

REFERENCES IN TEXT

The National Prohibition Act, as amended and supplemented, referred to in the text, is act Oct. 28, 1919, 41 Stat. 305, ch. 85, which was formerly classified to U. S. Code, title 27.

AMENDMENTS

1953—Subsecs. (b) and (c) amended by act June 29, 1953, § 404 (e), (f), respectively, to refer to licenses granted under subsec. (l) of section 25-111.

1938—Subsec. (c) amended by act June 15, 1938, which added the rest of the sentence following the comma after the word "business."

1937—Subsec. (b) amended by act Aug. 25, 1937, § 1, which added the last sentence.

Subsec. (d) amended by act Aug. 25, 1937, § 2, which deleted provision for requirement of bond.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCES

Business interests forbidden, see §§ 25-105, 25-113, 25-119, 25-120.

Other provisions concerning rules and regulations, see § 25-107.

NOTES TO DECISIONS

In general 1
Factors considered in grant of license 2
Injunction 3
Mandamus 4
Parties 5
Procedural errors 6
Review 7

1. In general

Rejection by the Alcoholic Beverage Control Board, of application for a retailers' Class "C" license on ground that area was adequately serviced, was arbitrary and capricious, in absence of any evidence on the point. *Clore Restaurant v. Payne* (1947, 72 F. Supp. 677).

2. Factors considered in grant of license

In license transfer case, question is whether wishes of neighborhood and character of premises warrant granting of liquor license for locality; and previous location and history of store are beside the point. *Palisades Citizens Association Inc. et al. v. Weakly et al.* (1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

3. Injunction

Under circumstances disclosed, including showing that net effect of board's failure to prescribe adequate rules and regulations had been to by-pass wishes of community, plaintiffs were entitled to preliminary injunction against operation of liquor store pending review of board's grant of application for transfer of liquor license. *Palisades Citizens Association Inc. et al. v. Weakly et al.* (1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

4. Mandamus

In action in the nature of a petition for writ of mandamus to require Alcoholic Beverage Control Board to issue a retailers' Class "C" license to petitioning restaurant, question before the court was whether action of the Board was based upon substantial evidence, and if it was, mandamus would not lie, whereas if it was not, next question was whether action of Board was arbitrary or capricious. *Clore Restaurant v. Payne* (1947, 72 F. Supp. 677).

5. Parties

Under statute forbidding alcoholic beverage control board of District of Columbia to issue license for new location to operate liquor store if the owners of a majority of the real property within a radius of 600 feet of the place for which the license is desired object to the granting of such license, individuals who own property within 600-foot radius of new location and an association having members who own property within such 600-foot radius had standing to bring action against licensee and

members of the board to set aside license for new location. *MacArthur Liquors Inc. v. Palisades Citizens Ass'n Inc. et al.* (1959, 265 F. 2d 372, 105 U.S. App. D.C. 180).

6. Procedural errors

Where owners within 600-foot radius of proposed new location of retail liquor store, objected to granting license for the new location on District of Columbia alcoholic beverage control board's form meant for use in connection with statute requiring board, before granting license, to consider wishes of persons residing or owning property in neighborhood of premises rather than on board's form meant for use in connection with statute forbidding board to issue license for new location if owners of majority of real property within 600-foot radius of new location object, the board should not have refused to correct the owners signing such form but should have either ignored the formal error or allowed it to be corrected. *MacArthur Liquors, Inc. v. Palisades Citizens Ass'n Inc., et al.* (1959, 265 F. 2d 372, 105 U.S. App. D.C. 180).

7. Review

Right of review in liquor license case was not restricted to owners of stores immediately adjacent to licensed premises nor to unsuccessful applicants, and property owners who had taken an active interest at hearing and had presented the "wishes of the neighborhood" were entitled to seek judicial review under District of Columbia Alcoholic Beverage Control Act. *Palisades Citizens Association Inc. et al. v. Weakly et al.* (1958, 166 F. Supp. 591, appeal dismissed in part, reversed in part on other grounds 265 F. 2d 372, 105 U.S. App. D.C. 180).

§ 25-116. Issuing licenses in certain districts restricted.

(a) No retailer's licenses except of classes B or E shall be issued for any business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission, except for a restaurant or tavern conducted in a hotel, apartment house, or club, and then only when the entrance to such restaurant or tavern is entirely inside of the hotel, apartment house, or club and no sign or display is visible from the outside of the building.

(b) No wholesaler's license shall be issued for any establishment conducted in such residential-use district and no manufacturer's license shall be issued for any establishment conducted in a residential or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission. Nothing herein contained shall be construed as permitting the establishment of a bottling works in violation of said zoning regulations.

(c) The provisions of subsection (a) of this section shall not apply in any case where an application is made for the issuance or transfer of a retailer's license for a place of business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission if the zoning of such place of business was changed from a less restricted use to such residential use during a period when a license of the same class for which application is made was in effect at such place of business: *Provided*, That a license of the same class at such place of business is in effect on the date the application for the new license, or transfer, is filed.

(d) The provisions of subsection (b) of this section shall not apply in any case where an application is made for the issuance or transfer of a wholesaler's or manufacturer's license for a place of business conducted in a residential- or first commercial-use district as defined in the zoning regulations and

shown in the official atlases of the Zoning Commission if the zoning of such place of business was changed from a less restricted use to such residential- or first commercial-use during a period when a license of the same class for which application is made was in effect at such place of business: *Provided*, That a license of the same class at such place of business is in effect on the date the application for the new license, or transfer, is filed.

(e) Nothing contained in this section shall be construed as entitling a licensee to any preferential treatment or be construed as making inapplicable any provision in any other section of this chapter, in any case where an application is made pursuant to this section for the issuance or transfer of a retailer's license for a place of business conducted in a residential-use district, or for the issuance or transfer of a wholesaler's or manufacturer's license for a place of business conducted in a residential- or first commercial-use district, as such districts are defined in the zoning regulations and shown in the official atlases of the Zoning Commission, and the applicant for the issuance or transfer of any of the said licenses is the holder of a similar license for any of the said places of business in effect on the date the application for the new license, or transfer, is filed. (Jan. 24, 1934, 48 Stat. 328, ch. 4, § 15; June 16, 1934, 48 Stat. 974, ch. 552; May 22, 1958, 72 Stat. 132, Pub. L. 85-423, § 1.)

AMENDMENTS

1958—Act May 22, 1958, designated existing provisions as subsecs. (a) and (b) and added subsecs. (c)–(e).

1934—Act June 16, 1934, added class B to the exception.

§ 25-117. Transfer of license—Fee—Conditions imposed.

No license shall be transferred by the licensee to any other person or to any other place, except with the written consent of the Board, upon a regular application therefor in writing and after notice and hearing, as herein provided for an original application for license, and the fee to be paid by the party applying for such transfer shall be \$100, which shall be paid to the Collector of Taxes for the District of Columbia before such transfer is made: *Provided*, That the Board shall not allow the transfer of the license of any person against whom there is pending in the courts or before the Board any charge of keeping a disorderly house, or of violating this chapter or the laws against gambling in the District of Columbia. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 16; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 503.)

AMENDMENT

1949—Act May 27, 1949, increased the fee for transfer of a license from \$25 to \$100.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, effective on the first day of first month succeeding sixtieth day after May 27, 1949, see section 509 of act May 27, 1949, set out as a note under section 25-111.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

§ 25-118. Revocation of license—Causes—Hearing—Discretionary closing for one year.

If during the period for which any license was issued the licensee shall be convicted of any felony, or if any licensee violates any of the provisions of this chapter or any of the rules or regulations promulgated pursuant thereto or fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued, or allows the premises with respect to which the license of such licensee was issued, to be used for any unlawful, disorderly, or immoral purpose, or knowingly employs in the sale or distribution of beverages any person who has, within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior thereto, been convicted of any felony, or such licensee otherwise fails to carry out in good faith the provisions of this chapter, the license of said licensee may be revoked or suspended by the Board after the licensee has been given an opportunity to be heard in his defense, subject to review by the Commissioners in case of revocation or in case of suspension for a period of more than thirty days, as herein provided. In case a license issued hereunder shall be revoked or suspended, no part of the license fee shall be returned, and the Board may, in its discretion, subject to review by the Commissioners, as a part of the order of revocation provide that no license shall be granted for the same place for the period of one year next after such revocation, and in case such order shall be made no license shall, during said year, be issued for said place or to a person or persons whose license is so revoked for any other location.

In the event the Board at any time shall order the suspension of any license a notice may be posted by the Board, in a conspicuous place, on the outside of the licensed premises, at or near the main street entrance thereto; which notice shall state that the license theretofore issued to the licensee has been suspended and shall state the time for which said license is suspended, and state that the suspension is ordered because of a violation of this chapter, or of the Commissioners' regulations adopted under authority of this chapter. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106.)

REFERENCES IN TEXT

The National Prohibition Act, as amended and supplemented, referred to in the text, is act Oct. 28, 1919, 41 Stat. 305, ch. 85, which was formerly classified to U.S. Code, title 27.

AMENDMENTS

1950—Act Apr. 26, 1950, inserted the words "during the period for which any license was issued the licensee shall be convicted of any felony, or if" after the word "If" at the beginning of the first sentence of the first paragraph.

1937—Act Aug. 25, 1937, substituted "may" for "shall" in the second par.

1935—Act Aug. 27, 1935, added the words "or suspended" both times they appear and the words "in case of revocation or in case of suspension for a period of more than thirty days" in the first paragraph, and added the second paragraph.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCES

General penalties for violations of chapter or rules and regulations, see § 25-132.

Refund of fees when license refused, see § 47-1019.

NOTES TO DECISIONS

1. Injunction

An injunction against enforcement of order of Alcoholic Beverage Control Board revoking liquor license should not issue for any period while failure of Board of Commissioners of District of Columbia to reach a decision on appeal is caused by unavoidable circumstances such as absence of a commissioner or necessary delay in considering and deciding the case. *Lambros v. Young* (1945, 145 F. 2d 341, 79 U. S. App. D. C. 247).

§ 25-119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.

If any manufacturer of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage, or lien, or by any other means shall have such a substantial interest, whether direct or indirect, in the business of any wholesale or retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer, the Board may, in its discretion, revoke the license issued in respect of the business in which such manufacturer is interested, subject to review by the Commissioners as herein provided. No such manufacturer of beverages shall loan or give any money to any wholesale or retail licensee, or sell, rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however,* That with the prior approval of the Board, a manufacturer may sell, give, rent, or loan to a wholesale or retail licensee any service or article of property costing such manufacturer not more than \$10. No wholesale or retail licensee shall receive or accept any loan or gift of money from any such manufacturer or purchase from, rent from, borrow or receive by gift from such manufacturer any equipment, furniture, fixtures, or property, or accept or receive any service from such manufacturer: *Provided, however,* That, with the prior approval of the Board, a wholesale or retail licensee may purchase from, rent from, borrow, or receive by gift from such manufacturer any service or article of property costing such manufacturer not more than \$10. Nothing herein contained, however, shall prohibit the sale of alcoholic and nonalcoholic beverages and the reasonable extension of credit therefor by a manufacturer to a wholesale or retail licensee. When used in this section the word "manufacturer" shall include any stockholder holding directly or indirectly 25 per centum or more of the common stock or any officer of a manufacturer of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E, or to the wholesale license held by a person not licensed as a manufacturer hereunder owning an establishment for the manufacture of beverages outside of the District of Columbia. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 18; Aug. 27, 1935, 49 Stat. 902, ch. 756, § 15.)

AMENDMENT

1935—Act Aug. 27, 1935, deleted the words "to such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent, loan or give to such licensee any equipment, furniture, fixtures or property, or give or sell any service to such licensee for less than the fair market value thereof," and inserted in lieu thereof the remainder of the second sentence after the word "sell" the first time it is used; inserted the words "rent from, borrow, or receive by gift from" in the third sentence; deleted from the third sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent from, borrow or receive by gift from such manufacturer" following the word "manufacturer" the second time it is used in said sentence; deleted in the third sentence the words "for less than the fair market value thereof" and inserted in lieu thereof the proviso in such sentence; deleted from the last sentence the words "hereunder owning an establishment for the manufacture of beverages" and inserted in lieu thereof the concluding words of the last sentence following the word "licensed."

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCES

Business interests forbidden, see §§ 25-105, 25-113, 25-115, 25-120.

Other provisions concerning sale of beverages on credit, see §§ 25-120, 25-133.

§ 25-120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.

If any wholesaler of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage or lien or by any other means shall have such a substantial interest either direct or indirect in the business of any retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such wholesaler, the Board may in its discretion revoke the license issued in respect of the business in which such wholesaler is interested, subject to review by the commissioners as herein provided. No such wholesaler of beverages shall lend or give any money to any retail licensee or sell to such licensee, any equipment, furniture, fixtures, or property, except merchandise sold at the fair market value for resale by such licensee, or rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however,* That, with the prior approval of the Board, a wholesaler may sell, give, rent, or loan to such licensee any service or article of property costing such wholesaler not more than \$10. No retail licensee shall receive or accept any loan or gift of money from any such wholesaler or purchase from any such wholesaler any equipment, furniture, fixtures, or property, except merchandise purchased at the fair market value for resale, or rent from, borrow, or receive by gift from such wholesaler any equipment, furniture, fixtures, or property, or receive any service from such wholesaler: *Provided, however,* That with the prior approval of the Board, a retail licensee may purchase from, rent from, borrow or receive by gift from such wholesaler any service or article of property costing such wholesaler not more than \$10. Nothing herein contained, however, shall prohibit the reasonable extension of credit by a wholesaler for

merchandise sold to a retail licensee for resale as herein permitted. When used in this section the word "wholesaler" shall include any stockholder holding directly or indirectly 25 per centum or more of the common stock or any officer of a wholesaler of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 19; Aug. 27, 1935, 49 Stat. 903, ch. 756, § 16.)

AMENDMENT

1935—Act Aug. 27, 1935, deleted from the second sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent, loan or give to such licensee" following the word "licensee" the first time it is used in said sentence; added the words "except merchandise sold at the fair market value for resale by such licensee, or rent, loan or give to such licensee any equipment, furniture, fixtures, or property" in the second sentence; added the proviso in the second sentence; deleted from the third sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent from, borrow or receive by gift from such wholesaler" following the word "wholesaler" the second time it is used in said sentence; added the proviso in the third sentence; added the last five words in the fourth sentence.

TRANSFER OF FUNCTIONS

Statute of Alcoholic Beverage Board, see notes under section 25-104.

CROSS REFERENCES

Business interests forbidden, see §§ 25-105, 25-113, 25-115, 25-119.

Other provisions concerning sale of beverages on credit, see §§ 25-119, 25-133.

§ 25-121. Sale to minors or intoxicated persons—Liability of licensee.

Licenses issued hereunder shall not authorize the sale or delivery of beverages, with the exception of beer and light wines, to any person under the age of twenty-one years, or beer or light wines to any person under the age of eighteen years, either for his own use or for the use of any other person; or the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated; and ignorance of the age of such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages.

No person being the holder of a license issued under section 25-111 (1) shall permit on the licensed premises the consumption of alcoholic beverages, with the exception of beer and light wines, by any person under the age of twenty-one years, or permit the consumption of beer and light wines by any person under the age of eighteen years, or the consumption of any beverage by any intoxicated person, or any person of notoriously intemperate habits, or any person who appears to be intoxicated; and ignorance of the age of any such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to permit the consumption of any beverage on any premise licensed under section 25-111 (1). (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 20; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 10; June 29, 1953, 67 Stat. 104, ch. 159, § 404(g).)

AMENDMENTS

1953—Act June 29, 1953, added paragraph extending existing restrictions to licenses issued under subsec. (1) of section 25-111.

1935—Act Aug. 27, 1935, inserted the words "service or delivery" following the word "sale" following the first semicolon in first paragraph.

§ 25-122. License forfeited on licensee becoming bail.

If any person holding a license under this chapter shall become bail for any person complained of for the violation of any provisions of this chapter, his license shall become void as of the date of becoming such bail. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 21.)

§ 25-123. Monthly reports of sales and purchases.

(a) Each holder of a manufacturer's license shall, on or before the 10th day of each month, furnish to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverages, except beer, manufactured during the preceding calendar month. Beverages shall not be considered as manufactured within the meaning of this section and section 25-124 until they are ready for sale.

(b) Each holder of a wholesaler's or retailer's license shall, on or before the 10th day of each month, furnish to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverages, except beer, purchased by him during the preceding calendar month, and also showing the date of each such purchase, the name of the person from whom purchased, giving the license number of the vendor, if licensed hereunder, and the quantity and kind of beverages in each such purchase.

(c) The Commissioners may at any time suspend or revoke in whole or in part the requirements of this section. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 22; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 2.)

AMENDMENT

1934—Subsec. (c) added by act Apr. 30, 1934.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCE

Report of sales of beer, see § 25-138.

§ 25-124. Beverage tax—Stamps—Seizure and disposition of beverage upon which tax not paid—Absence of stamp prima facie evidence of nonpayment—Penalty for counterfeiting or forging stamps—Class C or D licensees—Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 15 cents on every wine-gallon of wine containing 14 per centum or less of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional

parts of such gallon; (2) a tax of 33 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 45 cents on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) a tax of \$1.25 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; (5) and a tax of \$1.25 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

(b) Said taxes shall be collected by and paid to the Collector of Taxes of the District of Columbia and shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) Said taxes on spirits or alcohol shall be collected and paid by the affixture of a stamp or stamps secured from the Commissioners or their designated agent denoting the payment of the amount of the tax imposed by this chapter upon such beverage, such affixture to be upon the immediate container of the beverage, unless the Commissioners shall by regulation permit otherwise. The Commissioners or their designated agent shall furnish suitable stamps, to be prescribed by the Commissioners, denoting the payment of the taxes imposed by this chapter upon spirits or alcohol, and shall by the sale of such stamps at the amounts indicated on the faces thereof cause the said taxes to be collected.

(d) Said taxes on wine (wine containing 14 per centum or less of alcohol by volume, wine containing more than 14 per centum of alcohol by volume, champagne, sparkling wine, and any wine artificially carbonated) shall be collected and paid in the manner following:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of wine subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of wine subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia any wine other than the regular stock on hand in a passenger carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the wine for which the permit is requested. Such permit shall

specifically set forth the quantity, character, and brand or trade name of the wine to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such wine during its transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the wine by the retail licensee, be marked "canceled" and retained by him.

(3) The Commissioners are authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes on wine imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever in their judgment such action is necessary to prevent frauds or evasions.

(e) Upon taxable spirits of alcohol manufactured in the District of Columbia by a manufacturer licensed under this chapter, the stamps required by this chapter shall be affixed before the removal of the spirits of alcohol from the place of business or warehouse of the said manufacturer for delivery to a purchaser. Upon taxable spirits of alcohol imported or brought into the District of Columbia by any wholesaler licensed under this chapter, the stamps required by this chapter shall be affixed before the removal of the spirits of alcohol from the place of business or warehouse of the said wholesaler for delivery to a purchaser. Upon spirits of alcohol purchased outside the District of Columbia by any retailer licensed under this chapter, the stamps required by this chapter shall be affixed within twenty-four hours (excluding Sunday from the count) after the spirits of alcohol is received at the licensed premises of said retailer and before said spirits of alcohol is sold by such retailer.

(f) No person shall use or cause to be used for the payment of any tax imposed by this chapter a stamp or stamps already theretofore used for the payment of any such tax.

(g) No tax shall be levied and collected on any alcohol exempt from tax under the laws of the United States, or on any alcohol sold for nonbeverage purposes by the holder of a manufacturer's or wholesaler's license, in accordance with the regulations promulgated by the Commissioners.

(h) If any Act of Congress shall hereafter prescribe for a Federal volume tax on alcoholic beverages under which a portion of said tax shall be returned to the District of Columbia, the taxes levied under this section shall not be collected after the effective date, January 24, 1934.

(i) The possession by any licensee of any spirits of alcohol after its removal from the licensed premises of a manufacturer or wholesaler within the District of Columbia or after twenty-four hours (Sunday being excluded from the count) after its receipt from outside the District of Columbia, upon which the tax required has not been paid, shall render such spirits of alcohol liable to seizure wherever found, and to forfeiture by the District of Columbia. And the absence of the proper stamps

from any container (or wrapper if such be permitted) after the time at which the affixture of the stamp is required by this chapter shall be notice to all persons that the tax has not been paid thereon and shall be prima facie evidence of the nonpayment thereof. Such spirits of alcohol so liable to forfeiture shall be proceeded against in the United States District Court for the District of Columbia by the corporation counsel of the District of Columbia, and if condemned, the said spirits of alcohol shall be disposed of by destruction or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, and all such proceedings shall be at the suit of and in the name of the District of Columbia.

(j) Any person who shall counterfeit or forge any stamp required by this chapter shall, upon conviction, be subject to a fine not exceeding \$5,000 or to imprisonment for a period of not more than two years, or to both such fine and imprisonment.

(k) No taxing provision of subsection (a), (c), (e), and (i) of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.

The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the board. Each holder of such a license shall, on or before the tenth day of each month, forward to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverage, except beer and wine (wine containing 14 per centum or less of alcoholic content, wine containing more than 14 per centum of alcoholic content, champagne, sparkling wine and any wine artificially carbonated) sold under such license in the District of Columbia during the preceding calendar month, to which said statement shall be attached stamps denoting the payment of the tax imposed under this chapter upon the spirits or alcohol set forth in said report and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such wines as set forth in said report. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1,

2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 505; May 18, 1954, 68 Stat. 113, ch. 218, § 801; Mar. 31, 1956, 70 Stat. 81, 82, ch. 154, §§ 301, 302(a); July 25, 1958, 72 Stat. 418, 419, Pub. L. 85-558, § 1-7.)

AMENDMENTS

1958—Subsec. (c) amended by act July 25, 1958, § 1, which inserted "on spirits or alcohol" following "Said taxes", substituted "Commissioners or their designated agent denoting" for "Collector of Taxes of the District of Columbia denoting" and added the provision requiring the Commissioners or their designated agent to furnish stamps and to cause the taxes to be collected.

Subsec. (d) amended by act July 25, 1958, § 2, which substituted the provisions for the collection and payment of taxes in the prescribed manner on the described wines for former provision requiring the Collector of Taxes of the District of Columbia to furnish stamps and cause the taxes to be collected, now incorporated in subsec. (c).

Subsecs. (e), (i) amended by act July 25, 1958, §§ 3, 4, which substituted "spirits or alcohol" for "beverage" and "beverages", wherever appearing.

Subsec. (k) amended by act July 25, 1958, § 5, which substituted "except beer and wine (wine containing 14 per centum or less of alcoholic content, wine containing more than 14 per centum of alcoholic content, champagne, sparkling wine and any wine artificially carbonated)" for "except beer," and added the words "and such statement shall be accompanied by payment of any tax imposed under this chapter upon any such wines as set forth in said report."

1956—Subsec. (a) amended by act Mar. 31, 1956, § 301, to add clause (1) and to redesignate former clauses (1)—(4) as (2)—(5), increasing in the clauses as amended the tax rate on a wine-gallon in clause (2) from 20 to 30 cents, on a wine-gallon of champagne in clause (3) from 30 to 45 cents and on a wine-gallon of spirits in clause (4) from \$1 to \$1.25.

Subsec. (e) amended by act Mar. 31, 1956, § 302(a), which substituted "Upon taxable beverage" for "Upon taxable beverages except taxable light wines" in the second sentence and deleted therefrom "; upon taxable light wines imported or brought into the District of Columbia by any wholesaler licensed under this chapter, the said stamps shall be affixed within twenty-four hours (excluding Sunday from the count) after the wines are received at the licensed premises of the wholesaler and before said wines are sold by such wholesaler".

Subsec. (k) amended by act Mar. 31, 1956, § 302(b), which deleted "and nontaxable light wines" following "except beer".

1954—Subsec. (a) amended by act May 18, 1954, to increase the tax rate on a wine-gallon in clause (1) from 15 to 20 cents, on a wine-gallon of champagne in clause (2) from 22½ to 30 cents, and on a wine-gallon of spirits in clause (3) from 75 cents to \$1 and to make minor changes in phraseology and punctuation.

1949—Subsec. (a) amended by act May 27, 1949, to increase the tax rate on a wine-gallon in clause (1) from 10 to 15 cents, on a wine-gallon of champagne in clause (2) from 15 to 22½ cents, on a wine-gallon of spirits in clause (3) from 50 to 75 cents, and on a wine-gallon of alcohol in clause (4) from \$1.10 to \$1.25.

1935—Subsec. (a) amended by act Aug. 27, 1935, § 17 to decrease the tax rate on a wine-gallon in clause (1) from 35 to 10 cents and on a wine-gallon of champagne in clause (2) from 50 to 15 cents.

Subsec. (k) added by act Aug. 27, 1935, § 11.

1934—Subsec. (a) amended by acts June 18, 1934, § 1, and Apr. 30, 1934. Act June 18, 1934, substituted "by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District of Columbia by a holder of a retailer's license" for "by a holder of a wholesaler's or retailer's

license." Act Apr. 30, 1934, substantially reenacted the provisions of the first sentence as subsec. (a) substituting "manufactured by a holder of a manufacturer's license, and on all of the said beverages imported or brought into the District of Columbia by a holder of a manufacturer's license and on all beverages, except beer, purchased by the holder of a wholesaler's or retailer's license, except such beverages as may have been purchased from a licensee under this chapter."

Subsec. (b) so designated by act Apr. 30, 1934, which substantially incorporated therein the provisions of the second sentence, deleting provision for payment on or before the fifteenth day of each month for beverages manufactured by the holders of manufacturers' licenses or purchased by the holders of wholesalers' or retailers' licenses during the preceding calendar month.

Subsecs. (c), (d) added by act Apr. 30, 1934.

Subsec. (e) amended by act June 18, 1934, § 2, which inserted "taxable" following "Upon" in the beginning of the first and second sentences, and previously added by act Apr. 30, 1934.

Subsec. (f) added by act Apr. 30, 1934.

Subsec. (g) so designated by act Apr. 30, 1934, which reenacted the provisions of the third sentence, inserting therein "by the holder of a manufacturer's or wholesaler's license."

Subsec. (h) so designated by act Apr. 30, 1934, which reenacted the provisions of the fourth sentence.

Subsecs. (i), (j) added by act Apr. 30, 1934.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 7 of act July 25, 1958, provided that: "This Act [amending subsecs. (c)—(e), (i) and (k) of this section and enacting provisions set out as a note under this section] shall take effect on the first day of the calendar month beginning not less than sixty days after the date of approval of this Act [July 25, 1958]."

EFFECTIVE DATE OF 1956 AMENDMENT

Section 308 of act Mar. 31, 1956, provided that: "The provisions of this title [amending this section and section 25-138 and enacting provisions set out as notes under this section] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act [Mar. 31, 1956]."

EFFECTIVE DATE OF 1954 AMENDMENT

Section 806 of act May 18, 1954, provided that: "The provisions of this title [amending this section and section 25-138 and enacting provisions set out as notes under this section] shall become effective on the day following the approval of this Act [May 18, 1954]."

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, effective on the first day of first month succeeding sixtieth day after May 27, 1949, see section 509 of act May 27, 1949, set out as a note under section 25-111.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CONSTRUCTION OF ACT JULY 25, 1958, AND DELEGATION OF AUTHORITY

Section 6 of act July 25, 1958, provided that:

"Nothing in this Act [amending subsecs. (c)—(e), (i) and (k) of this section] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act [amending subsecs. (c)—(e), (i) and (k) of this section] in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners

may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

OFFICERS AND AGENCIES OF DISTRICT

Officer or agency of the District, other than the Commissioners, referred to in act Mar. 31, 1956, deemed to be the officer or agency so mentioned or officer, officers, agency, agencies succeeding to functions of officer or agency so mentioned, pursuant to Reorg. Plan No. 5 of 1952, see section 603 of act Mar. 31, 1956, set out as a note under section 47-1551c.

TRANSITORY PROVISIONS OF ACT MAR. 31, 1956

"SEC. 303. Within ten days after the effective date of this title [see Effective Date of 1956 Amendment note hereunder], every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective, or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes, the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title [amending this section and section 25-138 and enacting sections 303, 304, 306, 307 of act Mar. 31, 1956], represented by such stamps.

"SEC. 304. Within ten days after the effective date of this title [see Effective Date of 1956 Amendment note hereunder], every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne, sparkling wine and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District at the beginning of the day this title becomes effective and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title, shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes (other than stamps denoting the payment of beverage taxes on alcohol and other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title) held or possessed by such licensee or anyone for him at the beginning of the day on which title becomes effective. Every such licensee shall within fifteen days after the effective date of this title pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title [amending this section and section 25-138 and enacting sections 303, 304, 306, 307 of act Mar. 31, 1956], represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws

of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act, such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps.

* * * * *

"SEC. 306. Every holder of a manufacturer's, wholesaler's, or retailer's license under said District of Columbia Alcoholic Beverage Control Act shall keep and preserve for a period of six months after the effective date of this title [see Effective Date of 1956 Amendment note hereunder] the inventories or other records made which form the basis for the information furnished on the sworn statements required to be filed under this title [amending this section and section 25-138 and enacting sections 303, 304, 306, 307 of act Mar. 31, 1956].

"SEC. 307. Any violation of the provisions of this title [amending this section and section 25-138 and enacting sections 303, 304, 306, 307 of act Mar. 31, 1956] shall constitute a violation under the District of Columbia Alcoholic Beverage Control Act and regulations promulgated pursuant thereto."

TRANSITORY PROVISIONS OF ACT MAY 18, 1954

"SEC. 802. Within ten days after the effective date of this title [May 19, 1954], every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act [this chapter] shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective [May 19, 1954], or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title [May 19, 1954], and shall, within fifteen days after the effective date of his title, [May 19, 1954] pay to the Collector of Taxes, the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title [this chapter], represented by such stamps.

"SEC. 803. Within ten days after the effective date of this title [May 19, 1954], every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act [this chapter] shall file with the Alcoholic Beverage Control Board a sworn statement on a form prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District at the beginning of the day this title becomes effective [May 19, 1954] and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title [May 19, 1954], shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes (other than stamps denoting the payment of beverage taxes on alcohol and other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title [May 19, 1954]) held or possessed by such licensee or anyone for him at the beginning of the day on which title becomes effective. Every such licensee shall within fifteen days after the effective date of this title [May 19, 1954], pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore

required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title [this chapter], represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, [May 19, 1954] such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act [this chapter], such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title [this chapter], represented by such stamps.

* * * * *

"SEC. 805. Any violation of the provisions of this title [amending this section and section 25-138 and enacting sections 802, 803, 805 of act May 18, 1954] shall constitute a violation under the Alcoholic Beverage Control Act and regulations promulgated pursuant thereto."

TRANSITORY PROVISIONS OF ACT MAY 27, 1949

Sections 506 and 507 of act May 27, 1949, provided respectively as follows:

"SEC. 506. Within ten days after the effective date of this title [see Effective Date of 1949 Amendment note hereunder], every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act [this chapter] shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners of the District of Columbia showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective, or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District of Columbia prior to the effective date of this title, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title, represented by such stamps.

"SEC. 507. Within ten days after the effective date of this title [see Effective Date of 1949 Amendment note hereunder], every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act [this chapter] shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District of Columbia at the beginning of the day this title becomes effective and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title, shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners of the District of Columbia showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or

possessed by such licensee or anyone for him at the beginning of the day on which this title becomes effective, other than stamps affixed to the containers of beverages manufactured in or imported into the District of Columbia prior to the effective date of this title. Every such licensee shall within fifteen days after the effective date of this title pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title [amendment of sections 25-111, 25-111a, 25-117, 25-124, 25-138], represented by such stamps. Should the number of any kind or denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act, such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps."

CROSS REFERENCES

Authority of Commissioners to make rules and regulations relating to act Mar. 31, 1956, see § 47-1595a.

Manufactured beverage defined, see § 25-123.

Redemption of cigarette or alcoholic-beverage tax stamps, see § 47-2811.

Tax on beer, see § 25-138.

§ 25-125. Sale, distribution, furnishing of beverages by convicted persons and minors.

No licensee under this chapter shall allow any person who has, within ten years prior thereto, been convicted of any felony, to sell, give, furnish, or distribute any beverage, nor allow any minor under the age of twenty-one years of age to sell, give, furnish, or distribute any beverage, except beer and light wines, or any minor under the age of eighteen years to sell, give, furnish, or distribute beer and light wines. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 25; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 12.)

AMENDMENT

1935—Act Aug. 27, 1935, deleted the words "within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented or," which followed the words "convicted of," and added the words "and light wines" both times they now appear.

§ 25-126. Power of Board to compel testimony—Witness fees—Perjury.

Said Board is hereby authorized and empowered to summon any person before it to give testimony on oath or affirmation, or to produce all books, records, papers, documents, or other legal evidence as to any matter affecting the operation of this chapter and any member of said Board shall have the power to administer all oaths and affirmations for the purposes of the administration of this chapter. Such summons may be served by any member of the Metropolitan police department. If any witness

having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event any member of the Board may report that fact to the United States District Court for the District of Columbia or one of the judges thereof and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Witnesses, other than those employed by the District of Columbia or the United States Government, summoned to appear before said Board shall be entitled to the same fees as are paid witnesses for attendance before the United States District Court for the District of Columbia, but said fees need not be paid said witnesses in advance of their appearing and testifying, or producing books, records, papers, documents, or other legal evidence before said board. Any person who shall wilfully swear falsely in any proceeding, matter, or hearing before said Board shall be deemed guilty of perjury. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 26; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia" and "judges" and "judge" for "justices" and "justice."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

§ 25-127. Intoxicated person not to operate locomotive, street car, elevator, watercraft, or horse-drawn vehicle—Penalty—Traffic acts not affected.

(a) No person shall be intoxicated while in charge of or operating any locomotive or while acting as a conductor or brakeman of a car or train of cars, or while in charge of or operating any street car, elevator, watercraft, or horse-drawn vehicle in the District of Columbia.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than \$300, or by imprisonment for not longer than three months, or by both such fine and imprisonment in the discretion of the court.

(c) Nothing herein contained shall be construed as repealing or modifying any provision of sections 40-301 to 40-303, 40-603, 40-605, 40-609 and 40-612. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 27.)

§ 25-128. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.

(a) No person shall in the District of Columbia drink any alcoholic beverage in any street, alley, park, or parking; or in any vehicle in or upon the same; or in or upon any premises where food, non-alcoholic beverages, or entertainment are sold or provided for compensation not licensed under this chapter; or in any place to which the public is invited for which a license has not been issued here-

under permitting the sale and consumption of such alcoholic beverage upon such premises except premises licensed under section 25-111 (l) ; or in any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverages on the premises is prohibited by this chapter or by the regulations promulgated thereunder, or in any place for which a license under section 25-111(l) has been issued at a time when the consumption of such alcoholic beverages on the premises is prohibited by regulations promulgated under this chapter. No such person shall be drunk or intoxicated in any street, alley, park, or parking; or in any vehicle in or upon the same or in any place to which the public is invited, or at any public gathering and no person anywhere shall be drunk or intoxicated and disturb the peace of any person.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than ninety days, or both. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14; June 29, 1953, 67 Stat. 104, ch. 159, § 404 (h).)

AMENDMENTS

1953—Subsec. (a) amended by act June 29, 1953, which inserted the words "or in or upon any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation not licensed under this chapter", "except premises licensed under section 25-111(l)", and "or in any place for which a license under section 25-111(l) has been issued at a time when the consumption of such alcoholic beverages on the premises is prohibited by regulations promulgated under this chapter."

Subsec. (b) amended by act June 29, 1953, which substituted punishment by fine of not more than \$100 or imprisonment for not more than ninety days or both for any offense for former punishment by "a fine of not more than \$100 or by imprisonment for not more than thirty days or by both such fine and imprisonment in the discretion of the court for the first offense, by a fine of not more than \$200 or by imprisonment for not more than sixty days or by both such fine and imprisonment in the discretion of the court for the second offense, or by a fine of not more than \$500 or by imprisonment for not more than six months or by both such fine and imprisonment in the discretion of the court for each subsequent offense."

1935—Subsec. (a) amended by act Aug. 27, 1935, § 13, which inserted "; or in any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverage on the premises is prohibited by this chapter or by the regulations promulgated thereunder."

Subsec. (b) amended by act Aug. 27, 1935, § 14, to make the existing penalty provisions applicable for the first offense and to add the penalty provisions for the second and subsequent offenses reading "by a fine of not more than \$200 or by imprisonment for not more than sixty days or by both such fine and imprisonment in the discretion of the court for the second offense, or by a fine of not more than \$500 or by imprisonment for not more than six months or by both such fine and imprisonment in the discretion of the court for each subsequent offense."

EFFECTIVE DATE OF 1953 AMENDMENT

Amendment of section by act June 29, 1953, effective sixty days after June 29, 1953, see section 404(k) of act June 29, 1953, set out as a note under section 25-109.

NOTES TO DECISIONS

In general 1
Evidence 2

1. In general

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by sections 11-606 and 11-616 was limited by this section, was without merit where the general statute existed before the special one Congress must have been aware of the older statutes, and had it intended later to modify the earlier, would have done so. *Peeples v. District of Columbia* (D.C. Mun. App. 1950, 75 A. 2d 845).

2. Evidence

In prosecution for intoxication, evidence was insufficient to support trial judge's finding that defendant was not guilty because of insanity. *Williams v. District of Columbia* (D.C. Mun. App. 1959, 147 A. 2d 773).

§ 25-129. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

(a) A search warrant may be issued by any judge of The Municipal Court for the District of Columbia or by a United States commissioner for the District of Columbia when any alcoholic beverages are manufactured for sale, kept for sale, sold, or consumed in violation of the provisions of this chapter, and any such alcoholic beverages and any other property designed for use in connection with such unlawful manufacture for sale, keeping for sale, selling, or consumption may be seized thereunder, and shall be subject to such disposition as the court may make thereof, and such alcoholic beverages may be taken on the warrant from any house or other place in which it is concealed.

(b) A search warrant can not be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant signed by him with his name of office to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner must insert a direction in the warrant that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the municipal court.

(n) Whoever shall knowingly and wilfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years.

(o) If the accused be discharged, the beverages and other property seized shall be returned to the person in whose possession they were found; if he be convicted, the said beverages and other property shall be forfeited, and may be destroyed by the police department or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States Government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct.

(p) If any of said property so seized, other than the said beverages and the containers thereof, shall be subject to a lien which is established by intervention or otherwise to the satisfaction of the court as being bona fide and as having been created without the lienor's having any notice that said property was to be used in connection with the illegal manufacture for sale, keeping for sale, or selling of alcoholic beverages, the court, upon the conviction of the accused, shall order a sale of said property at public auction

and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure and the cost of the sale, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Jan. 24, 1934, 48 Stat. 334, ch. 4, § 29; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 29, 1953, 67 Stat. 104, ch. 159, § 404(i).)

AMENDMENT

1953—Subsec. (a) amended by act June 29, 1953, which substituted "The Municipal Court for the District of Columbia" for "the police court of the District of Columbia" to conform to change in name effected by act Apr. 1, 1942, substituted "commissioner" for "Commissioner" and provided for the seizure of alcoholic beverages and other property designed for use in connection with unlawful consumption.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4-103.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT
"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" in subsec. (a) and "Municipal Court" for "police court" in subsec. (m) to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Other provisions concerning disposition of property coming into hands of police, see § 4-151 et seq.

Search warrants generally, see § 23-301 et seq.

NOTES TO DECISIONS

1. Subject of search

Where, in searching defendant's premises under a valid search warrant authorizing search for alcoholic beverages or any property designed for use in connection with violation of Alcoholic Beverage Control Act, police officer looked behind a movable partition closing off a fireplace and discovered two large clean paper bags in the midst of rubble, and, although the feel and weight of such bags indicated to him that they did not contain bottles, the officer looked into the bags and discovered therein a quantity of marihuana, the officer's action in looking into the bags did not constitute an unreasonable search, but was lawful. *United States v. White* (1954, 122 F. Supp. 664).

§ 25-130. Minor misrepresenting age to procure beverage—Penalty.

Any minor who falsely represents his age for the purpose of procuring any beverage shall be deemed guilty of a misdemeanor and be fined for each offense not more than \$25 and, in default in the payment of such fine, shall be imprisoned not exceeding ten days. (Jan. 24, 1934, 48 Stat. 335, ch. 4, § 30.)

§ 25-131. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.

After the date of the approval of this chapter no permit shall be issued under the Act of Congress entitled "An Act to provide revenue for the District of Columbia by the taxation of beverages and for other purposes," approved April 5, 1933, and no permits issued thereunder shall be renewed, but the Commissioners are hereby authorized to extend the expiration dates of permits issued under said act to a date designated by them not to exceed sixty days after the approval of this chapter, upon such terms and conditions, including the payment of such fees as the Commissioners may prescribe. Any permittee thereunder may make an application for a license under

this chapter and, if said application is approved by the Board, such permittee shall surrender his permit and he shall be allowed a refund of the permit fee prorated as hereinafter provided. Any permittee under said Act of April 5, 1933, may surrender his permit and receive a refund of the permit fee prorated from the date of surrender of such permit to the date of expiration thereof. All such refunds shall be paid from the permanent indefinite appropriation for refunding erroneously paid taxes in the District of Columbia. All permits issued under said Act of April 5, 1933, shall remain in force and effect for the respective periods for which they were issued, unless sooner surrendered. After the approval of this chapter no taxes shall be collected under section 11 of the Act approved April 5, 1933. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 31.)

REFERENCES IN TEXT

The Beverage License Act of 1933 was repealed by section 31 of act Jan. 24, 1934, effective one year from Jan. 24, 1934.

§ 25-132. Penalty for violation where no specific penalty provided—Prosecutions.

Whosoever violates any of the provisions of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated pursuant thereto, shall be punished by a fine of not more than \$1,000 or by imprisonment for not longer than one year or by both such fine and imprisonment in the discretion of the court.

Prosecutions for violations of this chapter shall be on information filed in the municipal court by the corporation counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies, shall be by the United States Attorney in and for the District of Columbia or any of his assistants. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

NOTES TO DECISIONS

Consolidation 1
Examination of witnesses 2
Failure to report violation 3
Instructions 4
Officers of the United States 5

1. Consolidation

It was not error for trial court to refuse to consolidate the counts of keeping liquor for sale where motion was made at end of government's case on ground that appellant could have asked for a bill of particulars before trial and could have pleaded a defective information. *Davenport v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 522).

2. Examination of witnesses

A court may not limit cross-examination upon a pertinent subject at the outset, but after a substantial exploration of the subject, a judge is within his right in limiting examination which may become needlessly protracted and where the record discloses that during a trial for the illegal sale of alcoholic beverages, appellant's counsel was permitted freely and fully to cross-examine all government witnesses, there was no undue restriction or limitation upon the right of cross-examination. *Davenport v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

Where government witness admitted that during a recess, he had talked with another government witness who had been excluded from the court room, trial court did not abuse its discretion in permitting him to testify. *Id.*

3. Failure to report violation

It is an offense for any officer to fail to report prohibition violations to the corporation counsel. *Donnelley v. United States* (1928, 48 S. Ct. 400, 276 U.S. 505, 72 L. Ed. 767).

4. Instructions

Where judge's charge stated "I charge you it is his constitutional right not to take the stand if he [the appellant] wishes not to do so," it was not prejudicial error not to have stated that the fact appellant had not taken the witness stand, should not be construed in any way to his prejudice. *Davenport v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 522).

Police officers who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct must be received with caution. *Davenport v. District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

5. Officers of the United States

Prohibition agent appointed by the commissioner, with the approval of the Secretary of Treasury, is not an "officer of the United States"; however police captains are officers of the District but not of the United States *Keehn v. United States* (C.C.A. 1, 1924, 300 F. 493).

§ 25-133. Sale by retailer of beverages on credit prohibited—Exceptions.

No holder of a retailer's license, except a retailer's license, class E, shall sell on credit any beverages except beer and light wines. This section shall not prohibit a club from extending credit to its members or the guests of members or a hotel from extending credit to its registered guests. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 35.)

CROSS REFERENCE

Other provisions concerning sale of beverages on credit, see §§ 25-119, 25-120.

§ 25-134. Containers to be labeled—Content.

No rectified or blended spirits shall be sold unless the container in which it is sold shall bear a legible label firmly affixed thereto stating the nature and percentage of each ingredient therein (except water), the age of each such ingredient, and the alcoholic content of such spirits by volume. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 36.)

§ 25-135. Offenses under National Prohibition Act to be prosecuted.

Any offense committed, or any right accrued, or any penalty or obligation incurred, or any seizure or forfeiture made, prior to the effective date of this chapter, under the provisions of the National Prohibition Act, as amended and supplemented, or under any permit or regulation issued thereunder, or under any other provision of law repealed by this chapter, may be prosecuted or enforced in the same manner and with the same effect as if this chapter had not been enacted. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 37.)

REFERENCES IN TEXT

The National Prohibition Act, as amended and supplemented, referred to in the text, is act Oct. 28, 1919, 41 Stat. 305, ch. 85, which was formerly classified to U.S. Code, title 27.

§ 25-136. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 38.)

§ 25-137. Unlawful transportation—Penalty.

(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia from without the District of Columbia any wines, spirits, or beer in a quantity in excess of one gallon at any one time.

(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of one gallon at any one time for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(d) The penalty for violation of this section shall consist of the forfeiture of the beverages transported, imported, or shipped or caused to be transported, imported, brought, or shipped in violation of this section, and a fine of not more than \$500 or imprisonment for not more than six months. (Jan. 24, 1934, ch. 4, § 39, as added Aug. 25, 1937, 50 Stat. 803, ch. 766, § 4.)

CROSS REFERENCE

Other provisions concerning transportation, see §§ 25-112, 25-138.

§ 25-138. Tax on beer.

(a) There shall be levied and collected by the District of Columbia on all beer sold by the holder of a manufacturer's or wholesaler's license, except such beer as may have been purchased from a licensee under this chapter, and except such beer as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beer purchased for resale by the holder of a retailer's license, except such beer as may have been purchased from a licensee under this chapter, a tax of \$1.50 for every barrel containing not more than thirty-one gallons and at a like rate for any other quantity or for the fractional parts thereof. Unless the Commissioners shall by regulation prescribe otherwise, the collection and payment of such tax shall be in the manner following:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the 10th day of each month, furnish to the assessor of the District

of Columbia, on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the 15th day of each month, pay to the collector of taxes of the District of Columbia the tax hereby imposed upon the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia for resale any beer, other than the regular stock on hand in a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beer for which the permit is requested. Such permit shall specifically set forth the quantity, character, and brand or trade name of the beer to be transported and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beer during its transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beer by the retail licensee, be marked "canceled" and retained by him.

(b) The Commissioners are authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by this section in addition to or in lieu of the method hereinbefore set forth whenever, in their judgment, such action is necessary to prevent frauds or evasions.

(c) The taxes imposed hereby, when collected, shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Jan. 24, 1934, ch. 4, § 40, as added May 16, 1938, 52 Stat. 376, ch. 223, § 8, and amended May 27, 1949, 63 Stat. 136, ch. 146, title V, § 508; May 18, 1954, 68 Stat. 115, ch. 218, § 804; Mar. 31, 1956, 70 Stat. 83, ch. 154, § 305.)

AMENDMENTS

1956—Subsec. (a) amended by act Mar. 31, 1956, to increase the tax on a barrel of beer from \$1.25 to \$1.50.

1954—Subsec. (a) amended by act May 18, 1954, to increase the tax on a barrel of beer from \$1 to \$1.25.

1949—Subsec. (a) amended by act May 27, 1949, to increase the tax on a barrel of beer from 50 cents to \$1.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, effective on the first day of the first month which begins on or after the thirtieth day after Mar. 31, 1956, see section 308 of act Mar. 31, 1956, set out as a note under section 25-124.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective May 19, 1954, see section 806 of act May 18, 1954, set out as a note under section 25-124.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, effective on the first day of first month succeeding sixtieth day

after May 27, 1949, see section 509 of act May 27, 1949, set out as a note under section 25-111.

TRANSFER OF FUNCTIONS

Status of Alcoholic Beverage Control Board, see notes under section 25-104.

CROSS REFERENCES

Authority of Commissioners to make rules and regulations under acts May 18, 1954, and Mar. 31, 1956, see §§ 43-1618, 47-1595a.

Beverage taxes generally, see § 25-124.

Other provisions concerning rules and regulations, see § 25-107.

Other provisions concerning transportation, see §§ 25-112, 25-137.

§ 25-139. Building or place of violation declared a nuisance—Procedure to enjoin or abate.

(a) Any building, ground, premises, or place where any intoxicating beverage is manufactured, sold, kept for sale, or permitted to be consumed in violation of this chapter is hereby declared to be a nuisance, and may be enjoined and abated as hereinafter provided.

(b) An action to enjoin any nuisance defined in subsection (a) of this section may be brought in the name of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants, in the civil branch of The Municipal Court for the District of Columbia against any person conducting or maintaining such nuisance or knowingly permitting such nuisance to be conducted or maintained. The rules of The Municipal Court for the District of Columbia relating to the granting of an injunction or restraining order shall be applicable with respect to actions brought under this subsection, except that the District as complaining party shall not be required to furnish bond or security. It shall not be necessary for the court to find the building, ground, premises, or place was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the complaint are true, the court shall enter an order restraining the defendant from manufactur-

ing, selling, keeping for sale, or permitting to be consumed any alcoholic beverage in violation of this chapter. When an injunction, either temporary or permanent, has been granted it shall be binding on the defendant throughout the District of Columbia. Upon final judgment of the court ordering such nuisance to be abated, the court may order that the defendant, or any one claiming under him, shall not occupy or use, for a period of one year thereafter, the building, ground, premises, or place upon which the nuisance existed, but the court may, in its discretion, permit the defendant to occupy or use the said building, ground, premises, or place, if the defendant shall give bond with sufficient security to be approved by the court, in the penal and liquidated sum of not less than \$500 nor more than \$1,000, payable to the District of Columbia, and conditioned that intoxicating beverages will not thereafter be manufactured, sold, kept for sale, or permitted to be consumed in or upon the building, grounds, premises, or place in violation of this chapter.

(c) In the case of the violation of any injunction, temporary or permanent, rendered pursuant to the provisions of this section, proceedings for punishment for contempt may be commenced by the corporation counsel or any of his assistants, by filing with the court in the same case in which the injunction was issued a petition under oath setting out the alleged offense constituting the violation and serving a copy of said petition upon the defendant requiring him to appear and answer the same within ten days from the service thereof. The trial shall be promptly held and may be upon affidavits or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than twelve months, or by both such fine and imprisonment. (Jan. 24, 1934, ch. 4, § 41, as added June 29, 1953, 67 Stat. 104, ch. 159, § 404 (j).)



TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chap.		Sec.
1.	Banking Institutions in General.....	26-101
2.	Joint Accounts—Adverse Claimants—Trust Accounts	26-201
3.	Trust, Loan, Mortgage, Safe Deposit and Title Corporations.....	26-301
4.	Building Associations.....	26-401
5.	Credit Unions.....	26-501
6.	Money Lenders—Licenses.....	26-601
7.	Common Trust Funds.....	26-701

Chapter 1.—BANKING INSTITUTIONS IN GENERAL

Sec.	
26-101.	Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163, and 164 of title 12, U.S. Code, applicable.
26-102.	Examination by Comptroller of the Currency—section 84 of title 12, U.S. Code, extended to banks and trust companies—Reserves.
26-103.	Banking—Foreign corporations not to engage in—Approval of Comptroller of the Currency—"Branches" defined—Building associations—Dissolution of solvent banking corporations—Penalties.
26-104.	Liability of stockholders of bank or savings company—"Entered into or incurred" defined—Certain provisions of U.S. Code extended to District of Columbia.
26-105.	Shareholders' liability terminated after July 1, 1937—Conditions.
26-106.	Dividends—Payment—Restrictions.
26-107.	Restriction on use of words "bank" and "trust company"—Penalty.
26-108.	False statements against banking institutions—Penalty—Defense.
26-109.	Certain limitations on member banks of Federal Reserve System extended to nonmembers.
26-110.	Authority of notaries public employed by bank or trust company

§ 26-101. Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163, and 164 of title 12, U.S. Code, applicable.

All savings banks, or savings companies, or trust companies, or other banking institutions, organized under authority of any act of Congress to do business in the District of Columbia, or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received, shall be, and are hereby, required to make to the Comptroller of the Currency and to publish all the reports which national banking associations are required to make and publish under the provisions of sections 161, 163, and 164 of title 12, U.S. Code, and shall be subject to the same penalties for failure to make such reports as are therein provided, which penalties may be collected by suit before the United States District Court for the District of Columbia. And the Comptroller shall have power, when in his opinion it is necessary, to take possession of any such bank or company, for the reasons and in the manner and to the same extent as are provided in

the laws of the United States with respect to national banks: *Provided, however,* That banking institutions having offices or banking houses in foreign countries as well as in the District of Columbia shall only be required to make and publish the reports provided for in this section semiannually: *And provided further,* That all publications authorized or required by section 161 of title 12, U.S. Code, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in one or more daily newspapers of general circulation, published in the city of Washington. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 713; June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1906, 34 Stat. 458, ch. 3533; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646 § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

REFERENCE IN TEXT

Section 163 of title 12, U.S. Code, referred to in the text, was repealed by act Sept. 8, 1959, 73 Stat. 466, Pub. L. 86-230, § 22(a) and is now covered by section 161 of title 12.

AMENDMENTS

1933—Act March 4, 1933, changed the requirement as to publication from "two or more daily newspapers" to "one or more daily newspapers" and omitted the requirement that one of them should be a morning newspaper.

1906—Act June 25, 1906, inserted in the first sentence the words "or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received," and added the second sentence.

1902—Act June 30, 1902, omitted a second paragraph of this which read as follows: "And all savings or other banks now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes and of all acts of Congress applicable to national banking associations, so far as the same may be applicable to such savings or other banks: *Provided,* That any savings banks established before 1874 shall not be required to have a paid-up capital exceeding one hundred thousand dollars."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCES

Charter, amendment of, see § 29-238.
Credit unions, see § 26-506.
Excise and license taxes, see § 47-1701 et seq.
Forwarding agent, liability of, see § 28-1010.
Mistake or error in paying instruments, damages, see § 28-1009.
Money Lenders Law, exemption from operation of, see § 26-610.
Payment of checks or other instruments more than a year after date, see § 28-1004.

Payment of forged or altered instruments, see § 28-1008.
Real estate conveyances, formal requisites, see § 45-302.
Suits, see § 26-104.

Trust companies—

General provisions, see § 26-301 et seq.
Required to obtain certificate from Comptroller showing capital stock paid and deposit of securities with Comptroller, see § 26-307.
Trust or joint deposits, accounts, or safety deposit boxes, see § 26-201 et seq.

NOTES TO DECISIONS

Authority to take possession 1
Constitutionality 2
Construction 3
Foreign bank 4
Insolvency 5
Liability of stockholders 6
National Savings Bank 7
Payment of interest in liquidation 8
Personal liability of directors 9
Receiver 10
Reorganization plan 11

1. Authority to take possession

Comptroller's authority and power to take possession was precisely the power given him by statute to take possession of a national bank; and, if we are correct in this position, then it follows equally that under the powers vested in him by law he was authorized to investigate the condition of the bank and declare it insolvent, and to appoint a receiver and make an assessment against the stockholders. *Dunn v. O'Connor* (1937, 89 F. 2d 820, 67 App. D. C. 76).

2. Constitutionality

This act is constitutional. *Lyons v. Bank of Discount* (C.C. N.Y. 1907, 154 F. 391).

3. Construction

This act incorporates all the United States Bank Acts which have to do with administration in the case of insolvent banks and gives to the Comptroller the same control and management as in the case of national banks. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D. C. 385).

Determination of Comptroller of Currency as to necessity for assessments is conclusive. *Harper v. Moran* (1935, 76 F. 2d 980, 64 App. D. C. 210, certiorari denied 56 S. Ct. 104, 296 U.S. 592, 80 L. Ed. 419).

4. Foreign bank

Where foreign bank establishes house in District of Columbia, it submitted itself to the provisions of this act. *Washington Loan & Trust Co. v. Allman* (1934, 70 F. 2d 282, 63 App. D. C. 116).

The liquidation of bank organized under West Virginia law and doing business solely in District of Columbia was governed by this chapter, and not by law of West Virginia. *Parsons v. Barry* (1945, 59 F. Supp. 221, affirmed 148 F. 2d 21, 80 U. S. App. D. C. 409, certiorari denied 66 S. Ct. 32, 326 U.S. 726, 90 L. Ed. 431, rehearing denied 66 S. Ct. 136, 326 U.S. 808, 90 L. Ed. 492).

5. Insolvency

Where the Comptroller of the Currency has held a bank to be insolvent and has appointed a receiver for it, the court will not substitute its judgment for the judgment of the Comptroller, unless it appears by convincing proof that the Comptroller's action is plainly arbitrary, and made in bad faith. *United States Sav. Bank v. Morgenthau* (1936, 85 F. 2d 811, 66 App. D. C. 234).

6. Liability of stockholders

This section does not impose double liability on stockholders where State laws impose none. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D. C. 385, certiorari denied 56 S. Ct. 121, 296 U.S. 592, 80 L. Ed. 419). See, also, *Hamilton v. Bergling* (1936, 85 F. 2d 249, 66 App. D. C. 83).

Though bank stockholders' liability under state law may be enforced in the District of Columbia by a receiver appointed by the Comptroller of the Currency, both the existence and the duration of the liability must be determined by the law of the state of the bank's incorporation. *Moran v. Cobb* (1941, 120 F. 2d 16, 73 App. D. C. 200, certiorari dismissed 62 S. Ct. 134, 314 U. S. 703, 86 L. Ed. 562).

7. National Savings Bank

The National Savings Bank of the District of Columbia was organized by the act of May 24, 1870, to accept deposits from depositors, to invest such funds for their benefit, and disburse revenues to the depositors and the corporators have no shares and receive no profits, and have not such interest as will warrant an action for an account and distribution of the profits. *Huntington v. National Sav. Bank* (1877, 96 U. S. 388, 6 Otto 388, 24 L. Ed. 777).

8. Payment of interest in liquidation

When assets of insolvent bank being liquidated under Comptroller of the Currency are sufficient to pay more than 100 percent of principal amount of depositors' claims, depositors are entitled to interest on their claims from date of suspension until paid, computed at statutory or legal rate of jurisdiction in which the liquidation is had. *Parsons v. Barry* (1945, 59 F. Supp. 221, affirmed 148 F. 2d 21, 80 U. S. App. D. C. 409, certiorari denied 66 S. Ct. 32, 326 U.S. 726, 90 L. Ed. 431, rehearing denied 66 S. Ct. 136, 326 U. S. 808, 90 L. Ed. 492).

Interest on time and savings deposits should be computed to date of bank's closing at contract rate, and after closing, deposits, whether savings or demand, should bear interest at local statutory rate on judgments. *Id.*

A judgment of United States Court of Appeals for District of Columbia that no part of assets of closed bank organized under state authority and doing business in District of Columbia could be turned over by receiver to stockholders until after principal and interest on debts were paid was res judicata of depositors' right to interest on their deposits. *Id.*

9. Personal liability of directors

Directors of bank not liable personally for deposits made after expiration of charter, where bank continued business. *Thompson v. Park Sav. Bank* (1935, 77 F. 2d 955, 64 App. D. C. 308, certiorari denied 56 S. Ct. 104, 296 U.S. 592, 80 L. Ed. 419).

10. Receiver

Receiver is the mere instrument of the Comptroller, and the declaration of the Comptroller, rather than the receiver, is the essential factor in determining the necessity for the assessment and where the Comptroller has made the decision, his conclusion is not subject to attack or open to review except for fraud. *Harper v. Moran* (1935, 76 F. 2d 980, 64 App. D. C. 210).

Plaintiff was appointed and qualified as receiver of the bank by the Comptroller of the Currency. *Moran v. Schlosberg* (1937, 90 F. 2d 408, 67 App. D. C. 163).

11. Reorganization plan

Comptroller of the Currency was acting within his statutory authority in holding that the plan of reorganization proposed by appellant was not fair and equitable as to the depositors and other creditors of the bank, and is not in the public interest, and that the Comptroller was right in refusing to adopt appellant's proposed plan, and consequently that his action in this behalf was not arbitrary or capricious. *Cooper v. Woodin* (1934, 72 F. 2d 179, 63 App. D. C. 311).

§ 26-102. Examination by Comptroller of the Currency—Section 84 of title 12, U.S. Code, extended to banks and trust companies—Reserves.

(a) The Comptroller of the Currency, in addition to the powers now conferred upon him by law for the examination of national banks, is hereby further authorized, whenever he may deem it advisable, to cause examination to be made into the condition of any bank mentioned in section 26-101. The expense of such examination shall be paid in the manner provided by section 482 of title 12, U. S. Code, relating to the examination of national banks.

(b) The provisions of section 84 of title 12, U.S. Code, are hereby extended to apply to all banks and trust companies doing business in the District of Columbia.

(c) Each bank and trust company doing business in the District of Columbia and not a member of the

Federal Reserve System shall within six months from March 4, 1933, establish and maintain reserves on the same basis and subject to the same conditions as may by law on March 4, 1933, or thereafter be prescribed for national banks located in the District of Columbia, except that such reserves shall be established and maintained at such agency or agencies which shall have the approval of the Comptroller of the Currency: *Provided, however*, (1) That the required reserves carried by such bank or trust company with an agency or agencies may, under the regulations and subject to such penalties as may be prescribed by the Comptroller of the Currency, be checked against and withdrawn by such bank or trust company for the purpose of meeting existing liabilities, and (2) that no such bank or trust company shall at any time make new loans or shall pay any dividends unless and until the total reserves required by law shall be fully restored. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 714; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 3.)

AMENDMENT

1933—Act Mar. 4, 1933, changed the first par. of this section which originally provided that the Comptroller might cause examination of any bank in the District organized under act of Congress, that he might, at his discretion, report thereon to Congress, and that the expense should be paid out of any appropriation made by Congress for special bank examinations to read as above, designated such provision as subsec. (a) and added subsecs. (b) and (c).

ALTERATION, AMENDMENT OR REPEAL

Section 9 of act Mar. 4, 1933, provided that: "The right to alter, amend, or repeal this Act is hereby expressly reserved. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered."

CROSS REFERENCES

Credit unions, see § 26-506.

Examination of building and homestead associations, see § 26-404.

General provisions concerning trust companies, see § 26-301 et seq.

Suits, see § 26-104.

NOTES TO DECISIONS

Bank established in another state 1
Personal liability of directors 2
Plan of reorganization 3

1. Bank established in another state

When Alabama bank established a banking house in Washington, D. C., and all its officers and directors and substantially all of its stockholders resided in the District; and when all meetings of its stockholders and directors and all assets and records were kept here, the bank was governed by this section. *Thompson v. Park Sav. Bank* (1935, 77 F. 2d 955, 64 App. D.C. 308, certiorari denied 56 S. Ct. 104, 296 U.S. 592, 80 L. Ed. 419).

Alabama corporation doing business in Washington, D. C., paying dividends and making reports to Comptroller of Currency, was examined by Comptroller under this section. *Thompson v. Park Sav. Bank* (1938, 96 F. 2d 544, 68 App. D. C. 272).

2. Personal liability of directors

Continuance of bank in business after expiration of charter, liability of directors personally for deposits, see *Thompson v. Park Sav. Bank* (1935, 77 F. 2d 955, 64 App. D.C. 308, certiorari denied 56 S. Ct. 104, 296 U.S. 592, 80 L. Ed. 419, certiorari denied 59 S. Ct. 72, 305 U. S. 606, 83 L. Ed. 391).

3. Plan of reorganization

Comptroller of Currency was acting within his statutory authority in holding that the plan of reorganization proposed by appellant was not fair and equitable as to the depositors and other creditors of the bank, and is not in the public interest, and that the Comptroller was right in refusing to adopt appellant's proposed plan, and consequently that his action in this behalf was not arbitrary or capricious. *Cooper v. Woodin* (1934, 72 F. 2d 179, 63 App. D. C. 311).

§ 26-103. Banking—Foreign corporations not to engage in—Approval of Comptroller of the Currency—"Branches" defined—Building associations—Dissolution of solvent banking corporations—Penalties.

(a) No banking business shall be done in the District of Columbia except by corporations organized in accordance with the provisions of this Code, as amended, or by national banking associations organized in accordance with the laws of the United States, except that this paragraph shall not apply to (1) corporations engaged in and doing a banking business on March 4, 1933, (2) individuals, partnerships, associations, or corporations primarily engaged as brokers in buying, selling, exchanging, and/or otherwise dealing in stocks, bonds, and/or other securities, for the account of others, and incidentally thereto conducts banking transactions, (3) individuals, partnerships, associations, or corporations not doing a bank-of-deposit business.

(b) No corporation shall engage in or do the business of a bank of deposit or a fiduciary business in the District of Columbia nor shall any branch be established to carry on any phase of such banking or fiduciary business in the District of Columbia until the approval and consent of the Comptroller of the Currency is secured. The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any place of business located in the District of Columbia, at which deposits are received, or checks paid, or money lent, or at which the public is served or any phase of business conducted by the parent institution.

(c) No building association, incorporated or unincorporated, shall do a building-association business or maintain any office in the District of Columbia until it shall have secured the approval and consent of the Home Loan Bank Board; and the Home Loan Bank Board shall not give consent or approval to any building association to maintain any office or place of business in the District of Columbia, other than a foreign association which qualifies for a certificate of authority under section 26-405, where such association is not incorporated under the laws of the District of Columbia in accordance with sections 26-401 to 26-416, except that this paragraph shall not apply to associations, incorporated or unincorporated, engaged in and doing a building-association business on March 4, 1933.

(d) Any solvent financial institution in the District of Columbia under the supervision of the Comptroller of the Currency may go into liquidation and discontinue business by the vote of its shareholders owning two-thirds of its stock. Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the institution, by its president, secretary, or cashier to the Comptroller of

the Currency, and publication thereof to be made for a period of two weeks in a newspaper published in the District of Columbia, that the institution has discontinued business and is winding up its affairs, and notifying its creditors to present claims against the institution for payment. The shareholders shall at the time of going into liquidation elect a committee or liquidating agent who shall liquidate the institution. No institution which has gone into voluntary liquidation shall be permitted to resume business but until its liquidation is complete shall remain a legal corporation or association for the purpose of suing or being sued. The liquidating agent shall give satisfactory surety bond to the board of directors of the institution and shall annually, on request of the Comptroller of the Currency, render such reports to the Comptroller as he shall require. Any such institution in liquidation may be examined by the Comptroller of the Currency who, if he finds such institution insolvent, may appoint a receiver and wind up its affairs in the same manner as provided by law for national banking associations.

(e) If any financial institution under the supervision of the Comptroller of the Currency, which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause, shall discontinue its operations for a period of sixty days, the Comptroller of the Currency may, if he deems it advisable, appoint a receiver for such institution.

(f) Any financial institution over which the Comptroller of the Currency has or had supervision which prior to March 4, 1933, had in any manner ceased to do a banking business shall not resume such banking business and shall advise the Comptroller of the Currency when its business has been fully liquidated, whereupon by operation of this section its charter is terminated. Such financial institution may in the discretion of the Comptroller of the Currency be subject to all the provisions of paragraph (d) of this section.

(g) Each person, copartnership, each director, liquidating committee or liquidating agent, and each one of the officers and employees of an association or corporation violating any of the provisions of this section shall be punished by a fine not exceeding \$1,000, or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court. (Apr. 26, 1922, 42 Stat. 500, ch. 147; Mar. 4, 1933, 47 Stat. 1564, ch. 274, § 1; Sept. 15, 1951, 65 Stat. 324, ch. 404, § 3.)

AMENDMENTS

1951—Subsec. (c) amended by act Sept. 15, 1951, substituting "Home Loan Bank Board" for "Comptroller of the Currency", and adding the words "other than a foreign association which qualifies for a certificate of authority under § 26-405."

1933—Act Mar. 4, 1933, amended section to read as set forth in the text. Prior to the amendment, this section provided: "That no corporation that is not now engaged in the business of banking in the District of Columbia shall, after the passage of this act, be permitted to enter upon said business in the said District, nor shall any corporation now or hereafter engaged in the business of banking be permitted to establish branch banks in said District, until after it shall have secured the approval and consent of the Comptroller of the Currency; and each one of the officers of such corporation so offending shall be punished by a fine not

exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court."

CROSS REFERENCES

General provision concerning trust companies, see § 26-301 et seq.

Suits, see § 26-104.

NOTES TO DECISIONS

Banks operating prior to statute 1
State law determining liability 2

1. Banks operating prior to statute

Bank incorporated under a state law operating a bank in the District of Columbia prior to April 26, 1922, was entitled to continue (33 O. A. G. 395).

2. State law determining liability

In absence of words creating liability claimed, or finding by necessary implication that the section plainly and convincingly adopts the national banking law of double liability, the law of Virginia as the place where bank was created would govern in measuring liability of appellees as stockholders. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D. C. 385).

§ 26-104. Liability of stockholders of bank or savings company—"Entered into or incurred" defined—Certain provisions of U.S. Code extended to District of Columbia.

(a) Repealed. Feb. 16, 1934, 48 Stat. 352, ch. 14, § 1.

(b) The shareholders, on March 4, 1933, of every savings bank or savings company other than building associations organized under authority of any Act of Congress to do business in the District of Columbia, and of every banking institution organized by virtue of the laws of any of the states of this Union to do or doing a banking business in the District of Columbia, shall be held individually responsible, equally and ratably, and not one for another for all contracts, debts, and engagements of such savings bank, savings company, or banking institution, entered into or incurred subsequent to March 4, 1933, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares. The words "entered into or incurred" as used in this section, shall be held to include any extension or renewal of any contracts, debt, and engagement renewed or extended after March 4, 1933.

(c) The provisions of sections 55, 62, 65, 67, 191-194, 197, and 198-200 of title 12, U.S. Code, are extended to apply to any bank, savings bank, or trust company organized, hereafter organized, or doing a banking business in the District of Columbia and to the shareholders of such institutions, except as limited by the provisions of paragraph (b) of this section: *Provided, however*, That the provisions of section 26-101 shall not be construed to be repealed by this section but shall have application to the banks, savings banks, savings companies, other than building associations, and trust companies embraced within this section.

(d) That portion of section 24 of the Judicial Code, as amended, applying to suits against national-banking associations shall be extended and shall apply to all actions arising under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 4; Feb. 16, 1934, 48 Stat. 352, ch. 14, § 1.)

REFERENCES IN TEXT

Section 24 of the Judicial Code, as amended, applying to suits against national-banking associations, referred

to in subsec. (d), was repealed by act June 25, 1948, 62 Stat. 992, ch. 646, § 39, eff. Sept. 1, 1948, and is now covered by U.S. Code, title 28, § 1348.

AMENDMENT

1934—Subsec. (a) repealed by act Feb. 16, 1934.

Prior to such amendment, section provided that: "The shareholders of every savings bank or savings company other than building associations now or hereafter organized under authority of any Act of Congress to do business in the District of Columbia and of every banking institution organized by virtue of the laws of any of the States of the Union to do or doing a banking business in the District of Columbia, who acquire in any manner the shares of any such savings bank or savings company or such banking institutions other than building associations after the enactment of this Act, shall be held individually responsible equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank or company, to the extent of the amount of their stock so acquired therein, at the par value thereof in addition to the amount invested in such shares."

SHAREHOLDERS' LIABILITY NOT APPLICABLE TO SHARES ISSUED AFTER FEB. 16, 1934

Section 2 of act Feb. 16, 1934, provided that: "The additional liability imposed by subsection (b) of section 4 of such Act [subsec. (b) of this section] upon the shareholders of the savings banks, savings companies, and banking institutions specified in such subsection (b) [subsec. (b) of this section], shall not apply with respect to shares in any such savings bank, savings company, or banking institution issued after the date of enactment of this Act [Feb. 16, 1934]."

CROSS REFERENCE

Stockholder's liability in trust, loan, mortgage, safe deposit, and title corporations, see § 26-322.

NOTES TO DECISIONS

1. Foreign bank doing business in District

When there was, at the time, no statute in the District creating double liability in the case of a stockholder of a foreign bank doing business exclusively in the District, the liability of the stockholder is determined by the charter of incorporation and laws of the State in which incorporation is had. *Hamilton v. Bergling* (1936, 85 F. 2d 249, 66 App. D.C. 83).

§ 26-105. Shareholders' liability terminated after July 1, 1937—Conditions.

The additional liability imposed by section 26-104 upon the shareholders of savings banks, savings companies, and banking institutions and the additional liability imposed by section 26-322 upon the shareholders of trust companies, shall cease to apply on July 1, 1937, with respect to such savings banks, savings companies, banking institutions, and trust companies which shall be transacting business on such date: *Provided*, That not less than six months prior to such date, the savings bank, savings company, banking institution or trust company, desiring to take advantage hereof, shall have caused notice of such prospective termination of liability to be published in a newspaper published in the District of Columbia and having general circulation therein. In the event of failure to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date six months subsequent to publication in the manner above provided. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337.)

CROSS REFERENCE

General provisions concerning trust companies, see § 26-301 et seq.

§ 26-106. Dividends—Payment—Restrictions.

Each such savings bank, savings company, banking institution, and trust company shall, before the declaration of a dividend on its shares of common stock, carry not less than one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall equal the amount of its common stock: *Provided*, That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock or debentures of any such savings bank, savings company, banking institution, or trust company, out of its net earnings for such half-year period shall be deemed to be an addition to its surplus if, upon the retirement of such preferred stock or debentures, the amount so paid into such retirement fund for such period may then properly be carried to surplus. In any such case the savings bank, savings company, banking institution, or trust company shall be obligated to transfer to surplus the amount so paid into such retirement fund for such period, on account of the preferred stock or debentures as such stock or debentures are retired. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337.)

CROSS REFERENCE

General provisions for trust companies, see § 26-301 et seq.

§ 26-107. Restriction on use of words "bank" and "trust company"—Penalty.

No corporation, association, partnership, or individual shall carry on any business in the District of Columbia under any name or title containing the word "bank" or the words "trust company" unless (1) the business is being carried on under the name or title on March 4, 1933, or (2) the business is carried on under the supervision of the Comptroller of the Currency and the name or title is approved by the Comptroller of the Currency. Any individual who, or corporation, association, or partnership which, violates any of the provisions of this section, and any officer of any such corporation or association and any officer or member of any such partnership, who assents to any such violation, shall, upon conviction thereof, be fined not more than \$5,000. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 6.)

CROSS REFERENCES

General provisions concerning trust companies, see § 26-301 et seq.

Suits, see § 26-104.

§ 26-108. False statements against banking institutions—Penalty—Defense.

Any person who maliciously makes or repeats to, or in the hearing of, or under such circumstances that it becomes known to, any other person any false statement imputing insolvency or unsound financial condition to any bank, trust company, or building and loan association in the District of Columbia, or tending to cause a general withdrawal of deposits or funds from any such institution, shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than five years, or both: *Provided*, That the truth of said statement, established by the maker thereof, shall be a complete defense in any prosecution under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 7.)

CROSS REFERENCES

General provisions concerning trust companies, see § 26-301 et seq.
Suits, see § 26-104.

§ 26-109. Certain limitations on member banks of Federal Reserve System extended to nonmembers.

All acts prohibited by the provisions of sections 5208 and 5209 of the Revised Statutes, as amended, and section 22 of the Federal Reserve Act, as amended, in the case of Federal Reserve Banks or member banks thereof, or of directors, officers, or employees of such banks, are likewise prohibited, respectively, in the case of banks in the District of Columbia which are not members of a Federal reserve bank, or of directors, officers, or employees of such banks, and shall be punishable by the respective penalties provided in such section. (Mar. 4, 1933, 47 Stat. 1568, ch. 274, § 8.)

REFERENCES IN TEXT

Part of section 5208 of the Revised Statutes, referred to in the text, is classified to U.S. Code, title 12, § 501. Part of such section 5208 which was formerly classified to U.S. Code, title 12, § 591, was repealed in 1948 and is now covered by U.S. Code, title 18, § 1004.

Section 5209 of the Revised Statutes, referred to in the text, which was formerly classified to U.S. Code, title 12, § 592, was repealed in 1948 and is now covered by U.S. Code, title 18, §§ 334, 656, 1005.

Section 22 of the Federal Reserve Act, as amended, referred to in the text, consisted of subsecs. (a)–(k), which may be accounted for as follows:

Section 22(a), formerly classified to U.S. Code, title 12, § 593, was repealed in 1948 and is now covered by U.S. Code, title 18, §§ 217, 218, 655.

Section 22(b), formerly classified to U.S. Code, title 12, § 594, was repealed in 1948 and is now covered by U.S. Code, title 18, § 1906, 1909.

Section 22(c), formerly classified to U.S. Code, title 12, § 595, was repealed in 1948 and is now covered by U.S. Code, title 18, § 220.

Section 22(d)—(g) is classified to U.S. Code, title 12, §§ 375, 376, 503, 375a respectively.

Section 22(h), formerly classified to U.S. Code, title 12, § 596, was repealed in 1948 and is now covered by U.S. Code, title 18, § 1014.

Section 22(i), formerly classified to U.S. Code, title 12, § 597, was repealed in 1948 and is now covered by U.S. Code, title 18, §§ 655, 1005.

Section 22(j) was formerly classified to U.S. Code, title 12, § 598.

Section 22(k), formerly classified to U.S. Code, title 12, § 599, was repealed in 1948 and is now covered by U.S. Code, title 18, § 219.

The repeal of part of section 5208 and section 5209 of the Revised Statutes and the described subsections of section 22 of the Federal Reserve Act, as amended, was effected by act June 25, 1948, 62 Stat. 862, ch. 645, § 21, eff. Sept. 1, 1948.

CROSS REFERENCE

Suits, see § 26-104.

§ 26-110. Authority of notaries public employed by banks or trust company.

It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank, trust company, or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment drafts, checks, notes, acceptances, or other negotiable instruments which may be owned or held for collection by such corporation: *Provided*, That it shall be

unlawful for any notary public to take the acknowledgment of an instrument executed by or to a bank or corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument: *Provided further*, That it shall be unlawful for any notary public to take the oath of an officer or director of any bank or trust company of which he is an officer, or to take an oath of any person verifying a report of such bank or trust company to the Comptroller of the Currency. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 5.)

CROSS REFERENCE

General provisions concerning trust companies, see § 26-301 et seq.

NOTES TO DECISIONS

1. In general

Although a notary is a stockholder of a bank and its president, protest of notes by him is not invalid. *Roberts v. International Bank* (1928, 25 F. 2d 214, 58 App. D.C. 87).

Chapter 2.—JOINT ACCOUNTS—ADVERSE CLAIMANTS—TRUST ACCOUNTS

Sec.

- 26-201. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.
- 26-202. Safe deposit boxes in names of two or more persons—Right of access—Liability of bank.
- 26-203. Notice of adverse claim to deposit.
- 26-204. Payment of trust accounts on death of trustee.

§ 26-201. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.

When a deposit shall have been made in, or shall after May 15, 1928, be made in, or any collection item shall have been placed or shall after May 15, 1928, be placed with, any bank, trust company, savings bank, building association, or other banking institution, including national banks, transacting business in the District of Columbia, or when any shares of stock shall have been issued or shall after May 15, 1928, be issued by any building association, transacting business in the District of Columbia, in the names of two or more persons, including husband and wife, payable to either, or payable to either or the survivor or survivors, such deposit, or in any part thereof, or any interest or dividend thereon, and such collection item or its proceeds, or any interest or dividend thereon, or such shares of stock issued by a building association or any interest or dividend thereon, may be paid or delivered to either of said persons whether the other or others be living or not; and the receipt or acquittance of the person to whom such payment or delivery is made shall be a valid, sufficient, and complete release and discharge of the bank, trust company, savings bank, building association, or other banking institution, including national banks, for any payment or delivery so made. (May 15, 1928, 45 Stat. 533, ch. 568, § 1.)

CROSS REFERENCE

Uniform Fiduciary Act, see § 28-2301 et seq.

NOTES TO DECISIONS

Gift causa mortis 1
Inter vivos 2
Joint account 3

1. Gift causa mortis

Where depositor, not in contemplation of impending death, had brother's name added to bank account, but did not pass a present interest therein to brother, and retained control of account, there was no "gift causa mortis". *Gibson v. Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

2. Gift inter vivos

Where depositor had brother's name appended to bank account but passed no present interest thereto and retained control of account and passbook, there was no "gift inter vivos" to brother. *Gibson v. Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

3. Joint account

In action by husband's executors against widow to impress constructive trust on proceeds of bank account, for which printed bank cards which recited a right of survivorship had been signed by both husband and widow, and from which widow, after husband's death, withdrew all the funds for deposit elsewhere in her own name, evidence failed to rebut presumption, based on fact that funds for such account had been provided only by husband, that widow did not have a survivorship interest. *Imirie v. Imirie and Bogley etc.* (1957, 246 F. 2d 652, 100 U.S. App. D.C. 371).

A showing that name of depositor's brother was merely appended to bank account, without more, is insufficient to establish intention of depositor to establish a joint account with right of survivorship. *Gibson v. Industrial Bank of Washington* (D. C. Mun. App. 1944, 36 A. 2d 62).

§ 26-202. Safe deposit boxes in names of two or more persons—Right of access—Liability of bank.

When a safety deposit box or vault shall have been hired from any bank, trust company, savings bank, building association, or other banking institution, including national banks, or any other corporation, transacting business in the District of Columbia, in the names of two or more persons, including husband and wife, with the right of access being given to either, or with access to either or the survivor or survivors of said persons, or property is held for safe-keeping by any such bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, for two or more persons, including husband and wife, with the right of delivery being given to either, or with the right of delivery to either or the survivor or survivors of said persons, any one or more of such persons, whether the other or others be living or not, shall have the right of access to such safety deposit box or vault and to remove the contents thereof, or any part of such contents, or to have delivered to him or them, the property so held for safe-keeping, or any part thereof, and in case of such removal or delivery the said bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, shall be exempt from any liability for permitting such access or removal or for the delivery to such person or persons. (May 15, 1928, 45 Stat. 534, ch. 568, § 2.)

§ 26-203. Notice of adverse claim to deposit.

Notice to any bank or trust company doing business in the District of Columbia of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either (1) procure a restraining order, injunction, or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause

therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons; or (2) execute to such bank or trust company, in form and with sureties acceptable to it, a bond indemnifying said bank or trust company from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company: *Provided*, That this section shall not apply to any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, together with the facts showing reasonable cause of belief on the part of the said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 2.)

§ 26-204. Payment of trust accounts on death of trustee.

Whenever a deposit, savings account, or share account, which is in form in trust for another, shall be made or held by any person in any bank, trust company, savings and loan association, building association, building and loan association, or Federal savings and loan association, doing business in the District of Columbia, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, trust company, or other association, such deposit, savings account, or share account, or any part thereof, together with the dividends, or interest thereon, may, in the event of the death of the trustee, be paid to the person for whom such deposit, savings account, or share account was made or held, or to his legal representative. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 4; July 19, 1954, 68 Stat. 494, ch. 545, § 1.)

AMENDMENT

1954—Act July 19, 1954, made the section applicable to savings account and share account and savings and loan association, building association, building and loan association, and Federal savings and loan association.

Chapter 3.—TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS

Sec.

- 26-301. Purposes for which formed.
- 26-302. Title insurance companies may become perpetual.
- 26-303. Trust companies to have perpetual succession.
- 26-304. Organization certificate—Content.
- 26-305. Commissioners of the District may grant or refuse charter.
- 26-306. Notice of application to Commissioners.
- 26-307. Recording charter—Certificate to be secured from Comptroller of Currency.
- 26-308. Reports to Comptroller—Powers of Comptroller.
- 26-309. Powers of companies—Liability as trustee.
- 26-310. May be appointed trustee, receiver, administrator, collector, guardian, or committee.
- 26-311. Oath as fiduciary.
- 26-312. Stock to be security when fiduciary.
- 26-313. Existing companies.
- 26-314. Real estate which may be owned.
- 26-315. Duration of charter.
- 26-316. Capital stock—Deposit with Comptroller required.
- 26-317. Shares, par value—Calls—Sale of stock upon failure to pay call.
- 26-318. Annual reports to Comptroller.
- 26-319. Liability of directors or trustees—Exception.
- 26-320. False swearing—Misappropriation made larceny.

Sec.

- 26-321. Stock deemed personal estate of holder—Transfer—Face to show par value, amount paid.
- 26-322. Liability of stockholders.
- 26-323. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1902.
- 26-324. Number of directors or trustees—Election—Tenure.
- 26-325. Officers—Bond.
- 26-326. By-laws.
- 26-327. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.
- 26-328. Directors or trustees objecting to such dividends and filing certificate, exempt.
- 26-329. Directors or trustees personally liable when liabilities exceed assets.
- 26-330. Executors, administrators, guardians, or trustees not liable as stockholder—Estate liable.
- 26-331. Increase or decrease of capital stock—Approval by Comptroller—Distribution of assets.
- 26-332. Copy of certificate to be evidence.
- 26-333. No bond to be required when company appointed fiduciary—Capital stock and property to be considered as security for performance of duties.
- 26-334. Bond as fiduciary may be required—Examination for cause.
- 26-335. Compliance required of corporations organized under State laws—Penalty.
- 26-336. Right to amend or repeal reserved to Congress.

§ 26-301. Purposes for which formed.

Corporations may be formed within the District of Columbia for the purposes hereinafter mentioned in the following manner:

Any number of natural persons, citizens of the United States, not less than twenty-five, may associate themselves together to form a company for the purpose of carrying on, in the District of Columbia, any one of the three classes of business herein specified, to wit:

First. A safe deposit, trust, loan, and mortgage business.

Second. A title insurance, loan, and mortgage business.

Third. A security, guarantee, indemnity, loan, and mortgage business: *Provided*, That the capital stock of any of said companies shall not be less than one million dollars, and that any of said companies may also do a storage business when their capital stock amounts to the sum of not less than one million two hundred thousand dollars. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 715.)

CROSS REFERENCES

- Amendment of charter, see § 29-238.
- Excise and license taxes, see § 47-1701 et seq.
- Existing corporation availing itself of the provisions of this chapter, see § 26-313.
- Money Lenders Law, exemption from operation of, see § 26-610.
- Provisions applicable to trust and fiduciary companies, see §§ 26-101 to 26-110.
- Special powers of companies organized hereunder, see § 26-309.
- Title insurance excepted from operation of Fire and Casualty Act, see § 35-1302.

NOTES TO DECISIONS

1. In general

Language of the act of incorporation "liable to the creditors" does not create an independent and direct property right of creditors enforceable only by them in an equity suit, but it is a right which, though created for their benefit, accrues to the Comptroller and through him to his receiver, by whom alone it is enforceable in the ad-

ministration of the trust estate. *Dunn v. O'Connor* (1937, 89 F. 2d 820, 67 App. D.C. 76).

§ 26-302. Title insurance companies may become perpetual.

Any company formed prior to January 1, 1902, agreeably to law, for the purpose of insuring titles to real estate may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641.)

CODIFICATION

Section comprises the first paragraph of section 641 of act Mar. 3, 1901. Second paragraph of such section 641 is classified to section 26-303.

§ 26-303. Trust companies to have perpetual succession.

Any company transacting the business of a trust company and heretofore or hereafter organized or operating under the provisions of this chapter shall have perpetual succession from the date of its organization, or until such time as it be dissolved, or until its franchise shall become forfeited by reason of violation of law, or until terminated by either a general or special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him. (Mar. 3, 1901, ch. 854, § 641, as added June 24, 1936, 49 Stat. 1898, ch. 743.)

REFERENCES IN TEXT

In the original, "this chapter" refers to chapter 18 of act Mar. 3, 1901, ch. 854, which includes sections 574-797. For distribution of such sections 574-797 in the Code, see Tables.

CODIFICATION

Section comprises the second paragraph of section 641 of act Mar. 3, 1901. First paragraph of such section 641 is classified to section 26-302.

CROSS REFERENCE

Voluntary liquidation and discontinuance of business, see § 26-103.

§ 26-304. Organization certificate—Content.

The persons referred to in section 26-301 shall, under their hands and seals, execute before some officer in said District competent to take the acknowledgment of deeds, an organization certificate, which shall specifically state—

First. The name of the corporation.

Second. The purposes for which it is formed.

Third. The term for which it is to exist, which shall not exceed the term of fifty years, and be subject to alteration, amendment, or repeal by Congress at any time.

Fourth. The number of its directors and the names and residences of the officers who for the first year are to manage the affairs of the company.

Fifth. The amount of its capital stock and its subdivision into shares. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 716.)

CROSS REFERENCE

Prohibition against use of words "trust company" unless operated under supervision of Comptroller of the Currency, see § 26-107.

§ 26-305. Commissioners of the District may grant or refuse charter.

This certificate shall be presented to the Commissioners of the District, who shall have power and discretion to grant or refuse to said persons a charter

of incorporation upon the terms set forth in the said certificate and the provisions of this chapter. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 717.)

CROSS REFERENCE

Power of Comptroller of the Currency over trust companies, see § 26-101 et seq.

§ 26-306. Notice of application to Commissioners.

Previous to the presentation of the said certificate to the said Commissioners, notice of the intention to apply for such charter shall be inserted in two newspapers of general circulation, printed in the District of Columbia, at least four times a week for three weeks, setting forth briefly the name of the proposed company, its character and object, the names of the proposed incorporators, and the intention to make application for a charter on a specified day; and the proof of such publication shall be presented with said certificate when presentation thereof is made to said Commissioners. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 718.)

§ 26-307. Recording charter—Certificate to be secured from Comptroller of Currency.

If the charter be granted as aforesaid, it, together with the certificate of the Commissioners granting the same indorsed thereon, shall be filed for record in the office of the recorder of deeds for the District of Columbia, and shall be recorded by him. On the filing of the said certificate with the said recorder of deeds as herein provided, approved as aforesaid by the said Commissioners, the persons named therein and their successors shall thereupon and thereby be and become a body corporate and politic, and as such shall be vested with all the powers and charged with all the liabilities conferred upon and imposed by this chapter upon companies organized under the provisions hereof: *Provided, however,* That no corporation created and organized under the provisions hereof, or availing itself of the provisions hereof as contained in section 26-313, shall be authorized to transact the business of a trust company, or any business of a fiduciary character, until it shall have filed with the Comptroller of the Currency a copy of its certificate of organization and charter, and shall have obtained from him and filed the same for record with the said recorder of deeds, a certificate that the said capital stock of said company has been paid in and the deposit of securities made with said comptroller in the manner and to the extent required by this title. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 719.)

CROSS REFERENCE

Power of Comptroller over trust companies, see § 26-101 et seq.

§ 26-308. Reports to Comptroller—Powers of Comptroller.

All companies organized under this chapter, or which shall, under the provisions of this chapter, become entitled to transact the business of a trust company, shall report to the Comptroller of the Currency in the manner prescribed by sections 161, 163, and 164 of title 12, U.S. Code, in the case of national banks, and all acts amendatory thereof or supplementary thereto, and with similar provisions for compensating examiners, and shall be subject to like penalties for failure to do so. The comptroller

shall have and exercise the same visitorial powers over the affairs of the said corporations as is conferred upon him by sections 481-485 of title 12, U.S. Code, in the case of national banks. He shall also have power, when in his opinion it is necessary, to take possession of any such company for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 720.)

REFERENCES IN TEXT

Section 163 of title 12, U.S. Code, referred to in the text, was repealed by act Sept. 8, 1959, 73 Stat. 466, Pub. L. 86-230, § 22(a) and is now covered by section 161 of title 12.

CROSS REFERENCE

Other provisions concerning powers of Comptroller over trust companies, see § 26-101 et seq.

NOTES TO DECISIONS

In general 1
Real estate 2

1. In general

Purpose of this section is to make trust companies and State incorporated banks doing business in the District subject to the authority of the Comptroller both in operation and insolvency. *Dunn v. O'Connor* (1937, 89 F. 2d 820, 67 App. D.C. 76).

2. Real estate

Virginia real estate owned by insolvent trust company of the District, being administered by the Comptroller of the Currency is subject to attachment in Virginia court by Virginia creditors. *Loudoun Nat. Bank of Leesburg v. Continental Trust Co.* (1935, 180 S.E. 548, 164 Va. 536).

§ 26-309. Powers of companies—Liability as trustee.

All companies organized under this chapter are hereby declared to be corporations possessed of the powers and functions of corporations generally, and shall have power—

First. To make contracts.

Second. To sue and be sued, plead and be impleaded, in any court as fully as natural persons.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To loan money.

Fifth. When organized under subdivision 1 of section 26-301, to accept and execute trusts of any and every description which may be committed or transferred to them, and to accept the office and perform the duties of receiver, assignee, executor, administrator, collector of estate or property of any decedent, guardian of the estate of minors with the consent of the guardian of the person of such minor, and committee of the estates of lunatics and idiots whenever any trusteeship or any such office or appointment is committed or transferred to them, with their consent, by any person, body politic or corporate, or by any court in the District of Columbia; and all such companies organized under the first subdivision of section 26-301 are further authorized to accept deposits of money for the purposes designated herein, upon such terms as may be agreed upon from time to time with depositors, and to act as agent for the purpose of issuing or countersigning the bonds or obligations of any corporation, association, municipality, or state, or other public authority, and to receive and manage any sinking fund on any such terms as may be agreed upon, and shall have power to issue its debenture bonds upon deeds of trust or mortgages of

real estate to a sum not exceeding the face value of said deeds of trust or mortgages, and which shall not exceed fifty per centum of the fair cash value of the real estate covered by said deeds or mortgages, to be ascertained by the Comptroller of the Currency; but no debenture bonds shall be issued until the securities on which the same are based have been placed in the actual possession of the trustee named in the debenture bonds, who shall hold said securities until all of said bonds are paid; and when organized under the second subdivision of section 26-301 said company is authorized to insure titles to real estate and to transact generally the business mentioned in said subdivision; and when organized under the third subdivision of section 26-301 said company is hereby authorized, in addition to the loan and mortgage business therein mentioned, to secure, guarantee, and insure individuals, bodies politic, associations, and corporations against loss by or through trustees, agents, servants, or employees, and to guarantee the faithful performance of contracts and obligations of whatever kind entered into by or on the part of any person or persons, association, corporation, or corporations, and against loss of every kind: *Provided*, That any corporations formed under the provisions of this chapter when acting as trustee shall be liable to account for the amounts actually earned by the moneys held by it in trust in addition to the principal so held; but such corporation may be allowed a reasonable compensation for services performed in the care of the trust estate. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 721.)

CROSS REFERENCES

- Bylaws, see § 26-326.
 Conveyances of real estate, formal requisites, see § 45-302.
 False statements against trust companies, see § 26-108.
 Insurance companies authorized to write title insurance, see § 35-1103.
 Liability as forwarding agent, see § 28-1010.
 Mistake or error in paying instruments, damages, see § 28-1009.
 Number and powers of trustees or directors, see § 26-324.
 Other provisions concerning power of Comptroller over trust companies, see § 26-101 et seq.
 Payment of checks or other instruments more than a year after date, see § 28-1004.
 Payment of forged or altered instrument, see § 28-1008.
 Trust or joint deposits, accounts, or safety deposit boxes, see § 26-201 et seq.

§ 26-310. May be appointed trustee, receiver, administrator, collector, guardian, or committee.

In all cases in which application shall be made to any court in the District of Columbia, or wherever it becomes necessary or proper for said court to appoint a trustee, receiver, administrator, collector, guardian of the estate of a minor, or committee of the estate of a lunatic, it shall and may be lawful for said court (but without prejudice to any preference in the order of any such appointments required by law) to appoint any such company organized under the first subdivision of section 26-301, with its assent, such trustee, receiver, administrator, collector, committee, or guardian, with the consent of the guardian of the person of such minor: *Provided, however*, That no court or judge who is an owner of or in any manner financially interested in the stock or busi-

ness of such corporation shall commit by order or decree to any such corporation any trust or fiduciary duty. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 722.)

§ 26-311. Oath as fiduciary.

Whenever any corporation operating under this Code shall be appointed such trustee, executor, administrator, collector, receiver, assignee, guardian, or committee, as aforesaid, the president, vice-president, secretary, or treasurer of said company shall take the oath or affirmation required by law to be made by any trustee, executor, administrator, collector, receiver, assignee, guardian, or committee. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 723.)

§ 26-312. Stock to be security when fiduciary.

When any court shall appoint the said company a trustee, receiver, administrator, collector, or such guardian or committee, or shall order the deposit of money or other valuable with said company, or where any individual or corporation shall appoint any of said companies a trustee, executor, assignee, or such guardian, the capital stock of said company subscribed for or taken, and all property owned by said company, together with the liability of the stockholders and officers as herein provided, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 724.)

§ 26-313. Existing companies.

Any safe-deposit company, trust company, surety or guaranty company, or title insurance company incorporated on or before January 1, 1902, and operating under the laws of the United States in the District of Columbia or of any of the States, and doing business in said District on or before January 1, 1902, may avail itself of the provisions of this chapter on filing in the office of the recorder of deeds of the District of Columbia, or with the Comptroller of the Currency, a certificate of its intention to do so, which certificate shall specify which one of the three classes of business set out in section 26-301 it will carry on, and shall be verified by the oath of its president to the effect that it has in every respect complied with the requirements of existing law, especially with the provisions of this chapter, that its capital stock is paid in as provided in section 26-323 and is not impaired; and thereafter such company may exercise all powers and perform all duties authorized by any one of the subdivisions of section 26-301 in addition to the powers lawfully exercised by such company on January 1, 1902. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 725.)

NOTES TO DECISIONS

1. State bank operating in District

Comptroller has the same control and management of an insolvent State bank operating in the District as in the case of national banks and it likewise includes all provisions for the collection of debts and the distribution of assets, and as well the enforcement of the liability of stockholders. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D.C. 385).

§ 26-314. Real estate which may be owned.

Any company operating under this chapter may lease, purchase, hold, and convey real property in

which the offices of the company are located not to exceed in value the capital and surplus of the company, and such in addition as it may acquire in satisfaction of debts due the corporation under sales, decrees, judgments, and mortgages. But no such association shall hold the possession of any real estate under foreclosure of mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 726; Apr. 19, 1920, 41 Stat. 566, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, substituted "real property in which the offices of the company are located not to exceed in value the capital and surplus of the company" for "real estate, not exceeding in value five hundred thousand dollars".

§ 26-315. Duration of charter.

The charters for incorporations named in this chapter may be made perpetual, or may be limited in time by their provisions, subject to the approval of Congress. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 727.)

CROSS REFERENCES

Title insurance companies perpetual, see § 26-302.
Trust companies perpetual, see § 26-303.

§ 26-316. Capital stock—Deposit with Comptroller required.

The capital stock of every such company shall be at least one million dollars, and at least fifty per centum thereof must have been paid in, in cash or by the transfer of assets as hereinafter provided in section 26-323, before any such company shall be entitled to transact business as a corporation, except with its own members, and before any company organized hereunder shall be entitled to transact the business of a trust company, or to become and act as an administrator, executor, guardian of the estate of a minor, or undertake any other kindred fiduciary duty, it shall deposit, either in money or in bonds, mortgages, deeds of trust, or other securities equal in actual value to one-fourth of the capital stock paid in, with the Comptroller of the Currency, to be kept by him upon the trust and for the purposes hereinafter provided; and the said comptroller may from time to time require an additional deposit from any such company, to be held upon and for the same trust and purposes, not exceeding, however, in value one-half the paid-in capital stock; and the said comptroller shall not issue to any corporation the certificate heretofore provided for until said deposit with him of securities required by this section. Within one year after the organization of any corporation under the provisions of this chapter, or after any corporation existing prior to January 1, 1902, shall have availed itself of the powers and rights given by this chapter in the manner herein provided for, its entire capital stock shall have been paid in. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 728.)

CROSS REFERENCE

Increase or decrease of capital stock, see § 26-331.

§ 26-317. Shares, par value—Calls—Sale of stock upon failure to pay call.

The capital stock of every such company shall be divided into shares of one hundred dollars each, or into shares of such less amount as may be provided in the certificate of incorporation or amendment thereof. It shall be lawful for such company to call for and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such proportions as its board of directors shall deem proper, within the time specified in section 26-316, and it may enforce payment by all remedies provided by law; and if any stockholder shall refuse or neglect to pay any instalment, as required by a resolution of the board of directors, after thirty days' notice of the same, the said board of directors may sell at public auction to the highest bidder so many shares of said stock as shall pay said instalment, under such general regulations as may be adopted in the by-laws of said company, and the highest bidder shall be taken to be the person who offers to purchase the least number of shares for the assessment due. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 729; June 20, 1938, 52 Stat. 780, ch. 527.)

AMENDMENT

1938—Act June 20, 1938, added to the first sentence the words "or into shares of such less amount as may be provided in the certificate of incorporation or amendment thereof."

§ 26-318. Annual reports to Comptroller.

Every such company shall annually, within twenty days after the 1st of January of each year, make a report to the Comptroller of the Currency, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid, the amount of debts, and the gross earnings for the year ending December 31st then next previous, together with their expenses, which report shall be signed by the president and a majority of the directors or trustees, and shall be verified by the oath of the president, secretary, and at least three of the directors or trustees: *Provided, however,* That trust companies which are required to file and to publish reports under the provisions of section 161 of title 12, U.S. Code, as amended, shall not be required to make or publish the annual report required under this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 730; July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; Nov. 30, 1945, 59 Stat. 588, ch. 499.)

CODIFICATION

In view of the concluding sentence of par. 5 of § 6 of act July 1, 1902, the following words, contained in the original enactment after the present last word "trustees," were deleted: "and said company shall pay to the District of Columbia, in lieu of personal taxes for each next ensuing year, one and one-half per centum of its gross earnings for the preceding year, shown by said verified statement, which amount shall be payable to the collector of taxes at the times and in the manner that other taxes are payable."

AMENDMENT

1945—Act Nov. 30, 1945, inserted proviso in the second par.

CROSS REFERENCE

Other provisions concerning powers and duties of Comptroller, see § 26-101 et seq.

§ 26-319. Liability of directors or trustees—Exception.

If any company fails to comply with the provisions of section 26-318, all the directors or trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made: *Provided*, That in case of failure of the company in any year to comply with the provisions of section 26-318, and any of the directors shall, on or before January 15th of such year, file his written request for such compliance with the secretary of the company, the Comptroller of the Currency, and the recorder of deeds of the District of Columbia, such director shall be exempt from the liability prescribed in this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 731.)

§ 26-320. False swearing—Misappropriation made larceny.

Any wilful false swearing in regard to any certificate or report or public notice required by the provisions of this chapter shall be perjury and shall be punished as such according to the laws of the District of Columbia. Any misappropriation of any of the money of any corporation or company formed under this chapter, or of any money, funds, or property intrusted to it, shall be held to be larceny, and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 732.)

§ 26-321. Stock deemed personal estate of holder—Transfer—Face to show par value, amount paid.

The stock of such company shall be deemed personal estate, and shall be transferable only on the books of such company in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid. All certificates of the stock of any company organized under this chapter shall show upon their face the par value of each share and the amount paid thereon. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 733; July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5.)

CODIFICATION

As enacted, the first sentence of this section was continued as follows: "and the said stock shall not be taxable in the hands of individual owners, the tax on the gross earnings of the company hereinbefore provided being in lieu of other personal tax." This has been deleted as repealed in view of paragraph 5 of § 6 of the act July 1, 1902. See also amendment note to § 26-318 for deletion of provision for tax on gross earnings as provided by act Mar. 3, 1901.

§ 26-322. Liability of stockholders.

All stockholders of every company incorporated under this chapter, or availing itself of its provisions under section 26-313 shall be severally and individually liable to the creditors of such company to an amount equal to and in addition to the amount of stock held by them respectively for all debts and contracts made by such company. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 734.)

CROSS REFERENCES

Other provisions concerning liabilities of stockholders, see §§ 26-104 to 26-106.

Suits, see § 26-104.

Termination of liability, see § 26-105.

NOTES TO DECISIONS**Determination of liability 1
Double liability 2****1. Determination of liability**

Liability of a stockholder is determined by the charter of incorporation and the laws of the State in which incorporation is had, and no liability will be read into statute where none exists. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D. C. 385, certiorari denied 56 S. Ct. 121, 296 U. S. 592, 80 L. Ed. 419).

2. Double liability

Taking possession of District bank by Comptroller does not impose double liability on stockholders unless State does. *Hamilton v. Offutt* (1935, 78 F. 2d 735, 64 App. D.C. 385, certiorari denied 56 S. Ct. 121, 296 U.S. 592, 80 L. Ed. 419).

Double liability is no more the asset of the corporation than the double liability created by the District statute with relation to trust companies and in either case it is an asset of creditors and not of the corporation. *Dunn v. O'Connor* (1937, 89 F. 2d 820, 67 App. D. C. 76).

§ 26-323. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1962.

Nothing but money shall be considered as payment of any part of the capital stock, except that in the case of any company doing business on January 1, 1902, in the District of Columbia in any of the classes herein provided for, or under any act of Congress; or by virtue of the laws of any of the States, and which company had on that date actually received full payment in money of at least fifty per centum of the capital stock required by this chapter, and which company desires to obtain a charter under this chapter, all the assets or property may be received and considered as money at a value to be appraised and fixed by the Comptroller of the Currency: *Provided*, That all such assets and property are also transferred to and are thereafter owned by the company organized under this chapter. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 735.)

§ 26-324. Number of directors or trustees—Election—Tenure.

The stock, property, and concerns of such company shall be managed by not less than nine nor more than thirty directors or trustees, who shall, respectively, be stockholders, and citizens of the United States, and at least two-thirds of whom shall reside in the District of Columbia or within one hundred miles of the location of the principal office of the company, and shall, except the first year, be annually elected by the stockholders at such time and place and after such published notice as shall be determined by the bylaws of the company, and said directors or trustees shall hold until their successors are elected and qualified. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 736; Aug. 28, 1957, 71 Stat. 474, Pub. L. 85-199, § 1.)

AMENDMENT

1957—Act Aug. 28, 1957, substituted "and citizens of the United States, and at least two-thirds of whom shall reside in the District of Columbia or within one hundred miles of the location of the principal office of the company" for "and at least one-half residents and citizens of the District of Columbia."

§ 26-325. Officers—Bond.

There shall be a president of the company, who shall be a director, also a secretary and a treasurer, all of whom shall be chosen by the directors or trus-

tees: *Provided*, That only one of the above-named offices shall be held by the same person at the same time. Subordinate officers may be appointed by the directors or trustees, and all such officers may be required to give such security for the faithful performance of the duties of their offices as the directors or trustees may require. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 737.)

CROSS REFERENCE

Limitations on powers of notary public employed by trust company, see § 26-110.

§ 26-326. By-laws.

The directors or trustees shall have power to make such by-laws as they deem proper for the management or disposal of the stock and business affairs of such company, not inconsistent with the provisions of this chapter, and prescribing the duties of officers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 738.)

§ 26-327. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.

If the directors or trustees of any company shall declare or pay any dividend the payment of which would render it insolvent, or which would create a debt against such company, they shall be jointly and severally liable as guarantors for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall, respectively, remain in office. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 739.)

CROSS REFERENCE

Other provisions for restrictions upon payment of dividends, see § 26-106.

§ 26-328. Directors or trustees objecting to such dividends and filing certificate, exempt.

If any of the directors or trustees shall object to declaring such dividends or the payment of the same, and shall at any time before the time fixed for the payment thereof file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in section 26-327. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 740.)

§ 26-329. Directors or trustees personally liable when liabilities exceed assets.

If the liabilities of any company shall at any time exceed the amount of the fair cash value of the assets, the directors or trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of the company, after the additional liability of the stockholders has been enforced. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 741.)

§ 26-330. Executors, administrators, guardians, or trustees not liable as stockholder—Estate liable.

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such

company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 742.)

§ 26-331. Increase or decrease of capital stock—Approval by Comptroller—Distribution of assets.

Any corporation which may be formed under this chapter may increase its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for the purposes of the corporation.

Any company transacting the business of a trust company heretofore or hereafter organized or operating under the provisions of this chapter may by the vote of shareholders owning two-thirds of its capital stock reduce its capital to any sum not below the amount required by this chapter; but no such reduction shall be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by said Comptroller of the Currency, and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any such corporation unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of stock outstanding. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 743; June 20, 1938, 52 Stat. 780, ch. 527.)

AMENDMENT

1938—Act June 30, 1938, added the second par.

CROSS REFERENCES

Capital stock, see § 26-316.

Other provisions concerning trust companies, see § 26-101 et seq.

§ 26-332. Copy of certificate to be evidence.

A copy of any certificate of incorporation filed in pursuance of this chapter, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 744.)

§ 26-333. No bond to be required when company appointed fiduciary—Capital stock and property to be considered as security for performance of duties.

No bond or other collateral security, except as hereinafter stated, shall be required from any trust company incorporated under this chapter for and in respect to any trust, nor when appointed trustee, guardian, receiver, executor, or administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or other fiduciary appointment; but the capital stock subscribed for or taken, and all property owned by said company and the amount for which said stockholders shall be liable in excess of their stock, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever; and

in case of the insolvency or dissolution of said company, the debts due from the said company as trustee, guardian, receiver, executor, administrator, collector, or committee of the estate of lunatics, idiots, or any other fiduciary appointment shall have a preference. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 745.)

§ 26-334. Bond as fiduciary may be required—Examination for cause.

The United States District Court for the District of Columbia, or any judge thereof, shall have power to make orders respecting such company whenever it shall have been appointed trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic, idiot, or any other fiduciary, and require the said company to render all accounts which might lawfully be made or required by any court or any judge thereof if such trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or fiduciary were a natural person. And said court, or any judge thereof, at any time, on application of any person interested, may appoint some suitable person to examine into the affairs and standing of such companies, who shall make a full report thereof to the court, and said court, or any judge thereof, may at any time, in its discretion, require of said company a bond with sureties or other security for the faithful performance of its obligations, and such sureties or other security shall be liable to the same extent and in the same manner as if given or pledged by a natural person. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 746; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia" and "judge" for "justice" whenever appearing.

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 26-335. Compliance required of corporations organized under State laws—Penalty.

No corporation or company organized by virtue of the laws of any of the States of this Union shall carry on in the District of Columbia any of the kinds of business named in this chapter without strict compliance in all particulars with the provisions of this chapter for the government of such corporations formed under it, and each one of the officers of the corporation or company so offending shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 747; Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 5.)

AMENDMENT

1933—Act Mar. 4, 1933, omitted the words "and having its principal place of business within the District of Columbia" following "States of this Union" in the first sentence.

CROSS REFERENCES

Semiannual publication of financial statement, see § 29-105.

Suits, see § 26-104.

§ 26-336. Right to amend or repeal reserved to Congress.

Congress may at any time alter, amend, or repeal this chapter, but any such amendment or repeal shall not, nor shall the dissolution of any company formed under this chapter, take away or impair any remedy given against such corporation, its stockholders, or officers for any liability or penalty which shall have been previously incurred. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 748.)

Chapter 4.—BUILDING ASSOCIATIONS

Sec.

- 26-401. Organization—Certificate—Created body politic and corporate—Powers.
- 26-402. Powers as to stock.
- 26-403. Bonus to be paid by late subscribers.
- 26-404. Object—Powers of Home Loan Bank Board—Examination—Reports—Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.
- 26-404a. Remainder of powers, duties and functions of Comptroller of the Currency relating to building associations and building and loan associations transferred to the Home Loan Bank Board.
- 26-405. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.
- 26-406. Advancements.
- 26-407. Security for advancement.
- 26-408. Profits.
- 26-409. Redemption of shares.
- 26-410. Withdrawal by shareholder.
- 26-411. Repayment of advances.
- 26-412. Forfeiture.
- 26-413. Foreclosure.
- 26-414. Investment of funds in real estate.
- 26-415. Purchase of Home Owners' Loan Corporation bonds authorized.
- 26-416. Exchange of real estate and debts and liens secured by real estate for Home Owners' Loan Corporation bonds authorized.

§ 26-401. Organization—Certificate—Created body politic and corporate—Powers.

Any five or more persons who desire to form an incorporated building or homestead association, all being citizens of the United States, and a majority of them residents of the District of Columbia, may make, sign, seal, and acknowledge, before some officer authorized to take the acknowledgment of deeds, and file for record in the office of the recorder of deeds, a certificate, in writing, to the same effect as that required in sections 29-201 to 29-240 for the formation of the corporations therein mentioned.

When such certificate shall have been filed for record as aforesaid, the persons who have signed and acknowledged the same, and their successors, shall become and be a body politic and corporate, in fact and in law, by the name stated in the certificate, and by that name have succession and be capable of suing and being sued in the courts of the District, and of purchasing, holding, and conveying such real estate as may be necessary to the conduct of its business, and to make reasonable by-laws not inconsistent herewith. (Mar. 3, 1901, 31 Stat. 1298, 1299, ch. 854, §§ 687, 688.)

CROSS REFERENCES

Approval of Home Loan Bank Board required, see § 26-103.

Money Lenders Law, exemption from operation of, see § 26-610.

Real estate conveyances, formal requisites, see § 45-302.

§ 26-402. Powers as to stock.

Such corporation shall have power, in its certificate of incorporation or in its by-laws, to provide that its shares of stock may be issued in series; to limit the number of shares which each stockholder may be allowed to hold; to prescribe the entrance fee to be paid by each stockholder at the time of subscribing, and to regulate the instalments to be paid on each share and the times at which they shall be payable. It shall also have power to enforce the payment of all instalments and other dues by such fines and forfeitures as its by-laws may from time to time provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 689.)

§ 26-403. Bonus to be paid by late subscribers.

Any person applying for membership or stock after a month from the time of the incorporation may be required to pay on subscribing such bonus or assessment as may be fixed by said by-laws in order to place said new members or stockholders on a footing with the original members and others holding stock at the time of such application. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 690.)

§ 26-404. Object—Powers of Home Loan Bank Board—Examination—Reports—Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.

The object of such corporation shall be the accumulation of a capital in money to be derived from the savings and accumulations by the members thereof, to be paid into said corporation in such sums and at such times as may be designated by the by-laws of said corporation, from which the members thereof may obtain advances upon their shares of stock: *Provided*, That the Home Loan Bank Board is authorized, whenever such Board may deem it useful; to cause examination to be made into the condition of any building association incorporated under the provisions of this chapter, as well as any other building or loan association located or doing business in the District of Columbia. The expenses necessarily incurred in making any such examination shall be paid by such association to the Home Loan Bank Board at the time of the making of such examination: *And provided further*, That every building or loan association located and doing business in the District of Columbia shall make to the Home Loan Bank Board at least one report during each year, according to the form which may be prescribed by such Board, verified by the oath or affirmation of the president or secretary of such association and attested by the signature of at least three of the directors. The Home Loan Bank Board shall also have power to take possession of any company or association whenever in the Board's judgment any such company or association is insolvent or is knowingly violating the laws under which it is operated and to liquidate the same in the manner provided in rules and regulations which said Board is hereby authorized to adopt, and said Board

may also provide in such rules and regulations a procedure for the voluntary liquidation of any such company or association; and if any such company or association which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause shall discontinue its operations for a period of sixty days, the Home Loan Bank Board may, if such Board deems it advisable, appoint a receiver for such company or association:

Provided further, That from and after the first day of July, 1909, no person, company, association, copartnership, or corporation shall conduct or carry on in the District of Columbia the kind of business named in this section and section 26-405, without strict compliance in all particulars with the provisions of this section and section 26-405: *Provided*, That building associations organized and in actual operation before March 4, 1909, need not be incorporated. Any person, officer, or agent of any company, firm, or corporation who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not more than one thousand dollars or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. That any wilful false swearing in regard to any certificate, or report, or public notice required by the provisions of this section and section 26-405 shall be perjury, and shall be punished as such according to the laws of the District of Columbia. And any misappropriation of any of the money of any corporation or company, formed under or availing itself of the privileges of this section and section 26-405, or of any building or loan association located or doing business in the District of Columbia, or any money, funds, or property intrusted to any such corporation, company, or association, shall be held to be larceny and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 691; Mar. 4, 1909, 35 Stat. 1058, ch. 303, § 1; Sept. 15, 1951, 65 Stat. 323, ch. 404, § 1.)

REFERENCES IN TEXT

In the original, "this chapter" refers to chapter 18 of act Mar. 3, 1901, ch. 854, which includes sections 574-797. For distribution of such sections 574-797 in the Code, see Tables.

AMENDMENTS

1951—Act Sept. 15, 1951, amended the section generally by transferring functions of the Comptroller of the Currency to the Home Loan Bank Board, by striking monetary limits on the cost of examination of building associations, and by authorizing the Board to adopt rules and regulations relating to voluntary and involuntary liquidation and appointment of receivers.

1909—Act Mar. 4, 1909, amended section generally. Prior to such amendment, section read as follows: "The object of such corporation shall be the accumulation of a capital in money, to be derived from the savings and accumulation by the members thereof, to be paid into said corporation in periodical instalments, in fixed and certain sums, and in such amount as shall be designated by the by-laws, until the value of all the shares of stock in said corporation, and every series thereof, shall be equal to the nominal or par value thereof or of some multiple thereof, at which time said corporation shall cease to exist, and in the meantime to enable the members thereof, by obtaining advances upon their shares of stock, to purchase or erect homes for themselves."

CROSS REFERENCES

Powers and duties of comptroller concerning financial institutions, see § 26-101 et seq.

Voluntary liquidation and dissolution of solvent financial corporations, see § 26-103.

§ 26-404a. Remainder of powers, duties and functions of Comptroller of the Currency relating to building associations and building and loan associations transferred to the Home Loan Bank Board.

Any powers, duties, and functions of the Comptroller of the Currency with respect to building associations and building and loan associations operating in the District of Columbia which are not transferred to the Home Loan Bank Board by the specific statutory amendments herein contained are also hereby transferred from the Comptroller of the Currency to the Home Loan Bank Board. (Sept. 15, 1951, 65 Stat. 324, ch. 404, § 4.)

REFERENCES IN TEXT

Specific statutory amendments herein contained, referred to in the text, means the amendments by sections 1-3 of act Sept. 15, 1951, to sections 26-404, 26-405 and 26-103, respectively.

§ 26-405. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.

No foreign association shall make loans of any kind or transact any building and loan business within the District of Columbia or maintain an office in the District of Columbia for the purpose of transacting such business until it procures from the Home Loan Bank Board a certificate of authority to do such business in said District, after complying with the following provisions:

(a) It shall deposit with the Treasurer of the United States \$50,000 in cash or bonds of the United States or bonds which the United States guarantees the payment of both principal and interest. A foreign association may collect and use the interest on securities deposited with the Treasurer of the United States, as hereinabove provided, so long as it fulfills its obligations and complies with the laws of the District of Columbia. It may also exchange them for other securities of the United States or for cash. The deposit made by a foreign association with the Treasury of the United States shall be held as security for all claims of residents of the District of Columbia against such association, and be liable for all judgments or decrees thereon, and subjected to the payment thereof in the same manner as the property of other nonresidents. Should an association cease to do business in said District, the Treasurer of the United States, upon a certificate from the Home Loan Bank Board, may release securities in his discretion, retaining sufficient to satisfy all outstanding liabilities;

(b) It shall file with the Home Loan Bank Board a certified copy of its charter, constitution, and bylaws, and other rules and regulations showing its manner of conducting business, together with a statement such as is required semiannually from all associations;

(c) It shall file with the Home Loan Bank Board a power of attorney appointing a citizen of the District of Columbia, resident within said District, the agent or attorney for such foreign association upon whom process of law can be served.

There must also be filed a certified copy of the vote or resolution of the directors appointing such agent or attorney, which appointment shall continue until another agent or attorney is substituted, and said writing or power of attorney shall stipulate and agree on the part of such foreign association making the same that any lawful process against said association, which is served on such agent or attorney, shall be of the same legal force and validity as if served on such association within the District of Columbia; and, also, that in the case of the death or absence of the agent or attorney so appointed, service or process may be made upon the Home Loan Bank Board, and such power of attorney cannot be revoked or modified (except that a new one may be substituted) so long as any liability remains outstanding against such foreign association in the District of Columbia. The term "process," used above, shall be held and deemed to include any writ, summons, or order whereby any action, suit, or proceeding shall be commenced, or which shall be issued in or upon any action, suit, or proceeding by any court, officer, or magistrate.

(d) It shall pay to the collector of taxes the following fees:

For filing an application for admission to do business in the District of Columbia, \$500;

For each certificate of authority and annual renewal thereof, \$200.

(e) When a foreign association has complied with the provisions of paragraph (c) of this section, and the Home Loan Bank Board is satisfied that it is doing or will do its building and loan business in the District of Columbia in accordance with the laws of the District of Columbia, such Board may issue its certificate of authority to such foreign association to do a building and loan business in the District of Columbia. Annually thereafter, if the Home Loan Bank Board is satisfied as herein provided, it shall issue a renewal of such certificate.

(f) Should the Home Loan Bank Board find that such foreign association does not conduct its building and loan business in accordance with law, or that the affairs of such association are in unsafe condition, or if such foreign association refuses to permit examination to be made, the Home Loan Bank Board may revoke the certificate of authority granted, after ninety days' notice, to such foreign association to do a building and loan business in the District of Columbia; *Provided*, That upon revocation of such certificate of authority the Home Loan Bank Board shall mail a notice thereof to the home office of such foreign association and cause a similar notice to be published in at least one daily newspaper of general circulation in the District of Columbia. After so notifying said home office and after the publication of said notice, it shall be unlawful for any agent of such foreign association to receive any further payments from shareholders residing in the District of Columbia.

(g) Every foreign association doing a building and loan business in the District of Columbia shall be subject to the same examination as are domestic associations and such examination may include examination of all subsidiaries of such foreign associations and all business operations wherever appar-

ent: *Provided*, That the Home Loan Bank Board may accept reports of examination by other supervisory agents in lieu of making such examinations and provided that all the actual and necessary expenses of such examinations of such foreign associations shall be paid by the association examined.

(h) Whenever any taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by the laws of any State upon building and loan associations organized or incorporated under the laws of the District of Columbia, and doing business in the said State, in excess of the taxes, fines, penalties, fees, licenses, or conditions precedent imposed by the laws of the District of Columbia upon foreign associations doing a building and loan business in the District of Columbia, the same taxes, fines, penalties, fees, licenses, or conditions precedent shall be imposed upon every association incorporated under the laws of such State doing, or applying to do, a building and loan business in the District of Columbia, so long as such excess taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by such State; and upon the failure of any association incorporated under the laws of such State to comply therewith the Home Loan Bank Board shall revoke the certificate of authority of such association to do a building and loan business in the District of Columbia or shall refuse to grant such certificate of authority in the first instance.

(i) A foreign association which does a building and loan business in the District of Columbia without first complying with the provisions of this chapter, or which willfully violates or fails to comply with the provisions of laws relating to foreign associations, shall forfeit and pay not less than \$25 or more than \$500, to be recovered by an action in the name of the United States and on collection paid into the Treasury of the United States. (Mar. 3, 1901, ch. 854, § 691a, as added Mar. 4, 1909, 35 Stat. 1059, ch. 303, § 2, and amended July 18, 1939, 53 Stat. 1060, ch. 322, § 1; Sept. 15, 1951, 65 Stat. 323, ch. 404, § 2.)

AMENDMENTS

1951—Act Sept. 15, 1951, amended the section by changing references to the Comptroller of the Currency to the Home Loan Bank Board.

Subsec. (g) amended by act Sept. 15, 1951, which deleted the final provision which read: "if said examination is made beyond the limits of the District of Columbia, but if made within the limits of the District of Columbia, the cost of the examination to be at the same rate and upon the same terms as provided in § 26-404."

1939—Act July 8, 1939, amended section generally. Prior to such amendment, section read as follows: "That any building association incorporated or unincorporated, organized and existing under the laws of any State or Territory, except the District of Columbia, to do or now doing, in the District of Columbia, a building association business or otherwise operating as a building association, shall be subject to all the provisions of the foregoing section of this act in respect of the powers of the Comptroller of the Currency hereunder, and, any such association or corporation shall at all times keep on deposit with the Comptroller of the Currency in money or stocks, bonds or mortgages or other securities to be approved by said officer not less than ten per centum of its capital and surplus as security for its depositors and creditors, and as a guarantee for the faithful performance of its contracts, and may also make such further deposit of its assets as above described with the Comptroller for such purpose as it may from time to time desire so to do."

EFFECTIVE DATE OF 1939 AMENDMENT

Section 2 of act July 18, 1939, provided in part that "This Act [amending this section] shall take effect on the date of its enactment [July 18, 1939]."

CROSS REFERENCES

Other powers and duties of Comptroller concerning financial institutions, see § 26-101 et seq.

Other provisions concerning admission of foreign associations, see § 26-103.

Semiannual publication of financial statements, see § 29-105.

NOTES TO DECISIONS

1. Compliance with statutory requirements

The "Union Home Builders" and similar organizations must comply with statutory provisions as to examination and control by Comptroller of the Currency. (33 O. A. G. 418).

§ 26-406. Advancements.

The moneys accumulated from time to time shall be offered to such shareholder or shareholders as shall bid the highest premium for preference or priority of right to an advancement of the ultimate value of one or more of his or their respective shares. The said premium shall consist of a percentage on the amount of the advance and shall be deemed to be a consideration or bonus paid by the shareholder for the present and immediate use and possession of the future or ultimate value of the share so advanced, and shall not be deemed usurious. The said premium may either be deducted in advance from the amount to be advanced to the shareholder or be made payable in monthly installments, in addition to legal interest on the sum advanced, as the by-laws may provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 692.)

NOTES TO DECISIONS

Status of contract after insolvency 1
Surrender of stock 2
Usurious premiums 3

1. Status of contract after insolvency

Where contract between borrowing member of a building association by the giving of a bond and a deed of trust to secure the bond, is that in consideration of sum advanced he will pay to the association monthly payments, the insolvency of the association and appointment of a receiver will not abrogate the contract between it and one of its members and the substitution for that contract of some other arrangement which a court may deem equitable. *Armstrong v. United States Bldg. & Loan Assn.* (15 App. D. C. 1).

2. Surrender of stock

Where building association advanced money to one of its members and received therefor an assignment of stock held by him, and a deed of trust upon his real estate to secure his notes, a suit by a person who purchased the property was entitled to a release of the deed of trust upon payment of remaining notes, and the association could not enforce payment of accruing dues after the payment of the last note. *Eastern Bldg. & Loan Assn. v. Olmsted* (16 App. D. C. 387).

When borrower from building association surrenders his stock to the association upon mortgage loan being made to him, he becomes a creditor of the association and when accounting is made he is to be charged with amount actually received by him on account of loan, with interest, whether by way of premium, dues or interest. *Croissant v. Empire State Realty Co.* (29 App. D. C. 538).

3. Usurious premiums

A provision of building association mortgage that the borrower instead of paying the usual premium is to pay monthly during continuance of the mortgage, a specified sum called premium, in addition to legal rate of interest, is void as usurious payment. *Middle States Loan v. Baker* (19 App. D. C. 1).

The provision that premiums to be charged by building associations shall not be deemed usurious, is not retroactive, and it does not affect borrower's right to redeem mortgaged property from building association, when such right existed before the Code went into effect. *Washington Nat. Bldg. & Loan Assn. v. Fiske* (20 App. D. C. 514, certiorari denied 23 S. Ct. 848, 188 U.S. 740, 47 L. Ed. 677).

Test to determine whether building association loan is usurious is usually whether the promise to pay the sum above legal interest depends upon a contingency, and not upon the happening of a certain event. The loan is not usurious if it depends upon a contingency. *Whelpley v. Ross* (25 App. D. C. 207).

§ 26-407. Security for advancement.

For every advance made as aforesaid a bond in a penalty equal to the ultimate value of the shares advanced may be required, secured by a first mortgage or deed of trust on real estate, and a pledge of the shares advanced upon, as additional or collateral security, which bond shall be conditioned for the payment at the stated meetings of the corporation of the monthly dues on the share so advanced upon and the interest on the sum advanced, and the instalments of premium, if made so payable, and all fines chargeable upon arrears of payments, until said shares shall reach their ultimate value aforesaid, or said advance be otherwise canceled or discharged. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 693.)

§ 26-408. Profits.

The shares advanced upon shall participate equally with the other shares in the profits and the amounts paid by the advanced shareholders, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, the same as allowed on shares withdrawn not advanced upon, less all fines and a proportionate part of losses and other charges incurred. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 694.)

§ 26-409. Redemption of shares.

Where advances from the funds on hand can not be made on satisfactory terms, the shareholders failing to bid therefor, the by-laws may provide for the redemption of shares of stock, with the consent of the shareholders, and in case that can not be done, for the involuntary withdrawal and cancellation of shares, the said shares to be selected by lot, always from the oldest series, until exhausted, or the funds to be applied ratably among the owners of shares of the same series. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 695.)

§ 26-410. Withdrawal by shareholder.

A shareholder shall be entitled to withdraw at any time, by giving such notice as the by-laws may require, where no advance has been made on his shares, in which case he shall be entitled to receive the amount of dues paid in by him on each of his shares, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, less all fines due and a proportionate part of all losses and other charges incurred: *Provided*, That not more than one-half of the funds in the treasury at any time shall be applicable to the demands of the withdrawing shareholders without the consent of the board of trustees. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 696.)

§ 26-411. Repayment of advances.

A shareholder who has been advanced may at any time repay his advance upon application to the corporation, whereupon, on settlement of his account, he shall be charged with the full amount of the advance and of the accrued instalments of the premium, if that has been added to the advancement and made payable in instalments, together with all monthly dues, interest, and fines accrued and charged, and shall receive credit for all monthly dues paid on his shares and the profits thereon the same as are allowed under the by-laws on shares withdrawn not advanced upon, and, if the premium has been deducted in advance, with such proportion of the premium as the by-laws may direct, and the balance remaining due, over and above such credits, shall be received by said corporation in satisfaction and discharge of said advance: *Provided*, That in case of the insolvency of the association, he shall not be entitled to credit for the full amount of dues paid by him, but shall only be entitled to a dividend upon said amount, in common with the nonadvanced shareholders. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 697.)

§ 26-412. Forfeiture.

Any nonadvanced shareholder failing to pay the instalments due on his share and the fines due from him for such time as the by-laws shall determine, shall forfeit his stock, but may, on application, receive a return of the amount paid in on account of his stock, less the accrued fines. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 698.)

§ 26-413. Foreclosure.

In case any advanced shareholder shall fail to pay all dues, interest, or premiums and shall be in arrears for any part of the same for the period of two months, the payment of the same and of the principal of the advance may be enforced by a foreclosure of the securities given for the same, and if upon a statement of account, as in case of a voluntary settlement of said advance, as hereinbefore authorized, there shall be any surplus of the proceeds of sale of the property given as security over the amount found due from such advanced shareholder, together with all costs incurred by the corporation, such surplus shall be paid to said defaulting shareholder, or his assigns, and his shares of stock so advanced upon shall be the property of the corporation. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 699.)

§ 26-414. Investment of funds in real estate.

Such corporation shall not invest its fund in any real estate except what is necessary for the conduct of its business, but may purchase such property at sales made upon foreclosure of mortgages or in satisfaction of judgments or other liens held by it: *Provided*, That such property so purchased be sold within a reasonable time thereafter. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 700.)

CROSS REFERENCE

Conveyances of real estate, formal requisites, see § 45-302.

§ 26-415. Purchase of Home Owners' Loan Corporation bonds authorized.

The board of directors of any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia to do or now doing in the District of Columbia a building association business, in their discretion, may purchase the bonds of the Home Owners' Loan Corporation created pursuant to the authority of the Home Owners' Loan Act of 1933, approved June 13, 1933 (and said association is hereby permitted to carry said bonds as an asset at the par value of said bonds) or may subscribe and pay for shares of any Federal corporation created or authorized by law to lend money to building and loan associations. (Mar. 3, 1901, ch. 854, § 55, as added Mar. 27, 1934, 48 Stat. 506, ch. 96.)

REFERENCES IN TEXT

The Home Owners' Loan Act of 1933, approved June 13, 1933, referred to in the text, is classified to U.S. Code, title 12, ch. 12.

HOME OWNERS' LOAN CORPORATION

The Home Owners' Loan Corporation was dissolved by act June 30, 1953, 67 Stat. 126, ch. 170, § 21. See Historical Note under U.S. Code, title 12, § 1463.

§ 26-416. Exchange of real estate and debts and liens secured by real estate for Home Owners' Loan Corporation bonds authorized.

Any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia, to do or now doing, in the District of Columbia, a building association business, is authorized and empowered to exchange mortgages or deeds of trust or the notes or bonds secured thereby or other obligations and liens secured on real estate or any real estate which it may have or hold, for the bonds of the Home Owners' Loan Corporation created pursuant to the authority of the Home Owners' Loan Act of 1933, approved June 13, 1933 and said association is hereby authorized to carry said bonds as an asset at the par value of said bonds. (Mar. 3, 1901, ch. 854, § 56, as added Mar. 27, 1934, 48 Stat. 506, ch. 96.)

REFERENCES IN TEXT

The Home Owners' Loan Act of 1933, approved June 13, 1933, referred to in the text, is classified to U.S. Code title 12, ch. 12.

HOME OWNERS' LOAN CORPORATION

The Home Owners' Loan Corporation was dissolved by act June 30, 1953, 67 Stat. 126, ch. 170, § 21. See Historical Note under U.S. Code, title 12, § 1463.

Chapter 5.—CREDIT UNIONS

Sec.

- 26-501. Short title.
- 26-502. Definition.
- 26-503. Organization—Certificate—Contents.
- 26-504. Approval of certificate—Report by Director.
- 26-505. Recording certificate—Body corporate—Powers.
- 26-506. Supervision by Director—License—Revocation.
- 26-507. Powers.
- 26-508. By-laws.
- 26-509. Membership.
- 26-510. Members' meetings—Voting—Proxy—Qualifications.
- 26-511. Management in general—Officers—Directors—Credit committee—Supervisory committee—Powers and duties.
- 26-512. Reserves.
- 26-513. Dividends.
- 26-514. Expulsion and withdrawal of members.

Sec.

- 26-515. Shares issued to minors or in trust.
- 26-516. Taxation.
- 26-517. Restriction on use of words "credit union"—Penalty.
- 26-518. Right to alter, amend, or repeal reserved.

§ 26-501. Short title.

This chapter may be cited as the "District of Columbia Credit Unions Act." (June 23, 1932, 47 Stat. 326, ch. 272, § 1.)

CROSS REFERENCE

Federal Credit Union Act, see U. S. Code, title 12, ch. 14.

§ 26-502. Definition.

A credit union is hereby defined to be a cooperative society organized for the purpose of promoting thrift among its members and creating a source of credit for them for provident purposes. (June 23, 1932, 47 Stat. 326, ch. 272, § 2.)

§ 26-503. Organization—Certificate—Contents.

Any seven or more persons, who are actual residents of, or do business or are employed within, the District of Columbia, and who desire to form a credit union, shall subscribe before some officer in the District competent to take the acknowledgment of deeds, an organization certificate which shall specifically state—

First. The name of the corporation, which shall include the words "credit union" and "District of Columbia."

Second. The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.

Third. The par value of the shares of the credit union, which shall not exceed \$10 each.

Fourth. The proposed field of membership, specified in such detail as the Commissioners of the District of Columbia may require.

Fifth. The term of the credit union's existence, which may be perpetual. (June 23, 1932, 47 Stat. 326, ch. 272, § 3.)

§ 26-504. Approval of certificate—Report by Director.

The organization certificate shall be presented to the Commissioners of the District of Columbia, who may, in their discretion, approve the certificate. The said Commissioners are authorized to refer any such proposed certificate to the Director of the Bureau of Federal Credit Unions, who shall, within a reasonable time, submit a report to the said Commissioners with respect (1) to the conformity of the certificate to the provisions of this chapter, (2) the general character and fitness of the subscribers, and (3) the advisability of establishing a credit union in the proposed field of membership. (June 23, 1932, 47 Stat. 327, ch. 272, § 4; Aug. 10, 1954, 68 Stat. 682, ch. 666, § 1.)

AMENDMENT

1954—Act Aug. 10, 1954, substituted "Director of the Bureau of Federal Credit Unions" for "Comptroller of the Currency."

CROSS REFERENCE

Powers and duties of Director, see § 26-506.

§ 26-505. Recording certificate—Body corporate—Powers.

The certificate, if approved by the Commissioners of the District of Columbia, shall be filed for record

in the office of the recorder of deeds for the District of Columbia, and shall be recorded by him. At such time as the approved certificate is so filed, the subscribers and their successors shall thereupon become a body corporate and as such shall, subject to the limitations of section 26-508 (relating to approval of by-laws), be vested with all the powers and charged with all the liabilities conferred and imposed by this chapter upon corporations organized thereunder as credit unions; *Provided*, That the last paragraph of section 45-708 shall have no application to credit unions. (June 23, 1932, 47 Stat. 327, ch. 272, § 5.)

§ 26-506. Supervision by Director—License—Revocation.

(a) Credit unions established under this chapter shall be under the supervision of the Director of the Bureau of Federal Credit Unions. They shall make such financial reports to him (at least annually) as he may require.

(b) Not later than January 31 of each calendar year each credit union established under this chapter shall pay to the Bureau of Federal Credit Unions, for the preceding calendar year, a supervision fee in accordance with the scale prescribed for Federal credit unions. All such fees shall be deposited with the Treasurer of the United States for the account of the Bureau in the special fund created by section 1755 of title 12, U.S. Code and may be expended by the Director for such administrative and other expenses incurred in carrying out the provisions hereof as he may determine to be proper, the purpose of such fees being to defray, as far as practical, the administrative and supervisory costs of the Bureau incident to the execution of its functions under this chapter.

(c) Each credit union established under this chapter shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Director. The scale of examination fees prescribed for Federal credit unions shall also be applicable to credit unions established under this chapter which fees shall be assessed against and paid by each credit union established under this chapter promptly after the completion of such examination. Examination fees collected under the provisions of this section shall be deposited to the credit of the special fund created by 1755 of title 12, U.S. Code, and shall be available for the purposes specified in subsection (b) of this section.

(d) It shall be unlawful for any credit union established under this chapter to transact business in the District of Columbia without procuring a license from the District of Columbia; and all such credit unions shall pay a license tax of \$5 per annum to the District of Columbia. No license shall be granted for a longer period than one year: *Provided*, That the Commissioners of the District of Columbia may suspend or revoke a license upon proof of the bankruptcy or insolvency of any such credit union or upon conviction of a violation of any provision of this chapter or any law or regulation of the District of Columbia or of the United States. (June 23, 1932, 47 Stat. 327, ch. 272, § 6; Aug. 10, 1954, 68 Stat. 682, ch. 666, § 2.)

AMENDMENT

1954—Act Aug. 10, 1954, amended the section generally, gave the provisions subsection designations, and provided for supervision by and reports to the Director, a supervision fee, use of the fees for administrative and supervisory costs of the Bureau, examination of credit unions and fees therefor, accessibility of books and records, necessity for license tax, license tax of \$5 per annum and suspension and revocation of license in place of prior provision for supervision by the Comptroller of the Currency, relief from compliance with requirements, freedom from requirement of a report from credit union with assets less than \$100,000, examination fee of \$5.03 per \$1,000 and license tax of \$15.

CROSS REFERENCES

Approval of certification of incorporation, see § 26-504.

Commissioners' authority to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Refund of fees when license refused, see § 47-1017.

§ 26-507. Powers.

A credit union shall have succession in its corporate name during its existence and shall have power—

First. To make contracts.

Second. To sue and be sued in its corporate name.

Third. To adopt and use a common seal and alter the same at pleasure.

Fourth. To purchase, hold, and dispose of property necessary to enable the corporation to carry on its operations.

Fifth. To make loans to its members for provident purposes upon such terms and conditions as the by-laws provide and as the credit committee may approve at rates of interest not exceeding 1 per centum per month on unpaid balances, inclusive of all charges incident to the making of the loan: *Provided*, That no loan to a director, officer, or member of a committee shall exceed the amount of his holdings in the credit union in shares nor shall any such director, officer, or member indorse for borrowers. A borrower may prior to maturity repay his loan in whole or in part on any business day.

Sixth. To receive of its members payment on shares.

Seventh. To invest in the paid-up shares of building and loan associations and of other credit unions to an extent not to exceed 25 per centum of its capital, and in any investment legal for savings banks or for trust funds in the District of Columbia.

Eighth. To make deposits in banks and trust companies in the District of Columbia under the supervision of the Comptroller of the Currency.

Ninth. To borrow in an aggregate outstanding amount not exceeding 40 per centum of its paid-in and unimpaired capital.

Tenth. To fine members for failure to meet promptly their obligations to such corporation.

Eleventh. To impress a lien upon the shares and dividends of any member to the extent of any loan made to him and any dues or fines payable by him. (June 23, 1932, 47 Stat. 328, ch. 272, § 7; July 31, 1953, 67 Stat. 260, ch. 297, § 1.)

AMENDMENT

1953—Act July 31, 1953, substituted "credit union" for "company" in the Fifth subd. and "payable by" for "payable to" in Eleventh subd.

§ 26-508. By-laws.

(a) The incorporators shall subscribe, acknowledge, and submit to the Commissioners of the District of Columbia proposed by-laws, and no credit union shall receive payments on account of shares or make any loans until such proposed by-laws have been approved by the commissioners as being in conformity with the provisions of this chapter.

(b) The by-laws shall prescribe the purposes for which the corporation is formed, the qualifications for membership, the date of the annual meeting, the manner of conducting meetings, the methods by which members shall be notified of meetings and the number of members which shall constitute a quorum, the number of directors and the compensation and duties of officers, the number of members of the credit committee, the fines, if any, to be charged for failure of members to meet promptly obligations to the corporation, the amount of the entrance fee, if any, to be paid, and such other regulations as are deemed necessary.

(c) Amendments of the by-laws may be adopted by a three-fourths vote of the members present at any members' meeting, but the amendments shall not take effect until approved by the Commissioners of the District of Columbia as being duly adopted and in conformity with the provisions of this chapter. The meeting shall be duly called for the purpose and the proposed amendments shall be set forth in the call. (June 23, 1932, 47 Stat. 328, ch. 272, § 8.)

§ 26-509. Membership.

Credit-union membership shall consist of the incorporators and such other persons or organizations as may be elected to membership and subscribe to at least one share, pay the initial installment thereon, and the entrance fee, if any; except that credit-union membership shall be limited to groups the members of which are actual residents of or do business or are employed within the District of Columbia, and either have a common bond of occupation, of association, or reside within a well-defined neighborhood or community. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member. (June 23, 1932, 47 Stat. 329, ch. 272, § 9; July 31, 1953, 67 Stat. 260, ch. 297, § 2.)

AMENDMENT

1953—Act July 31, 1953, deleted the provision which limited the number of shares which could be held by an individual to two hundred shares and added the provision relating to shares issued in joint tenancy.

§ 26-510. Members' meetings—Voting—Proxy—Qualifications.

The fiscal year of all credit unions shall end December 31. The annual meeting of the corporation shall be held at such time during the month of January and at such place as the by-laws shall prescribe. Special meetings may be held in the manner indicated in the by-laws. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent delegated for the

purpose. No member shall, irrespective of the number of shares held by him, have more than one vote, and, after a credit union has been incorporated one year, no member thereof shall be entitled to vote until he has been a member for more than three months. All offices of a credit union shall be in the District of Columbia. (June 23, 1932, 47 Stat. 329, ch. 272, § 10.)

§ 26-511. Management in general—Officers—Directors—Credit committee—Supervisory committee—Powers and duties.

(a) *General.*—The business affairs of a credit union shall be managed by a board of not less than five directors, a credit committee of not less than three members, and a supervisory committee of three members, to be elected at the annual meeting, and to hold office for such terms, respectively, as the by-laws may provide and until successors qualify; except that prior to the first annual meeting all the business affairs of a credit union shall be managed by the subscribers to the certificate of incorporation. A record of the names and addresses of the members of the board and committees and the officers shall be filed with the Commissioners of the District of Columbia within ten days of their election. No member of the board or of either committee shall, as such, be compensated: *Provided*, That no person shall be elected to the board or to either committee unless he be duly elected to membership as provided in section 26-509.

(b) *Officers.*—At their first meeting after the annual meeting the directors shall elect from their own number a president, a vice-president, a clerk, and a treasurer, who shall be the executive officers of the corporation. The offices of clerk and treasurer may be held by the same person. The duties of the officers shall be as determined in the by-laws, except that the treasurer shall be the general manager of the corporation.

(c) *Directors.*—The board of directors shall have the general direction of the affairs of the corporation. They shall act upon application for membership; fix the amount of the surety bond required of any officer having custody of funds; recommend declaration of dividends; determine interest rates on loans: *Provided, however*, That the interest rate on loans shall not be in excess of the maximum amount fixed by the provisions of this chapter; fill vacancies in the board and in the credit committee until successors to be elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine the maximum loans other than loans to members; determine the maximum individual shareholdings and the maximum individual loan which can be made with and without security, except that no loan in excess of \$300 shall be made without adequate security; and transmit to the members recommended amendments to the by-laws. For the purposes of this subdivision an assignment of shares or the indorsement of a note shall be deemed security.

(d) *Credit committee.*—The credit committee shall hold meetings, of which due notice shall be given to its members, to consider applications for

loans to members of the corporation, and no loan shall be made unless all members of the committee who are present when the application is considered and a majority of all the committee approve the loan. Applications for loans shall be on forms prepared by such committee, which shall set forth the purpose for which the loan is desired, the security, if any, and such other data as may be required.

(e) *Supervisory committee.*—The supervisory committee shall make an examination of the affairs of the credit union at least quarterly, including an audit of its books; shall make an annual audit and report to be submitted at the annual meeting of the corporation; by a unanimous vote may suspend any officer of the corporation, or any member of the credit committee or of the board of directors until the next members' meeting, at which time the suspension shall be acted on by the members; and, by a majority vote, may call a meeting of the shareholders to consider any violation of this chapter or of the by-laws, or any practice of the corporation deemed by the committee to be unsafe or unauthorized. The said committee shall fill vacancies in its membership until successors to be elected at the next annual meeting have qualified: *Provided, however,* That before the treasurer shall enter upon his duties he shall give bond with good and sufficient security, in an amount to be determined by the board of directors, conditioned upon the faithful performance of his trust. (June 23, 1932, 47 Stat. 329, ch. 272, § 11; April 28, 1950, 64 Stat. 90, ch. 119.)

AMENDMENT

1950—Subsec. (c) amended by act Apr. 28, 1950, to increase maximum amount of unsecured loan from "\$50" to "\$300".

§ 26-512. Reserves.

All entrance fees and fines provided by the bylaws and 20 per centum of the net earnings of each year, before the declaration of any dividends, shall be set aside as a reserve fund against bad loans or other losses, which fund shall not be distributed except in case of liquidation: *Provided, however,* That when the reserve fund thus established shall equal 10 per centum of the total amount of members' shareholdings, no further transfer of net earnings to such reserve fund shall be required except that such amounts not in excess of 20 per centum of the net earnings as may be needed to maintain this 10 per centum ratio shall be transferred. In addition to such regular reserve, special reserves to protect the interests of members shall be established when required (a) by regulation, or (b) in any special case, when found by the Director of the Bureau of Federal Credit Unions to be necessary for that purpose. (June 23, 1932, 47 Stat. 330, ch. 272, § 12; July 31, 1953, 67 Stat. 260, ch. 297, § 3; Aug. 10, 1954, 68 Stat. 683, ch. 666, § 3.)

AMENDMENTS

1954—Act Aug. 10, 1954, substituted "Director of the Bureau of Federal Credit Unions" for "Comptroller of the Currency".

1953—Act July 31, 1953, amended the section to provide that after the reserve fund shall equal 10 percent of members' shareholdings no further transfers of net earnings to that fund will be required and to provide for special reserves and to eliminate the requirement that the reserve fund be kept "liquid and intact".

§ 26-513. Dividends.

At the annual meeting a dividend may be declared from net earnings on recommendation of the board, which dividend shall be paid on all paid-up shares outstanding at the end of the preceding fiscal year. Shares which become fully paid up during such year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full. (June 23, 1932, 47 Stat. 330, ch. 272, § 13.)

§ 26-514. Expulsion and withdrawal of members.

A member may be expelled by a two-thirds vote of the members of the corporation present at a special meeting called for such purpose, but only after an opportunity has been given him to be heard. The credit union may require sixty days' notice of intention to withdraw shares. Expulsion or withdrawal shall not operate to relieve a member from any remaining liability to the credit union. All amounts paid in on shares or deposited by expelled or withdrawing members prior to their expulsion or withdrawal shall be paid to them in the order of their withdrawal or expulsion, but only as funds become available and after deducting any amounts due from such members to the credit union. (June 23, 1932, 47 Stat. 331, ch. 272, § 14.)

§ 26-515. Shares issued to minors or in trust.

Shares may be issued and deposits received in the name of a minor or in trust in such manner as the by-laws may provide. The name of the beneficiary shall be disclosed to the credit union. (June 23, 1932, 47 Stat. 331, ch. 272, § 15.)

§ 26-516. Taxation.

Credit unions, but not the members thereof, shall be exempt from Federal and District of Columbia taxation except taxes upon real property. (June 23, 1932, 47 Stat. 331, ch. 272, § 16.)

§ 26-517. Restriction on use of words "credit union"—Penalty.

It shall be unlawful for any individual, partnership, association, or corporation, except corporations organized in accordance with this chapter, to transact business in the District of Columbia under any name or title containing the words "credit union," or to transact business at any place in the United States under any name or title containing the words "credit union" and "District of Columbia" or other words indicating that the business is transacted pursuant to authority of any Act of Congress. Any individual, partnership, association, or corporation violating this section shall upon conviction thereof be subject to a fine not in excess of \$100 for each day during which the violation continues. (June 23, 1932, 47 Stat. 331, ch. 272, § 17.)

§ 26-518. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter or any part thereof, or any charter or certificate of incorporation issued pursuant to the provisions of this chapter. (June 23, 1932, 47 Stat. 331, ch. 272, § 18.)

Chapter 6.—MONEY LENDERS—LICENSES

Sec.

- 26-601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.
- 26-602. Application for license filed with Commissioners—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.
- 26-603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.
- 26-604. Register to be kept—Contents—Inspection of register—Annual statements.
- 26-605. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.
- 26-606. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.
- 26-607. Penalties—Enforcement.
- 26-608. Attorneys' fees allowed on foreclosure.
- 26-609. Contracts for liquidated or other damages prohibited.
- 26-610. Persons, associations, and corporations exempt from operation of this chapter.
- 26-611. Commissioners to enforce—Rules and regulations.

§ 26-601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

It shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than six per centum per annum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring license; and all persons, firms, voluntary associations, joint-stock companies, incorporated societies, and corporations engaged in said business shall pay a license tax of five hundred dollars per annum to the District of Columbia. No license shall be granted to any person, firm, or voluntary association unless such person and the members of any such firm or voluntary association shall be bona fide residents of the District of Columbia, and no license shall be granted for a period longer than one year, and no license shall be granted to any joint-stock company, incorporated society, or corporation unless and until such company, society, or corporation shall, in writing and in due form, to be first approved by and filed with the commissioners of the District of Columbia, appoint an agent, resident in the District of Columbia, upon whom all judicial and other process or legal notice directed to such company, society, or corporation may be served. And in the case of death, removal from the District, or any legal disability or disqualification of any such agent, service of such process or notice may be made upon the Superintendent of Licenses of the District of Columbia. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 1; Mar. 3, 1917, 39 Stat. 1006, ch. 160.)

AMENDMENT

1917—Act Mar. 3, 1917, substituted "Superintendent of Licenses" for "assessor."

PARTIAL REPEAL

Section 19 of act Aug. 6, 1956, 70 Stat. 1043, ch. 970 provided that "The Act entitled 'An Act to regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, and real-estate brokers, in

the District of Columbia', approved February 4, 1913, as amended [§§ 26-601 to 26-611] insofar as the same applies to the business of lending money on the security of the pledge and possession of tangible personal property, is hereby repealed."

TRANSFER OF FUNCTIONS

License and Permit Division of Department of Licenses and Inspections to act as attorney-in-fact for licensed pawnbroker for the purpose of receiving judicial and other processes and legal notices, see Reorg. Order No. 55 of the Board of Commissioners, dated June 30, 1953, as amended, set out in the Appendix to title 1, Administration.

CROSS REFERENCES

Businesses exempted from provisions for money lenders, see § 26-610.

Commissioners' authority to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Provisions concerning interest and usury generally not applicable to this chapter, see § 28-2703.

Refund of fees when license refused, see § 47-1017.

Rules and regulations governing money lenders, see § 26-611.

Usury, see § 28-2703.

NOTES TO DECISIONS

Admissibility of evidence	5
Amount as determining applicability	1
Burden of proof	2
Construction	3
Defenses	4
Evidence	
Admissibility	5
Sufficiency	6
Illegal contracts	7, 8
Right under illegal contracts	8
Inferences	9
Lender, liability	10
Liability	
Lender	10
Transferee	11
Occasional loans	12
Office outside the District	13
Pari delicto	14
Persons protected by enactment	15
Remedies	16
Right under illegal contracts	8
Sales	17
Small loans	18
Sufficiency of evidence	6
Transferee, liability	11
Unlicensed lender	19

1. Amount as determining applicability

This section making it unlawful to engage in business of loaning money upon which a rate of interest greater than six percent per annum is charged on any security of any kind without procuring a license has application to a loan larger than \$200. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

2. Burden of proof

It is well established that one who alleges usury or any contractual illegality has the burden of proving it and it was incumbent on the District to adduce evidence establishing an excessive finance payment and the fact that the plaintiff bank did not prove the amount of insurance premium did not relieve the District of its burden of proof. *District of Columbia v. Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

3. Construction

This chapter, the usury law, section 28-2703 et seq., and section 47-1701 et seq., regarding financial institutions are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

4. Defenses

Defense that contract violates this chapter is available, not only against the nominal maker of the loan, but against the principal for whom he acts and against the holder of an instrument given to secure payment of loan, if the holder knew of its illegality. *Hartman v. Lubar*

(1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

5. Evidence—Admissibility

In action to recover for wrongful foreclosure of deed of trust, evidence was admissible to show that lender was doing business in violation of Loan Shark Law making it unlawful for person to engage in business of loaning money at interest rate greater than 6% per annum without procuring license. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

Where lender of approximately \$900 took from borrower note for \$1,000 payable in \$20 weekly installments and secured by chattel trust deed, in replevin suit by trustee of endorsee finance company to recover the chattel, evidence that lender was principal stockholder and president of endorsee company, that trustee was officer of and counsel for the company, that loan was actually made by the company and that the company was engaged in business of lending money in District of Columbia at an interest rate greater than six percent without having procured a license was admissible to show illegality of the transaction and the resulting absence of title in trustee. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

Where borrowers contended that lender was engaged in business of loaning money within this chapter and that payee of note was but a straw party for the lender, trial court properly refused to admit in evidence against lender other notes payable to same payee, where witness testified that the payee lent money herself. *Knott v. Jackson* (1943, 31 A. 2d 662).

Where there was evidence that indorsee finance company for which trustee brought replevin suit to recover chattels named in chattel trust deed securing a note was in the business of lending money rather than solely that of discounting notes in the sense of buying from a creditor an existing obligation at less than face value, proffered evidence consisting of court trials of five municipal court cases in which finance company sued to recover on notes assigned to it was material to defendant's defense that finance company was in business of lending money at rate of interest greater than 6 percent without required license and should have been admitted. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

6. — Sufficiency

Where it was established that lending agency in two instances violated statutes making it unlawful to "engage in business" of loaning money at rate greater than 6 percent per annum on any security without procuring a license, there was sufficient showing that agency did "engage in business" within meaning of statute. *Columbia Auto Loan Inc. v. District of Columbia* (D.C. Mun. App. 1951, 78 A. 2d 857).

Evidence that lender had made five loans was not sufficient to warrant finding that lender was engaged in the "business of loaning money" within this chapter. *Knott v. Jackson* (1943, 31 A. 2d 662).

7. Illegal contracts

Every consideration of "public policy" suggests that a contract made in violation of this chapter should be unenforceable. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

Where no legal insurance was obtained on automobile by lending agency when contract was executed under which charge was exacted which made the total more than 6 percent annually on amount loaned, even though part of the charge was called an "insurance premium", the charge was for "interest", and lending agency violated this section making it unlawful to engage in business of loaning money at rate greater than 6 percent per annum on any security without procuring a license. *Columbia Auto Loan Inc. v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 857).

8. — Rights under illegal contracts

A borrower who enters into a usurious contract, void because lender violated Loan Shark Law for not having

license, may recover from lender any damages sustained by reason of such void contract. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

9. Inferences

Where defendant had subpoenas duces tecum served upon officers of indorsee finance company for which trustee was maintaining replevin suit to compel them to produce at trial all records regarding the company for purpose of showing that company was in business of lending money at rate of interest greater than 6 percent without required license, and officers failed to produce the records, jury could infer from failure to produce subpoenaed records that contents thereof would have been unfavorable to trustee's case. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

10. Liability—Lender

Where lender, not licensed as required by Loan Shark Law, grants usurious loan, and makes foreclosure possible by transfer of void note and deed of trust, lender is liable in damages resulting from foreclosure by his transferee, even if transferee was innocent throughout. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

11. — Transferee

Where one takes note and deed of trust with notice or knowledge that transferor had obtained them through usurious loan contract made in violation of Loan Shark Law requiring license of lender, a foreclosure thereunder by such person is unlawful and he is liable for damages caused thereby. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

12. Occasional loans

A nonresident who makes occasional loans on real estate in the District, is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle v. Daly* (1932, 54 F. 2d 455, 60 App. D. C. 344).

13. Office outside the District

A pawnbroker violates this law if he stores pledged goods in the city of Washington, and uses it as a collecting center, but applications for loans are made just over the line in Virginia, to which place free automobile service is maintained, and loans are there made at an excessive rate. *Horning v. District of Columbia* (1920, 41 S. Ct. 53, 254 U. S. 135, 65 L. Ed. 185).

14. Pari delicto

Under Loan Shark Law requiring license of persons engaged in business of loaning money at interest rate greater than 6% per annum, borrower is not in pari delicto with lender and his participation with him in making loan does not bar borrower from asserting illegality of loan. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

15. Persons protected by enactment

A borrower is member of class for whose protection statute, requiring license of persons engaged in business of loaning money at interest rate greater than 6% per annum, was enacted. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

16. Remedies

Borrower under usurious loan contract made in violation of statute requiring license of lender had right to elect whether to go into equity and ask that foreclosure sale, caused by transferee of void note and deed of trust, be set aside, or to let sale stand and ask for damages. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

An action at law for damages for wrongful foreclosure is an especially appropriate remedy where an innocent purchaser buys at foreclosure, because it gives relief against guilty rather than innocent party. *Id.*

17. Sales

In suit by conditional buyer of automobile against seller and finance company, to which conditional sale agreement and note covering deferred purchase price were negotiated, to have agreement and note declared void and to recover money paid under agreement, evidence sustained finding that the transaction was a sale

and not a loan of money, and that therefore the sanctions of the Loan Shark Law did not apply. *Brooks v. Auto Wholesalers* (D. C. Mun. App. 1953, 101 A. 2d 255).

18. Small loans

Loan Shark Law was intended to apply only to persons making small loans upon personal security and not to a case in which a debt of \$177,500 was secured by a first trust upon real estate. *Von Rosen v. Dean* (1920, 41 F. 2d 982, 59 App. D. C. 359).

This chapter is not a usury statute, but an act licensing, under limitations and restrictions, the lending of money in small sums on personal security, and was intended to apply only to persons making small loans on personal security. *Knott v. Jackson* (1943, 31 A. 2d 662).

Loan of nearly \$700 was not a "small loan" within this chapter, which provides, under § 26-605, that person violating the provisions of this chapter shall forfeit all interest, and in addition a sum equal to one-fourth of the principal sum. *Id.*

19. Unlicensed lender

A lender in a loan contract which is merely usurious may not be liable in damages, but if there is added the fact that the lender was not licensed as required by law, loan contract is unlawful and void, and a foreclosure thereunder is wrongful and gives rise to action for damages suffered therefrom. *Royall v. L. Yudelevit and W. H. Simons* (1959, 268 F. 2d 577, 106 U.S. App. D.C. 1).

§ 26-602. Application for license filed with Commissioners—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.

Applications for license to conduct such business must be made in writing to the Commissioners of the District of Columbia, and shall contain the full names and addresses of applicants, if natural persons, and in the case of firms and voluntary associations, the full names and addresses of all the members thereof, and in the case of joint-stock companies, incorporated societies, and corporations, the full names and addresses of the officers and directors thereof and under what law or laws organized or incorporated, and the place where such business is to be conducted, and such other information as the said commissioners may require. Every license granted shall date from the first of the month in which it is issued and expire on the 31st day of the following October, and such license shall be kept conspicuously displayed in the place of business of the licensee. Every application shall be filed not less than thirty days prior to the granting of such license, and notice of the filing of such application shall be posted in the office of the Superintendent of Licenses of the said District and be published twice a week for three successive weeks in a daily newspaper published in the District of Columbia. Protest may be made by any person to the issuing of such license, and when such protests are filed with the said commissioners the latter shall give public notice of and hold a public hearing upon such protests before issuing such license. The said commissioners shall have the power to reject any application for license after a hearing upon such protest or for failure on the part of the applicant to observe this chapter, or when such applicant shall have violated its provisions. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 2; Mar. 3, 1917, 39 Stat. 1006, ch. 160.)

AMENDMENT

1917—Act Mar. 3, 1917, substituted "Superintendent of Licenses" for the "assessor."

§ 26-603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.

Each application shall be accompanied by a bond to the District of Columbia in the penal sum of five thousand dollars, with two or more sufficient sureties, and conditioned that the obligor will not violate any law relating to such business. The execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business therein shall be equivalent to the execution thereof by two sureties, and such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. If any person shall be aggrieved by the misconduct of any such licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation, or by his, their, or its violation of any law relating to such business, and shall recover a judgment therefor, such person or his personal representative or heirs or distributees may, after a return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action in his own name upon such bond herein required in any court having jurisdiction of the amount claimed. The commissioners of the District of Columbia shall furnish to anyone applying therefor a certified copy of any such bond filed with them, upon the payment of a fee of twenty-five cents, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, voluntary association, joint-stock company, incorporated society, or corporation whose names appear thereon. Said bond shall be renewed and refiled annually in October of each year, or the licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall within thirty days thereafter, cease doing business, and their license shall be revoked by the said commissioners, but said bond until renewed and refiled as aforesaid shall be and remain in full force and effect. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 3.)

§ 26-604. Register to be kept—Contents—Inspection of register—Annual statements.

Every person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall keep a register, approved by said commissioners, showing in English, the amount of money loaned, the date when loaned and when due, the person to whom loaned, the property or thing named as security for the loan, where the same is located and in whose possession, the amount of interest, all fees, commissions, charges, and renewals charged, under whatever name. Such register shall be open for inspection to the said commissioners, their officers and agents, on every day, except Sundays and legal holidays, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall, on or before the 20th day of January of each year, make to the said commissioners an annual statement in the form of a trial balance of its books on the 31st day of December in each year, specifying the different kinds of its liabilities and the different kinds

of its assets, stating the amount of each, together with such other information as may be called for. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 4.)

§ 26-605. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.

No such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall charge or receive a greater rate of interest upon any loan made by him or it than one per centum per month on the actual amount of the loan, and this charge shall cover all fees, expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest shall not be deducted from the principal of loan when same is made. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall furnish the borrower a written, type-written, or printed statement at the time the loan is made, showing, in English, in clear and distinct terms, the amount of the loan, the date when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest charged, and the lender shall give the borrower a plain and complete receipt for all payments made on account of the loan at the time such payments are made. No such loan greater than two hundred dollars shall be made to any one person: *Provided*, That any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this chapter, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: *And provided further*, That any person in the employ of the Government who shall loan money in violation of the provisions of this chapter shall forfeit his office or position, and be removed from the same. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 5.)

NOTES TO DECISIONS

1. Advance deductions

In replevin by trustee of indorsee finance company to recover chattels named in trust deed securing a note, evidence that loan was usurious, in that an amount in excess of legal rate was deducted in advance and that plaintiff knew the amount deducted in advance, was sufficient to make defense of illegality available to defendant. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

§ 26-606. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.

Complaints against any licensee or applicant for a license shall be made in writing to the said commissioners, and notice thereof of not less than three days shall be given to said licensee or applicant by serving upon him a concise statement of the facts constituting the complaint, and a hearing shall be had before the said commissioners within ten days from the date of the filing of the complaint, and no adjournment shall be taken for longer than one week. A daily calendar shall be kept of all hearings by the said commissioners, which shall be posted in a conspicuous place in their public office

for at least three days before the date of such hearings. The said commissioners shall render their decision within eight days from the time the matter is finally submitted to them. Said commissioners shall keep a record of all such complaints and hearings, and may refuse to issue and shall suspend or revoke any license for any good cause shown, within the meaning and purpose of this chapter; and when it is shown to their satisfaction, whether as a result of a written complaint as aforesaid or otherwise, that any licensee or applicant under this chapter either before or after conviction, is guilty of any conduct in violation of this or any law relating to such business it shall be the duty of the said commissioners to suspend or revoke the license of such licensee or reject the petition of the applicant, but notice of the written complaint or proposed action shall be presented to and reasonable opportunity shall be given said licensee or applicant to be heard in his defense. Whenever for any cause such license is revoked, said commissioners shall not issue another license to said licensee until the expiration of at least one year from the date of revocation of such license, and not at all if such licensee shall have been convicted of a violation of this chapter under the provisions of section 26-607 thereof. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 6.)

CROSS REFERENCES

Refund of fees when license refused, see § 47-1017.

Revocation or suspension of license for violation of the Uniform Narcotic Drug Act, see § 33-418.

§ 26-607. Penalties—Enforcement.

Any violation of this chapter shall be punished by a fine of not less than twenty-five dollars and not greater than two hundred dollars, or by imprisonment in the jail or the workhouse of the District of Columbia for not less than five nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. The said commissioners shall cause the corporation counsel to institute criminal proceedings for the enforcement of this chapter before any court of competent jurisdiction. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 7.)

§ 26-608. Attorneys' fees allowed on foreclosure.

In any foreclosure on any loan made under this chapter no charges for attorneys' or agents' fees shall be made or collected which will exceed ten per centum of the amount found due in such foreclosure proceedings. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 8.)

§ 26-609. Contracts for liquidated or other damages prohibited.

In any contract made in pursuance of the provisions of this chapter it shall be unlawful to incorporate any provision for liquidated or other damages as a penalty for any default or forfeiture thereunder. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 9.)

§ 26-610. Persons, associations, and corporations exempt from operation of this chapter.

Nothing contained in this chapter shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, or real estate brokers, as defined in sections 47-1701 to 47-1709. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 10.)

§ 26-611. Commissioners to enforce—Rules and regulations.

The enforcement of this chapter shall be intrusted to the Commissioners of the District of Columbia, and they are hereby authorized and empowered to make all rules and regulations necessary in their judgment for the conduct of such business and the enforcement of this chapter in addition hereto and not inconsistent herewith. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 11.)

CROSS REFERENCE

Rules and regulations generally, see § 1-226 et seq.

Chapter 7.—COMMON TRUST FUNDS

Sec.

26-701. Establishment of common trust funds.

26-702. Taxability of common trust funds.

26-703. Court accountings.

26-704. Uniformity of interpretation.

§ 26-701. Establishment of common trust funds.

Any bank or trust company qualified to act as fiduciary in the District of Columbia may, subject to such rules and regulations as may be promulgated from time to time by the Board of Governors of the Federal Reserve System under the provisions of section 11 (k) of the Federal Reserve Act, as amended (12 U. S. C. 248 (k)), pertaining to the collective investment of trust funds by national banks, establish common-trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common-trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the written consent of its cofiduciaries to such investment. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 1.)

EFFECTIVE DATE

Section 8 of act Oct. 27, 1949, provided that: "This Act [this chapter] shall take effect November 1, 1949, and shall apply to fiduciary relationships then in existence or thereafter established."

SHORT TITLE

Section 5 of act Oct. 27, 1949, provided: "This Act [this chapter] may be cited as the 'Uniform Common-Trust Fund Act'."

SEPARABILITY OF PROVISIONS

Section 6 of act Oct. 27, 1949, provided: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Act [this chapter] which can be given effect without the invalid provision or application, and to this end the provisions of this Act [this chapter] are declared to be severable."

REPEALS

Section 7 of act Oct. 27, 1949, provided: "All Acts or parts of Acts which are inconsistent with the provisions of this Act [this chapter] are hereby repealed."

§ 26-702. Taxability of common trust funds.

(a) A common trust fund, as herein defined, shall not be subject to any tax imposed by the District of Columbia Income and Franchise Tax Act of 1947, as amended, and for the purpose of said Act shall not be deemed to be a corporation.

(b) The net income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual. Each participant in a common trust fund shall include, in computing its net income its proportionate share of the net income of such fund, whether or not distributed to it, and the amount so included in the net income of a participant shall be taxable to such participant, or its beneficiaries, in the manner and to the extent provided in title IX of the District of Columbia Income and Franchise Tax Act of 1947, as amended, as if any amount not distributed to the participant during its taxable year actually had been so distributed.

(c) No gain or loss shall be realized by a common trust fund upon the admission or withdrawal of a participant, or upon the admission or withdrawal of any interest of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by such participant.

(d) Every bank or trust company maintaining a common trust fund shall make a return under oath for the taxable year of such fund.

(e) If the taxable year of a common trust fund is different from that of a participant therein, the proportionate share of the net income of such fund to be included in computing the net income of such participant for its taxable year shall be based upon the net income of such fund for its taxable year ending within the taxable year of such participant. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 2.)

REFERENCES IN TEXT

The District of Columbia Income and Franchise Tax Act of 1947, as amended, referred to in subsecs. (a) and (b), is classified to chapter 15 of title 47.

EFFECTIVE DATE

Section effective Nov. 1, 1949, see note under section 26-701.

§ 26-703. Court accountings.

Unless ordered by a court of competent jurisdiction the bank or trust company operating such common-trust funds is not required to render a court accounting with regard to such common-trust funds; but it may, by application to the United States District Court for the District of Columbia, secure approval of such accounting on such conditions as the court may establish. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 3.)

EFFECTIVE DATE

Section effective Nov. 1, 1949, see note under section 26-701.

§ 26-704. Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the District of Columbia with the law of those States which enact the Uniform Common-Trust Fund Act. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 4.)

EFFECTIVE DATE

Section effective Nov. 1, 1949, see note under section 26-701.

27

28

29

TITLE 27.—CEMETERIES AND CREMATORIES

Chap.	Sec.
1. Cemetery Associations—Regulatory Provisions-----	27-101

Chapter 1.—CEMETERY ASSOCIATIONS — REGULATORY PROVISIONS

Sec.	
27-101.	Incorporation—Powers.
27-102.	Powers to acquire and sell land.
27-103.	Land to be platted and surveyed.
27-104.	Inclosure and ornamentation of land—Purchase of equipment.
27-105.	Duty to inclose and underdrain.
27-106.	Application of proceeds of sales of lots.
27-107.	Officers.
27-108.	Election of officers.
27-109.	Voters—Members of the corporation.
27-110.	By-laws.
27-111.	Exemption from taxation and sale on execution.
27-112.	Dedication of land—Title vested in perpetuity.
27-113.	Grants and bequests for care of lots.
27-114.	Distance from city and from dwellings.
27-114a.	Commissioners authorized to license certain lands for cemetery purposes.
27-115.	Lots to be conspicuously marked—Plat to be recorded—Size and depth of graves.
27-116.	Register—Contents.
27-117.	Superintendent to register at health department.
27-118 to 27-119.	Repealed.
27-119a.	Disposal of dead bodies—Permits required—Violations.
27-120.	Reports of death—Keeping of dead bodies—Exhibition of dead bodies.
27-121.	Place of burial.
27-122.	Mode of burial.
27-123.	Reopening graves—Death from pestilential diseases.
27-124.	Crematories—Consent of property owners—Permit.
27-125.	Permit to cremate—Embalming.
27-126.	Penalty.
27-127.	Prosecutions.
27-128.	Disinterment by order of court.
27-129.	Public crematory—Cremation required in certain cases.
27-130.	Establishment of crematory—Rules and regulations—Fees.
27-131.	Act for promotion of anatomical science not affected by crematory law.

§ 27-101. Incorporation—Powers.

When five or more persons shall associate themselves together for the purpose of forming a cemetery association in the District, such persons shall have the power to adopt a corporate name, and by that name shall be known as a body corporate, and by that name shall have perpetual succession and be invested with all powers, rights, privileges, liabilities, and immunities incident to corporations, and may have a common seal, and may alter or change the same at their pleasure. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 658.)

CROSS REFERENCES

Locations permitted, see § 27-114.
Public crematory, see §§ 27-129 to 27-131.

§ 27-102. Powers to acquire and sell land.

Such persons so associated shall have power to acquire by gift, grant, or purchase any lot or lots of

land not exceeding fifty acres, and lay out the same for a burial place for the dead, with convenient aisles, and to sell the same for such purpose and for no other purposes, reserving a sufficient portion thereof for the burial of the stranger and indigent. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 659.)

CROSS REFERENCE

Conveyances by corporations, formal requisites, see § 45-302.

§ 27-103. Land to be platted and surveyed.

They shall cause the land designed as a burial ground to be surveyed and platted, and a plat of the ground so surveyed shall be recorded in the office of the surveyor of the District. Each lot shall be duly numbered by the surveyor and such number shall be marked on the plat and recorded. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 660.)

CROSS REFERENCES

Commissioners to obtain right-of-way through burial grounds for streets, see § 1-615.

Duties of surveyor concerning plats and recording thereof, see § 1-605 et seq.

§ 27-104. Inclosure and ornamentation of land—Purchase of equipment.

Such association shall have power to inclose and ornament their burial ground, to build and erect a hearse house, and keep the same in proper repair; to purchase a hearse or hearses, and to do all other necessary acts to the end that all the appliances, conveniences, and benefits of a public and private cemetery may be obtained. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 661.)

§ 27-105. Duty to inclose and underdrain.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to inclose such cemetery or cemeteries with good and sufficient walls or fences to prevent entrance thereto or exit therefrom except by gates provided for that purpose. Such cemetery or cemeteries shall, if required by the commissioners of said District, be underdrained to such a depth as will prevent water remaining in any grave or vault therein. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 671.)

§ 27-106. Application of proceeds of sales of lots.

The proceeds arising from the sale of lots, after deducting all expenses of purchasing and laying out the same, shall be applied, appropriated, and used in improving and ornamenting the burial ground, or for other purposes named in sections 27-101 to 27-114, 27-115 to 27-117, 27-119a to 27-128. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 662.)

§ 27-107. Officers.

The officers of any such corporation shall be a president, a treasurer (who shall act as a secretary),

and not less than three directors, who shall be severally chosen annually by ballot, and shall hold office until their successors are chosen. Any neglect to choose officers on the day fixed upon for that purpose shall not operate as a forfeiture of the act of incorporation, in accordance with the provisions of sections 27-101 to 27-114, 27-115 to 27-117, 27-119a to 27-128. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 663.)

§ 27-108. Election of officers.

The first election of officers by the persons associating, according to and for the purpose specified in section 27-101, shall be at the time and place designated and agreed upon by a majority of the persons so associating themselves together, and no other than such persons shall vote at such election. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 664.)

§ 27-109. Voters—Members of the corporation.

At each subsequent election of officers of any such corporation the owner of a lot in said burial ground shall be entitled to one vote in the election of officers of the corporation and no more, and shall, by virtue of such membership, be a member of the corporation. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 665.)

§ 27-110. By-laws.

Each corporation shall have power to establish and change by-laws and prescribe rules and regulations for its government and the duties of its officers and the management of its property. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 666.)

§ 27-111. Exemption from taxation and sale on execution.

The property of any such corporation, its grounds, lots, and appliances, shall be exempt from taxation and shall not be liable to sale on execution. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 667.)

§ 27-112. Dedication of land—Title vested in perpetuity.

Any person desiring to dedicate any lot of land, not exceeding five acres, as a burial place for the interment of the dead for the use of any society, association, or neighborhood may, by deed duly executed and recorded, convey such land to the District of Columbia, by the corporate name of said District of Columbia, specifying in such deed the society, association, or neighborhood for the use of which the dedication is desired to be made, and thereby (provided such conveyance shall be accepted by the Commissioners of the District of Columbia) vest the title to such land in perpetuity, for the uses stated in the deed, and such land shall be thereafter exempt from taxes for all purposes whatever. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 668.)

§ 27-113. Grants and bequests for care of lots.

It shall be lawful for such association to take and hold any grant, donation, or bequest upon trust to apply the income thereof, under the direction of the board of managers, for the embellishment, preservation, renewal, or repair of any tomb, monument, gravestone, or other structure, fence, railing, or other inclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers,

or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; and the United States District Court for the District of Columbia shall have full power and jurisdiction to compel the due performance of such trusts, or any of them, upon a bill filed by the proprietor of any lot in such cemetery for that purpose. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 669; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

1. Trusts for perpetual maintenance

This section permits trusts for the perpetual maintenance of cemetery lots and monuments or other structures erected thereon, and is not in conflict with the rule against perpetuities (§ 45-102). Such a trust was held valid where it was to be carried out by a New York corporation in the State of New York. *Iglehart v. Iglehart* (1907, 27 S. Ct. 329, 204 U.S. 478, 51 L. Ed. 575).

§ 27-114. Distance from city and from dwellings.

No person or persons or cemetery association shall lay out any new cemetery, or part of any cemetery, within the city of Washington, in the District of Columbia, nor in said District, within one mile and a half from the boundaries of said city; no person or cemetery association shall, in said District, lay out any cemetery, or part of any cemetery, within less than two hundred yards of any dwelling-house, except with the written consent of the owner, lessee, and occupant of such house, nor without a permit to do so from the Commissioners of said District. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 670.)

§ 27-114a. Commissioners authorized to license certain lands for cemetery purposes.

Without regard to the provisions of section 27-114, the Commissioners of the District of Columbia are hereby authorized to license for cemetery purposes any parcel of land in the District of Columbia which does not exceed one acre in size, and which, except for a one-side frontage of less than 100 feet on a public street or highway, is otherwise completely bounded by land dedicated to cemetery purposes. (July 14, 1956, 70 Stat. 538, ch. 594, § 1.)

§ 27-115. Lots to be conspicuously marked—Plat to be recorded—Size and depth of graves.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to divide the area to be used for graves into lots of reasonable size, to be permanently designated by conspicuous marks, so that the position of each may be readily determined, each lot to be duly numbered. A plat of such cemetery showing the area so divided, the division into lots, and the number of each such lot shall be filed in the office of the surveyor of said District; the grave spaces hereafter laid out for the burial of persons above ten years of age to be at least eight feet by three feet, and those for the burial of children

under ten years of age at least six feet by two feet, or, if preferred by said owner or owners, one-half the measurement of the adult grave space, namely, four feet by three feet. No coffin shall be buried in said District so that any part thereof is within less than four feet of the ordinary level of the ground, unless it contains the body of a child under twelve years of age, when it shall not be less than three feet below that level. (Mar. 3, 1901, 31 Stat. 1295, 1297, ch. 854, §§ 672, 681.)

CROSS REFERENCE

Powers and duties of surveyor concerning plats and recording thereof, see § 1-605 et seq.

§ 27-116. Register—Contents.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to cause to be kept in the office of the superintendent or person in charge of such cemetery or cemeteries a register showing the number of each lot, the name, age, cause of death, and date of burial of each person or persons buried in any such lot or grave space, and the number of the burial permit authorizing such burial. In cases of disinterment said register shall show the date of such disinterment and the number of the official permit therefor opposite the name of the person whose remains are disinterred. Such register shall be at all times open to inspection by duly authorized representatives of the health department and of the police department of said District. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 673.)

CROSS REFERENCE

Anatomical board for disposition of human bodies for scientific purposes, see §§ 2-201 to 2-209.

§ 27-117. Superintendent to register at health department.

It shall be the duty of the superintendent or person in charge of any cemetery or other place for the disposal of dead bodies of human beings in the District of Columbia to register his or her name at the office of the health department of said District, giving full name, residence, and place of business, and in case of removal from one place to another in said District to make change in such register accordingly. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 674.)

CROSS REFERENCE

Anatomical board for disposition of indigent dead, see § 2-201 et seq.

§§ 27-118 to 27-119. Repealed. Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1.

Section 27-118, acts Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 675; Dec. 16, 1944, 58 Stat. 809, ch. 596, § 1, related to the removal of dead bodies and to the necessary permit and procedures attendant thereto, and is now covered by § 27-119a.

Section 27-118a, act Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 675a, as added Dec. 16, 1944, 58 Stat. 809, ch. 596, § 1, related to the appointment of deputies to issue removal permits.

Section 27-119, acts Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 676; Dec. 16, 1944, 58 Stat. 810, ch. 596, § 1, related to the conveyance through the District of Columbia of dead bodies, and is now covered by section 27-119a.

EFFECTIVE DATE OF REPEAL

Section 2 of act Sept. 22, 1950, provided that: "This Act [adding § 27-119a, and repealing §§ 27-118, 27-118a, and 27-119] shall take effect sixty days after enactment [Sept. 22, 1950]."

§ 27-119a. Disposal of dead bodies—Permits required—Violations.

It shall be unlawful to remove, transport, inter, disinter, or otherwise dispose of the dead body, or any part thereof, of any human being, except upon a permit, duly issued by the Director of Public Health of the District of Columbia, or such other person or persons as the Commissioners of the District of Columbia shall designate, upon such terms and conditions as the Commissioners may specify. Any violation hereof shall be subject to the penalties contained in section 27-126. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, §§ 675, 676, as added Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1.)

CODIFICATION

Act Sept. 22, 1950, repealed former sections 675 and 676 of act Mar. 3, 1901.

EFFECTIVE DATE

Section effective 60 days after September 22, 1950, see note under former sections 27-118 to 27-119.

CHANGE OF NAME

"Director of Public Health" substituted for "Health Officer" to conform to act Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1. See note set out under section 6-101.

CROSS REFERENCES

Unlawful traffic in dead bodies, grave robbery, penalties, see §§ 2-206, 22-3103.

NOTES TO DECISIONS

1. Post-mortem examinations

In a prosecution for homicide, it is not error to admit testimony relative to the disinterment and post-mortem examination of the body of the deceased, notwithstanding the fact that the Government gave no notice of its intention to make such an examination; "nor is it material whether or not there was full compliance with the provisions of section 686 of the District of Columbia Code (§ 27-128)." *Laney v. United States* (1924, 294 F. 412, 54 App. D.C. 56).

§ 27-120. Reports of death—Keeping of dead bodies—Exhibition of dead bodies.

It shall be the duty of any person or persons having custody or control of the dead body of any human being or any part of such body to report in writing or cause to be reported in writing, to the director of public health of said District, within forty-eight hours after the death of the deceased, the name of said deceased and the location of the body or part thereof. No such body or part thereof shall be kept in said District in such manner as to give rise to any offensive odors to the annoyance of any person or persons in the neighborhood or to the public, nor so as to be exposed to the public view; nor shall any such body or part thereof be permitted by the person or persons having custody or control of it to remain unburied for a longer period than one week after death without permission of the director of public health, unless it has been cremated or deposited in the vault of some cemetery; nor shall any person publicly exhibit in said District, for pay or otherwise, any dead body of any human being or any part of such body without a permit from the director of public health of said District so to do, except such exhibition be in connection with some government museum or with some institution of learning permanently located in said District. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 677; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

NOTES TO DECISIONS

1. Evidence, admissibility of

This section forbidding exposure of dead bodies or their exhibition in public did not preclude admission in evidence in murder prosecution of a section of skull of the deceased. *Hart v. U. S.* (1942, 130 F. 2d 456, 76 U. S. App. D. C. 193.).

§ 27-121. Place of burial.

No person shall bury or cause to be buried within said District the body or part of the body of any deceased person, except in such grounds as were known and used as public or private burial grounds on January 1, 1902, or such as shall thereafter be designated by the commissioners of said district and authorized by them to be used as such. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 678.)

CONFEDERATE VETERANS DYING IN DISTRICT OF COLUMBIA—BURIAL IN ARLINGTON

Hereafter persons dying in the District of Columbia or in the immediate vicinity thereof who have served in the Confederate Armies during the Civil War may be buried in the Confederate section of the Arlington National Cemetery without additional expense to the United States upon the certificate of Camp Numbered 171, United Confederate Veterans of the District of Columbia, that such persons are entitled to burial under the authority herein given: *Provided*, That all such interments shall be under the supervision and subject to the approval of the Secretary of War. (Aug. 24, 1912, 37 Stat. 417, ch. 355.)

WHITE'S TABERNACLE CEMETERY—INTERMENTS PROHIBITED

From and after the date of the passage of this act (December 16, 1921) it shall be unlawful to inter the body of any person in the cemetery known as the cemetery of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, in the District of Columbia and situate in the District of Columbia, to wit: Part of a tract called "Chappell's Vacancy," contained within the following metes and bounds, namely: Beginning for the same at the southeast corner of the land conveyed to Frederick Bangerter by deed recorded in Liber Numbered 785, folio 474, of the land records of the District of Columbia, and running thence north 15¾ degrees east, 20.44 perches; thence south 89 degrees east, 3.9 perches; thence south 15¾ degrees west, 20.44 perches; thence north 89 degrees west, 3.9 perches to the point of beginning; and any person or persons violating the provisions of this act, or aiding or abetting its violation, shall be subject to a fine of not less than \$100, nor more than \$500 for each offense, to be collected as other fines are collected in the District of Columbia. (Dec. 16, 1921, 42 Stat. 348, ch. 7, § 1.)

REMOVAL OF BODIES AND TOMBSTONES

The board of officers of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, in the District of Columbia, are hereby authorized and empowered, under such regulations as the Commissioners of the District of Columbia may prescribe, to disinter and remove all the bodies now buried in said cemetery lot, and to transfer and reinter the same in some other suitable cemetery or cemeteries selected by the said board of officers of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, and at the cost and expense of said order: *Provided*, That each monument, tombstone, or marker marking any grave or graves in said described burial ground shall be transferred to mark the grave or graves in which such body or bodies are to be interred, and shall be there placed in position as soon as can be done without danger of settling. (Dec. 16, 1921, 42 Stat. 349, ch. 7, § 2.)

RESTRICTIONS ON REMOVAL OF BODIES SUSPENDED

Insofar as the same shall be inconsistent with the provisions of this act as to the cemetery lot herein described, sections 675 and 680 (§§ 27-118, 27-123) shall be, and the same are hereby, declared inoperative, otherwise said sections 675 and 680 (§§ 27-118, 27-123) to remain unqualified and in full force and effect. (Dec. 16, 1921, 42 Stat. 349, ch. 7, § 3.)

PERMITTING CERTAIN BURIALS IN SCOTTISH RITE TEMPLE

"The Supreme Council (Mother Council of the World) of the Inspectors General Knights Commanders of the House of the Temple of Solomon of the Thirty-third Degree of the Ancient and Accepted Scottish Rite of Freemasonry of the Southern Jurisdiction of the United States of America, is hereby authorized to permit the burial of the remains of not to exceed two persons in vaults built for that purpose in its temple, situated on lot numbered 800, in square 192, at the southeast corner of S and Sixteenth Streets Northwest, in the District of Columbia, under such sanitary regulations as shall be prescribed for such burials by the Commissioners of the District of Columbia." (July 13, 1943, 57 Stat. 563, ch. 237.)

§ 27-122. Mode of burial.

No body shall be buried in said District in any vault unless the coffin be separately entombed in properly cemented stone or brick work, so as to render such vault airtight; such vault, after having been sealed, shall not be opened within ten years; no body shall be temporarily deposited in any vault for a longer period than one month, unless such body is in an hermetically sealed metallic case, nor in any instance for a longer period than one year. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 679.)

§ 27-123. Reopening graves—Death from pestilential diseases.

No grave in said District shall be reopened, except for the purpose of disinterment, within ten years after burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age, unless the grave has been, in the first instance, of sufficient depth to permit subsequent interments, in which case a layer of earth of not less than one foot thick shall be left undisturbed over the previously buried coffin, unless such coffin has been separately entombed in properly cemented stone or brick work; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed. In no case shall a grave be opened in which has been buried the body of any person who has died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, tetanus, diphtheria, or scarlet fever: *Provided*, that the director of public health of the District of Columbia may, in his discretion, authorize the opening, under sanitary precautions, of any such grave, and the disinterment and reinterment in the same grave or other suitable burial ground, of the dead body of any person who has died of any of the contagious diseases enumerated above. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 680; Jan. 20, 1936, 49 Stat. 1095, ch. 12; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

1936—Act Jan. 20, 1936, added the proviso.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalties, see §§ 2-206, 22-3103.

§ 27-124. Crematories—Consent of property owners—Permit.

No person shall, in the District of Columbia, build or maintain a crematory or other device for destroying human bodies, except within the limits of some duly-established cemetery in said District, unless such person or persons has in writing the consent of the owners of more than one-half of the property within a radius of two hundred feet from the place where such crematory is to be erected and maintained and a permit from the commissioners of said District for the erection and maintenance of such crematory or other device; such permit to be for a term of years, not exceeding five, to be specified therein: *Provided*, That this section shall not apply to such crematories or other devices for destroying human bodies as may have been erected and were in operation on March 3, 1901. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 682.)

§ 27-125. Permit to cremate—Embalming.

It shall be unlawful for any person or persons to cremate or otherwise to destroy the dead body, or part of the dead body, of any human being in said District before the issue of the burial permit by the director of public health of said District, and then only when said permit is countersigned by the coroner of said District, authorizing such cremation or destruction. It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead body, of any human being in said District within four hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the coroner of said District. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 27-126. Penalty.

Any person who shall violate or aid and abet in violating any of the provisions of sections 27-101 to 27-114, 27-115 to 27-117, 27-119a to 27-128 shall, upon conviction thereof by competent judicial authority, be punished, for each offense, by a fine of not more than two hundred dollars, or by imprisonment for not more than ninety days, or both. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 684.)

CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalty, see §§ 2-206, 22-3103.

§ 27-127. Prosecutions.

Prosecutions hereunder shall be in the Municipal Court for the District of Columbia, in the name of said District: *Provided*, That any person or persons so tried shall have the privilege, when demanded, of a trial by jury, as in other jury cases in said Munic-

ipal Court. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 685; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 27-128. Disinterment by order of court.

Nothing in sections 27-101 to 27-114, 27-115 to 27-117, 27-119a to 27-128 shall be construed to interfere with or prevent the disinterment of any body when such disinterment is ordered by one of the judges of the United States District Court for the District of Columbia, or by the coroner of said district, after due notice to the Commissioners of the District of Columbia. The provisions hereof shall not be held to interfere with the disposal of the ashes of bodies which have been cremated. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 686; June 30, 1902, 32 Stat. 534, ch. 1329, § 686; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1902—Act June 30, 1902, substituted "after due notice to the Commissioners of the District of Columbia for "for judicial purposes."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judges" for "justices."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

1. Post-mortem examinations

It was not error to admit testimony relative to the disinterment and post-mortem examination of the body of the deceased, and it was unnecessary that notice should be given the defendant of the intention on the part of the government to make the investigation. Nor is it material whether or not there was full compliance with this section. *Laney v. United States* (1924, 294 F. 412, 54 App. D.C. 56).

§ 27-129. Public crematory—Cremation required in certain cases.

Whenever the dead body of any person who has died from smallpox, Asiatic cholera, typhus fever, the plague, leprosy, glanders, scarlet fever, diphtheria, or epidemic cerebro-spinal meningitis comes into the custody of any officer, employee, or agent of the District of Columbia to be disposed of at public expense, the said officer, employee, or agent shall cause said body to be incinerated. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 1.)

§ 27-130. Establishment of crematory—Rules and regulations—Fees.

The Commissioners of the District of Columbia are authorized and directed to operate on reservation thirteen, commonly known as the Washington Asylum grounds, in the city of Washington, in said District, a crematorium of size sufficient for the incineration of all bodies that can not, except at public expense, be disposed of within a reasonable time after death, and for the incineration of such other bodies as may be presented for that purpose by the persons

having custody thereof. Said Commissioners are hereby authorized to make and enforce all rules necessary for the proper maintenance and operation of said crematorium, and to prescribe and collect for the incineration of bodies not necessarily disposed of at public expense fees in such amounts as may be required to defray the cost of incineration: *Provided*, That in any case the Commissioners may, by special order, waive or reduce the usual charges whenever, in the opinion of said Commissioners, to enforce such charges would be burdensome or oppressive upon the person or persons responsible for the disposal of the remains. All fees collected under the provisions of this section shall be paid to the collector of taxes of the District of Columbia, and be deposited by him in the Treasury of the United States wholly to the credit

of the District of Columbia. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

REFERENCE IN TEXT

The Washington Asylum was consolidated with the Jail by section 24-407, and is now known as the Washington Asylum and Jail.

CROSS REFERENCE

Lump-sum appropriation to the District, see § 47-134.

§ 27-131. Act for promotion of anatomical science not affected by crematory law.

Nothing in sections 27-129 to 27-131 shall be construed as repealing or in any way modifying any of the provisions of sections 2-201 to 2-209. (Apr. 20, 1906, 34 Stat. 124, ch. 1641, § 3.)

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Chap.	Sec.	Sec.
1. Negotiable Instruments—Form and Interpretation.....	28-101	28-122. Signature by procuration.
2. Consideration	28-201	28-123. Indorsement by corporation or infant.
3. Negotiation	28-301	28-124. Signature forged or without authority.
4. Rights of Holder.....	28-401	
5. Liabilities of Parties.....	28-501	§ 28-101. Definitions—Sundays and holidays—Application of the law merchant.
6. Presentment for Payment.....	28-601	In chapters 1-10 of this title unless the context otherwise requires—
7. Notice of Dishonor.....	28-701	“Acceptance” means an acceptance completed by delivery or notification.
8. Discharge of Negotiable Instruments....	28-801	“Action” includes counterclaim and set-off.
9. Bills of Exchange.....	28-901	“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.
10. Promissory Notes and Checks.....	28-1001	“Bearer” means the person in possession of a bill or note which is payable to bearer.
11. Uniform Sales—Formation of Contract..	28-1101	“Bill” means bill of exchange, and “note” means negotiable promissory note.
12. Transfer of Property as Between Seller and Buyer.....	28-1201	“Delivery” means transfer of possession, actual or constructive, from one person to another.
13. Performance of Contract.....	28-1301	“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.
14. Rights of Unpaid Seller Against Goods...	28-1401	“Indorsement” means an indorsement completed by delivery.
15. Action for Breach of Contract.....	28-1501	“Instrument” means negotiable instrument.
16. Interpretation	28-1601	“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.
17. Bulk Sales.....	28-1701	“Person” includes a body of persons, whether incorporated or not.
18. Warehouse Receipts—Issuance of Receipts	28-1801	“Value” means valuable consideration.
19. Obligations and Rights of Warehousemen Upon Their Rights.....	28-1901	“Written” includes printed, and “writing” includes print.
20. Negotiation and Transfer of Receipts....	28-2001	The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable.
21. Criminal Offenses.....	28-2101	In determining what is a “reasonable time” or an “unreasonable time” regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case.
22. Interpretation	28-2201	Where the day or the last day for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.
23. Fiduciaries	28-2301	In any case not provided for in chapters 1-10 of this title the rules of the law merchant shall govern. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1304.)
24. Bonds and Undertakings.....	28-2401	
25. Assignment of Choses in Action.....	28-2501	
26. Assignments for Benefit of Creditors....	28-2601	
27. Interest and Usury.....	28-2701	
28. Computation of Time.....	28-2801	
29. Stock Transfers.....	28-2901	

Chapter 1.—NEGOTIABLE INSTRUMENTS—FORM AND INTERPRETATION

Sec.	Sec.
28-101. Definitions—Sundays and holidays—Application of the law merchant.	
28-102. Negotiability—Requirements—Form.	
28-103. Certainty as to sum—What constitutes.	
28-104. When promise is unconditional.	
28-105. Determinable future time—What constitutes.	
28-106. Negotiability—Effect of additional provisions—Promise to do any act in addition to promise of payment.	
28-107. Validity and negotiability—Effect of omissions—Seal—Particular money.	
28-108. Instrument payable on demand.	
28-109. Instrument payable to order.	
28-110. Instrument payable to bearer.	
28-111. Terms—Sufficiency.	
28-112. Date—Presumption as to.	
28-113. Antedated or postdated instrument—Validity—Effective date.	
28-114. When date may be inserted.	
28-115. Blanks—Authority to complete—Enforceability.	
28-116. Undelivered incomplete instrument—Validity.	
28-117. Delivery—When effectual—When presumed.	
28-118. Construction where instrument is ambiguous.	
28-119. Liability—Person not signing—Person signing in trade or assumed name.	
28-120. Signature by agent—Authority.	
28-121. Liability of agent.	

CODIFICATION

Chapters 1-10 of this title refer to chapter 46 of act Mar. 3, 1901, which is the Uniform Negotiable Instruments Law.

§ 28-102. Negotiability—Requirements—Form.

An instrument to be negotiable must conform to the following requirements:

First. It must be in writing and signed by the maker or drawer.

Second. It must contain an unconditional promise or order to pay a certain sum in money.

Third. It must be payable on demand or at a fixed or determinable future time.

Fourth. It must be payable to order or to bearer; and,

Fifth. Where the instrument is addressed to a drawee he must be named or otherwise indicated therein with reasonable certainty. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1305.)

NOTES TO DECISIONS

Complete and regular 1
Conditional sale note 2
Place of payment 3
Postal money orders 4
Stolen traveler's checks 5
Unconditional promise to pay 6

L. Complete and regular

In action by endorsee of promissory note against makers, evidence sustained finding that endorsee was holder in due course, notwithstanding claim that note was not complete and regular on its face based on fact that place of payment was not specified in space provided therefor and that it appeared that blanks in printed form had been filled in by different persons using different colored inks. *Manzon et ano. v. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

Mere fact that there are differences in handwriting or ink does not establish irregularity in note as a matter of law, but such things constitute factors for consideration by the trier of facts. *Id.*

By virtue of the unique nature of traveler's checks in that they become cashable upon countersigning by buyer, such checks are complete and regular on their face even though no name has been inserted in the blank space indicating to whose order the check is payable, since act of countersigning is similar to endorsement in blank, and renders check subject to negotiation by delivery. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

2. Conditional sale note

Mere fact that note on its face referred to conditional sale contract giving rise to its execution did not render it nonnegotiable. *Certified Motors, Inc. v. Nolan Loan Co., Inc., etc.* (D.C. Mun. App. 1956, 122 A. 2d 227).

Concurrent execution of note and conditional sale agreement or similar instrument does not affect characteristics of note which give it commercial value, whether agreement is attached to note or on separate piece of paper. *Id.*

3. Place of payment

With respect to negotiability, place of payment is not a material element. *Manzon et ano. v. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

4. Postal money orders

Postal money orders are not negotiable instruments. *Jaselli v. Riggs Nat. Bank* (36 App. D. C. 159, 31 L. R. A. N. S. 763, Ann. Cas. 1912C, 119).

5. Stolen traveler's checks

Attempt of buyer of traveler's checks who had countersigned same to countermand checks which had been stolen and placed in circulation was ineffectual as to holders in due course. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

6. Unconditional promise to pay

An instrument, reading "I. O. U. 2165.55 for business expense" at certain address was not "negotiable promissory instrument" within § 28-201 providing that such an instrument is deemed prima facie to have been issued for valuable consideration, as instrument contained no unconditional promise or order to pay certain sum of money on demand or at fixed or determinable future time to order or bearer. *Bader v. Williams* (D. C. Mun. App. 1948, 61 A. 2d 637).

§ 28-103. Certainty as to sum—What constitutes.

The sum payable is a sum certain within the meaning hereof, although it is to be paid—

First. With interest; or

Second. By stated instalments; or,

Third. By stated instalments, with a provision that upon default in payment of any instalment or of interest the whole shall become due; or

Fourth. With exchange, whether at a fixed rate or at the current rate; or,

Fifth. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1306.)

§ 28-104. When promise is unconditional.

An unqualified order or promise to pay is unconditional within the meaning hereof, though coupled with—

First. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or,

Second. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1307.)

NOTES TO DECISIONS

Indorsements 1
Unconditional promise to pay 2

1. Indorsements

Following indorsements were not of such nature as to destroy negotiability by being notice that promise to pay was conditional.

"As collateral for Loan, \$7,225.00.

"J. P. M.

"LOS ANGELES, CAL. — 192—.

"For value received — hereby grant and assign the within note together with all rights accrued or to accrue under deed of trust securing same, so far as same relates to this note, and waive presentment, demand, notice, protest, and notice of protest." *Seaside Nat. Bank v. Allen* (1929, 277 P. 68, 35 Ariz. 302).

2. Unconditional promise to pay

Unless changed by statute, the rule is that to be negotiable the instrument must be payable at all events and unconditionally. *United States v. Bank of New York Nat. Banking Assn.* (C. C. A. 2, 1915, 219 F. 648, L. R. A. 1915D, 797). See, also, *Rector v. Strauss* (1937, 203 S.W. 1024, 134 Ark. 374).

§ 28-105. Determinable future time—What constitutes.

An instrument is payable at a determinable future time, within the meaning hereof, which is expressed to be payable—

First. At a fixed period after date or sight; or,

Second. On or before a fixed or determinable future time specified therein; or,

Third. On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1308.)

NOTES TO DECISIONS

1. Extension of maturity

Extension of maturity of notes is not invalid because extension slip was not signed by payee or payee's transferee who permitted the payee to retain possession of notes, as the maker and payee agreed to the extension and were bound. *Counselman v. Pitzer* (1935, 79 F. 2d

707, 65 App. D. C. 71, certiorari denied 56 S. Ct. 310, 296 U. S. 650, 80 L. Ed. 463).

§ 28-106. Negotiability—Effect of additional provisions—Promise to do any act in addition to promise of payment.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

First. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or,

Second. Authorizes a confession of judgment if the instrument be not paid at maturity; or,

Third. Waives the benefit of any law intended for the advantage or protection of the obligor; or,

Fourth. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1309.)

NOTES TO DECISIONS

1. Sale of collateral securities

An agreement in a promissory note, the payment of which is secured by collateral securities, that on sale of the securities for default on the part of the maker, the holder of the note may become purchaser, is valid, and the holder's agent may purchase securities for his principal. *Metropolitan Loan & Trust Co. v. Schafer* (44 App. D. C. 356).

§ 28-107. Validity and negotiability—Effect of omissions—Seal—Particular money.

The validity and negotiable character of an instrument are not affected by the fact that—

First. It is not dated; or,

Second. Does not specify the value given, or that any value has been given therefor; or,

Third. Does not specify the place where it is drawn or the place where it is payable; or,

Fourth. Bears a seal; or,

Fifth. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1310.)

NOTES TO DECISIONS

1. Seal

A note containing the word "seal" printed to the right and directly in line with maker's signature is a sealed instrument notwithstanding the note contained no indication that the maker adopted printed seal, as regards question of limitation. *Wells v. Alropa Corp.* (1936, 82 F. 2d 887, 65 App. D. C. 281).

The validity and negotiability of a note are not affected by fact that it bears a seal. *Sigler v. Mt. Vernon Bottling Co.* (1958, 158 F. Supp. 234, affirmed 261 F. 2d 378, 104 U.S. App. D.C. 260).

§ 28-108. Instrument payable on demand.

An instrument is payable on demand—

First. Where it is expressed to be payable on demand, or at sight, or on presentation; or,

Second. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1311.)

§ 28-109. Instrument payable to order.

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

First. A payee who is not maker, drawer, or drawee; or,

Second. The drawer or maker; or,

Third. The drawee; or,

Fourth. Two or more payees jointly; or,

Fifth. One or some of several payees; or,

Sixth. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1312.)

NOTES TO DECISIONS

1. Necessary requisites

A person designated as payee of a note, having fulfilled the necessary requisites, may be a holder in due course. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

§ 28-110. Instrument payable to bearer.

The instrument is payable to bearer—

First. When it is expressed to be so payable; or,

Second. When it is payable to a person named therein or bearer; or,

Third. When it is payable to the order of a fictitious or nonexistent person and such fact was known to the person making it so payable; or,

Fourth. When the name of the payee does not purport to be the name of any person; or,

Fifth. When the only or last indorsement is an indorsement in blank. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1313.)

NOTES TO DECISIONS

Fictitious or nonexistent person 1

Indorsement in blank 2

Negotiable upon delivery 3

1. Fictitious or nonexistent person

Where, at time checks were drawn by plaintiff on his account to a certain corporation, organization of Illinois corporation had proceeded to a point where, by Illinois law, its corporate existence was beyond challenge except by state, checks were not drawn to nonexistent payee and consequently payable to bearer under Negotiable Instruments Law and two other checks previously drawn by plaintiff were not within fictitious payee rule because nonexistence of corporation was not known to plaintiff. *Callaway v. Hamilton Nat. Bank of Washington* (1952, 195 F. 2d 556, 90 U.S. App. D.C. 228).

Where plaintiff conceded that at time he drew first check on his account in defendant bank payable to a certain corporation he knew there was no corporation by that name, check was bearer paper and as to that check plaintiff, under his pleadings, was entitled to no recovery against the defendant bank for its honoring endorsement of the nonexistent corporation. *Id.*

2. Indorsement in blank

Sale of notes indorsed in blank—extension by maker without notice of sale—innocent purchaser acquires superior title. *Counselman v. Pitzer* (1935, 79 F. 2d 707, 65 App. D. C. 71, certiorari denied 56 S. Ct. 310, 296 U. S. 650, 80 L. Ed. 463).

When promissory notes were indorsed in blank by payee to a holder for value, it had the effect of making them bearer paper, and the negotiability of the notes was not destroyed by the execution of extension slips by the owner and holder of property which was covered by trust deed securing the notes, and the bank, who had possession of

notes which were fraudulently delivered to them by holder's agent as security for his own debt, had title to notes superior to that of the holder. *Ragan v. Wardell* (1937, 91 F. 2d 253, 67 App. D. C. 222).

Traveler's checks, agreed by buyer to be negotiated only by countersigning in presence of payee, became fully negotiable when countersigned, even though signed out of presence of payee, and in absence of showing of fraud or deceit on part of seller, seller was bound to honor them when presented by holder in due course, notwithstanding fact that they had been stolen from buyer. *Emerson v. American Exp. Co.* (D.C. Mun. App. 1952, 90 A. 2d 236).

Attempt of buyer of traveler's checks who had countersigned same to countermand checks which had been stolen and placed in circulation was ineffectual as to holders in due course. *Id.*

3. Negotiable upon delivery

Notes payable to bearer are negotiable upon delivery. *Commercial Nat. Bank v. McCandlish* (1928, 23 F. 2d 986, 57 App. D. C. 378).

§ 28-111. Terms—Sufficiency.

The instrument need not follow the language herein employed, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1314.)

NOTES TO DECISIONS

1. Complete and regular

By virtue of the unique nature of traveler's checks in that they become cashable upon countersigning by buyer, such checks are complete and regular on their face even though no name has been inserted in the blank space indicating to whose order the check is payable, since act of countersigning is similar to endorsement in blank, and renders check subject to negotiation by delivery. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

§ 28-112. Date—Presumption as to.

Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1315.)

NOTES TO DECISIONS

1. Parol evidence

Permitting plaintiff to testify that two checks given as part payment on note were postdated did not violate parol evidence rule in suit between original parties to note. *Cooper v. Marosy* (D. C. Mun. App. 1945, 42 A. 2d 135).

§ 28-113. Antedated or postdated instrument—Validity—Effective date.

The instrument is not invalid for the reason only that it is antedated or postdated: *Provided*, That this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1316.)

NOTES TO DECISIONS

1. Post-dated checks

Post-dated checks are considered as negotiable instruments similar to bills of exchange payable in the future and their purpose is to obtain extension of credit. *Daine v. Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

§ 28-114. When date may be inserted.

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein

the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him the date so inserted is to be regarded as the true date. Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1317.)

§ 28-115. Blanks—Authority to complete—Enforceability.

Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument, operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time; but if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1318.)

NOTES TO DECISIONS

Erasures and substitutions 1

Material alteration 2

1. Erasures and substitutions

Although one is given permission to fill blanks in a note, he cannot subsequently recover it and erase material words and substitute and interline others. *Ofenstein v. Bryan* (20 App. D. C. 1).

Authority to fill blank notes does not give additional authority to change the terms by erasure or interlineation. *National Capital Bank v. Bryan* (20 App. D. C. 26).

2. Material alteration

Where the alteration is material, and such as reasonably to excite suspicion, it is incumbent upon the party offering it in support of his claim thereunder, to give some evidence tending to explain its condition. *Ofenstein v. Bryan* (20 App. D. C. 1).

§ 28-116. Undelivered incomplete instrument—Validity.

Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1319.)

NOTES TO DECISIONS

1. Liability of maker

Where thief stole properly signed check, typed in as payee his own name, endorsed check and had it cashed at drawee bank, depositor rather than bank would have to bear loss. *The Concordia Lutheran Evangelical Church v. The United States Casualty Co. et al.* (D. C. Mun. App. 1955, 115 A. 2d 307).

§ 28-117. Delivery—When effectual—When presumed.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery,

in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1320.)

NOTES TO DECISIONS

1. Presumption of transfer of title

Transfer of possession of a negotiable instrument is presumably a transfer of title, and especially is this true when the transfer is made to one who is not a debtor or is under no obligation to receive or pay it. *Lee v. Mitcham* (1938, 98 F. 2d 298, 69 App. D. C. 17, 117 A. L. R. 1427).

§ 28-118. Construction where instrument is ambiguous.

Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

First. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

Second. Where the instrument provides for the payment of interest without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

Third. Where the instrument is not dated it will be considered to be dated as of the time it was issued.

Fourth. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

Fifth. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election.

Sixth. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

Seventh. Where an instrument containing the words, "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1321.)

NOTES TO DECISIONS

1. Parol evidence

In absence of fraud, accident, or mistake, parol evidence of an oral agreement alleged to have been made at the time of drawing, making, or indorsing a bill or note cannot be permitted to vary, qualify, or contradict, or to add to or subtract from, the absolute terms of the written contract. *Hutchins v. Langley* (27 App. D. C. 234).

§ 28-119. Liability—Person not signing—Person signing in trade or assumed name.

No person is liable on the instrument whose signature does not appear thereon, except as herein other-

wise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1322.)

NOTES TO DECISIONS

Agreement to pay 1 Real parties in interest 2

1. Agreement to pay

Person who did not sign note was not liable thereon. *Rouse v. United States* (1954, 215 F. 2d 872, 94 U.S. App. D.C. 386).

Where defendant purchased encumbered property without assuming liability on note secured by deed of trust but, to obtain extension, agreed to pay note and thereafter sold property to one who did not assume indebtedness, the fact that holder of note granted extension to defendant's vendee without defendant's knowledge or consent did not preclude enforcement of defendant's agreement since defendant's liability was not a "secondary liability". *Ober v. Riggs Nat. Bank of Washington, D. C.* (1943, 31 A. 2d 877).

2. Real parties in interest

Where note which was executed as part of purchase price of realty and which was secured by deed of trust thereon bore only the signature of maker with no indication that she executed it in other than her individual capacity, her employers were not liable for deficiency on foreclosure by exercise of power of sale, on any theory that employers were real parties in interest and that maker executed the papers for employers as their agent. *Stearns et al. v. Formant et al., etc.* (1957, 249 F. 2d 527, 102 U.S. App. D.C. 12).

§ 28-120. Signature by agent—Authority.

The signature of any party may be made by a duly-authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1323.)

NOTES TO DECISIONS

1. Real parties in interest

Where note which was executed as part of purchase price of realty and which was secured by deed of trust thereon bore only the signature of maker with no indication that she executed it in other than her individual capacity, her employers were not liable for deficiency on foreclosure by exercise of power of sale, on any theory that employers were real parties in interest and that maker executed the papers for employers as their agent. *Stearns et al. v. Formant et al., etc.* (1957, 249 F. 2d 527, 102 U.S. App. D.C. 12).

§ 28-121. Liability of agent.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized, but the mere addition of words describing him as an agent or as filling a representative character without disclosing his principal does not exempt him from personal liability. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1324.)

NOTES TO DECISIONS

1. Presumption of agency

Under this section, the instrument creates a presumption of agency which may be rebutted by competent proof. *Eisinger v. E. J. Murphy Co.* (1923, 285 F. 931, 52 App. D. C. 197).

Signer is not liable if he was duly authorized, but mere addition of words describing him as agent does not exempt him from liability. There is a presumption that an acceptance of a draft on an individual described as agent, is the act of the agent, but it may be rebutted by competent proof. *Id.*

§ 28-122. Signature by procuration.

A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. (Mar. 3, 1901, 31 Stat. 1399, ch. 854. § 1325.)

§ 28-123. Indorsement by corporation or infant.

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1326.)

NOTES TO DECISIONS

Accommodation indorsement 1
Omission of word 2
Seal of corporation 3

1. Accommodation indorsement

Whether trading corporation had implied power to make indorsement of negotiable paper for accommodation solely, it is not necessary to consider, but assuming the want of power, the defense is unavailable where the party acting upon the faith of that indorsement had no notice of the fact, as its effect was, nevertheless, to pass the property therein. *Willard v. Crook* (21 App. D. C. 237).

2. Omission of word

Omission of word "by" between title of corporation, and officer acting for it in the indorsement, is immaterial. *Clark v. Read* (12 App. D. C. 343).

3. Seal of corporation

Impression of the seal of a corporation upon an instrument otherwise negotiable, especially when such impression is in connection with an indorsement of the note by such corporation, does not of itself suffice to restrain the negotiability of the paper or to convert it into a specialty. *Clark v. Read* (12 App. D. C. 343).

§ 28-124. Signature forged or without authority.

Where a signature is forged or made without the authority of the person whose signature it purports to be it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1327.)

CROSS REFERENCE

Liability of bank or trust company on forged, altered, or raised check, see §§ 28-1008 to 28-1010.

NOTES TO DECISIONS

Generally 1
Acceptance of forged paper 2
Bill paid upon presentment 3
Defenses 4
Forgery against United States 5
Historical 6
Liability of bank 7

1. Generally

Where signature of payee of check is forged, it is inoperative and gives no right to enforce payment unless the party against whom writ is sought to enforce the right is precluded from setting up the forgery. *Washington Loan & Trust Co. v. U. S.* (1943, 134 F. 2d 59, 77 U. S. App. D. C. 284).

2. Acceptance of forged paper

If one accepts forged paper purporting to be his own and pays it to a holder for value, the Supreme Court has said that it is undoubtedly true as a general rule of commercial law that he cannot recall the payment. What he has done amounts to an adoption of the paper as genuine. He is presumed to know his own signature. *United States*

v. Bank of New York Nat. Banking Assn. (C. C. A. 2, 1915, 219 F. 648, L. R. A. 1915D, 797).

3. Bill paid upon presentment

Principle applies as well to the case of a bill paid upon presentment as to one accepted and afterwards paid. *United States v. Bank of New York Nat. Banking Assn.* (C. C. A. 2, 1915, 219 F. 648, L. R. A. 1915D, 797).

4. Defenses

In action to recover amount paid out by defendant bank on checks drawn by plaintiff on his account to a corporation on ground that endorsements of checks were not those of the intended payee, defenses of estoppel, negligence and plaintiff's laches would have to be pleaded and proved by defendant bank. *Callaway v. Hamilton Nat. Bank of Washington* (1952, 195 F. 2d 556, 90 U.S. App. D.C. 228).

Under this section providing that a person acquiring an instrument under forced endorsement cannot enforce it against any party thereto unless such party is "precluded" from setting up forgery as a defense, negligence is considered a basis to "preclude" the party from setting up the forgery but it must be such negligence as directly and proximately affects the conduct of the party in passing the forged instrument and must contribute to and induce the acceptance of the check under the forged endorsement, and it must be negligence lulling the party paying on the forged endorsement, into relaxing its vigilance against forgeries. *Saul Co. v. Rich Wine and Liquor Co.* (D. C. Mun. App. 1956, 120 A. 2d 208).

Entrusting checks to a trusted employee is not such negligence as will "preclude" the drawer within the this section providing that a person acquiring an instrument under a forged endorsement cannot enforce its payment against any party thereto unless such party is "precluded" from setting up the forgery. *Id.*

In action to recover loss sustained by plaintiff in cashing checks bearing endorsements forged by defendant's employee, where there was no showing that plaintiff relied or even knew of defendant's practice of delivering checks to the employee or that it was aware that under the defendant's accounting practices, it was possible for the employee to fraudulently requisition checks, plaintiff's cashing of the checks without investigation was at its peril and it was required to bear the loss sustained thereby. *Id.*

The rule that as between two innocent persons, one whose conduct placed it in the power of a third party to occasion the loss must suffer, is properly applied as respects responsibility for loss occasioned by the cashing of checks forged by the drawer's employee only when a check is issued and made payable to an imposter. *Id.*

5. Forgery against United States

United States cannot recover money paid on draft that has forged signature of one of its consuls, where the defendant has not been guilty of negligence so as to contribute to the fraud. *United States v. Bank of New York Nat. Banking Assn.* (C. C. A. 2, 1915, 219 F. 648, L. R. A. 1915D, 797).

6. Historical

The principle established by *Price v. Neale* (3 Burrows, 1354), decided in 1762, has been incorporated into uniform Negotiable Instruments Act [chapters 1—10 of this title], which has been adopted in the District of Columbia. That act provides that the acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance and admits "the existence of the drawer, the genuineness of his signature, his capacity and authority to draw the instrument." As payment is equivalent to acceptance, the United States under the act admitted the genuineness of the drawer's signature if the bill was negotiable. *United States v. Bank of New York Nat. Banking Assn.* (C.C.A. 2, 1915, 219 F. 648, L.R.A. 1915D, 797).

7. Liability of bank

In action to recover amount paid out by defendant bank on checks drawn by plaintiff on his account to a corporation on ground that endorsements of checks were not those of the intended payee, defenses of estoppel, negligence and plaintiff's laches would have to be pleaded and proved by defendant bank. *Callaway v. Hamilton Nat. Bank of Washington* (1952, 195 F. 2d 556, 90 U.S. App. D.C. 228).

Liability of bank for payment of check on forged indorsement. *Central Nat. Bank v. National Met. Bank* (31 App. D. C. 391, 17 L. R. A. N. S. 520).

Bank accepting indorsed check without requiring identification of payee's signature, which was in fact forged, is liable to drawee bank on guaranty of prior indorsements. *District Nat. Bank v. Washington Loan & Trust Co.* (1933, 65 F. 2d 831, 62 App. D. C. 198).

When one bank received money from a second bank on checks to husband and wife which it had acquired through forged indorsements and which under the Negotiable Instruments Law were legally uncollectible, the conduct of the second bank in delivering the checks to the husband did not, in the circumstances, preclude it from setting up the forgery of the indorsement. *City Bank v. Hamilton Nat. Bank* (1940, 108 F. 2d 588, 71 App. D. C. 255).

Price v. Neale goes upon the same theory as do those cases which hold that a bank is bound to know its customer's signature, and has no remedy where it has paid or certified a forged check to a bona fide holder for value. *United States v. Bank of New York Nat. Banking Assn.* (C. C. A. 2, 1915, 219 F. 648, L. R. A. 1915D, 797).

Where Government employee made up fraudulent payroll vouchers for fictitious employees of an imaginary C. C. camp and such employee forged endorsement on checks made payable to the fictitious employees but shortage was not discovered or suspected during four or five years during which the employee operated, the Government was entitled to recover from banks amount paid to them on their presentation of checks bearing the forged endorsements and neither negligence in issuance of checks nor late discovery of forgeries was defense which banks could interpose under "equitable estoppel" doctrine since the Government as drawer owed no duty to the banks with reference to the endorsements and the banks were under duty to determine the genuineness of the endorsements. *Washington Loan & Trust Co. v. U. S.* (1943, 134 F. 2d 59, 77 U. S. App. D. C. 284).

Where bank presenting checks for payment did not designate or identify itself as agent or trustee for collection, and did not represent itself as acting only for the account of its principal, but instead indorsed checks so as to imply to drawee that prior payments had been made to and acknowledged by identical persons named as payees, and where warranty, which was false, was relied on by the United States, as drawee, the presenting bank could not escape liability on ground that it acted only as agent for another. *National Metropolitan Bank v. U. S.* (1944, 142 F. 2d 474, 79 U. S. App. D. C. 54, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

Where checks were drawn by one governmental agency on another, were negligently issued on fraudulent vouchers, names of payees were forged by dishonest employee of government, government was negligent in not sooner discovering fraud, and checks were cashed or deposited in banks and sums of checks thereafter paid on demand by the government on faith of the banks' guarantee of all indorsements, the government was entitled to recover amount of the checks from bank presenting them for payment, since government as drawer and drawee owed no duty to banks with reference to indorsements, whereas it was obligation of banks, at their peril, to be sure the indorsements which they guaranteed were genuine. *Id.*

Holder of checks was under statutory duty to determine genuineness of indorsement and when it presented checks for payment with a warranty, express or implied, that indorsements were in all respects regular, holder thereby made itself liable to drawer or drawee if it afterwards was shown that indorsements were forged. *Id.*

Chapter 2.—CONSIDERATION

Sec.

28-201. Presumption of valuable consideration.

28-202. What is value.

28-203. Who is holder for value.

28-204. Holder of lien on instrument is holder for value.

28-205. Absence or failure of consideration is defense.

28-206. "Accommodation parties" defined—Liability.

§ 28-201. Presumption of valuable consideration.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1328.)

NOTES TO DECISIONS

Acknowledgment of debt 1
Burden of proof 2
Presumption rebuttable 3
Prima facie evidence 4

1. Acknowledgment of debt

Generally, instrument containing no unconditional promise or order to pay certain sum of money on demand or at fixed or determinable future time to order or bearer is not good negotiable instrument, but merely acknowledgment of debt, to which presumptions of this section, such as that of valuable consideration, are inapplicable. *Bader v. Williams* (D. C. Mun. App. 1948, 61 A. 2d 637).

2. Burden of proof

When defendant alleged want of consideration for the note, this did not impose upon the plaintiff the burden of proof. *Towles v. Tanner* (21 App. D. C. 530).

If, upon proof of fraud or illegality in the inception of the negotiable paper, the indorsee or transferee thereof cannot avail himself of the presumption of bona fide ownership, certainly as between the original parties thereto, upon proof of want or failure of consideration, the burden is on the plaintiff to prove by a preponderance of the evidence, without the aid of the presumption of consideration, that he is a holder for value. *Holley v. Smalley* (1921, 269 F. 694, 50 App. D. C. 178).

Where defense, in suit on note, is want of consideration, defendant must demonstrate such proposition with evidence. *Carter v. Purcellville National Bank* (D.C. Mun. App. 1960, 158 A. 2d 325).

In action on note by bank against accommodation endorser, wherein endorser contended that note was made in contemplation of discharge and cancellation of old notes, and that since old notes were not cancelled there was failure of consideration, finding that there was no agreement to cancel old notes meant not only that agreement did not exist but also that endorser had failed to prove defense. *Id.*

In action upon note when defense is want of consideration or mistake, defendant has burden to present evidence to sustain such defense, which must be more than a mere suggestion of a defense. *Sheriger v. Gruner* (D. C. Mun. App. 1943, 34 A. 2d 35).

3. Presumption rebuttable

When the plaintiff introduced the note and rested, he had made a prima facie case which, if unchallenged, would have been sufficient to sustain a verdict and judgment in his favor. This amounts, however, to a mere legal presumption, which disappears when confronted by facts setting up either absence or failure of consideration. *Holley v. Smalley* (1921, 269 F. 694, 50 App. D. C. 178).

Where the consideration for a note was the surrender of certain prior notes, which the payee failed to do, there was a complete failure of consideration for the note first mentioned. *Id.*

Presumption that negotiable instrument issues for valuable consideration is rebuttable legal presumption. *Carter v. Purcellville National Bank* (D.C. Mun. App. 1960, 158 A. 2d 325).

4. Prima facie evidence

As the consideration is presumed, evidence to establish a consideration is not required. *Towles v. Tanner* (21 App. D. C. 530).

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. *Id.*

Plaintiff made a prima facie case by the authentication and introduction of the note against the maker, see § 28-205 (31 Stat. 1399, ch. 854, § 1332). *Kiess v. Baldwin* (1937, 90 F. 2d 392, 67 App. D. C. 147).

§ 28-202. What is value.

Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1329.)

NOTES TO DECISIONS

Assumption of liability 1
Extension of time 2

1. Assumption of liability

Assumption of a liability at the request of the promisor is a valuable consideration, as, for example, a guaranty of the promisor's debt. *Commercial Nat. Bank v. McCandlish* (1928, 23 F. 2d 986, 57 App. D. C. 378).

2. Extension of time

When note was given to indorser in exchange for six months' extension and a previous note to bank, for which the indorser gave his own note to bank, which turned over to the indorser the makers' original note for collection, it was supported by consideration and the bank was estopped from making claim on original note. *McNeill v. Lilly* (1936, 82 F. 2d 620, 65 App. D. C. 210).

An extension of time and forbearance to sue on old notes would constitute sufficient consideration for renewal note. *The Purcellville National Bank v. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

In action against accommodation endorser who claimed that there was no consideration for renewal note, and payee contended that consideration was an extension of time and forbearance to sue on the old notes, that there was no agreement to discharge the old notes and that even if there was such agreement payee was not required to do so before coming into court, there were material issues of fact involved precluding grant of summary judgment on ground of lack of consideration, since whether payee's acceptance of renewal note put payee under duty to cancel original notes depended on whether payee agreed to do so, and intent of parties determined whether such agreement existed, and that in turn was a question of fact. *Id.*

§ 28-203. Who is holder for value.

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1330.)

NOTES TO DECISIONS

1. In general

A promissory note in the hands of a bona fide purchaser for value without notice is valid in District of Columbia even though it is made upon a gambling consideration. *Wirt v. Stubblefield* (17 App. D. C. 283).

"One who holds a negotiable note taken before maturity as collateral security for a preexisting debt, is a holder for value." *Thompson v. Franklin Nat. Bank* (45 App. D. C. 218, certiorari denied 37 S. Ct. 21, 242 U. S. 637, 61 L. Ed. 540).

Evidence sustained finding that indorsee was bona fide holder for value of note even though payee breached agreement that he would complete his work. *Gross v. Delaney* (D. C. Mun. App. 1943, 34 A. 2d 629).

§ 28-204. Holder of lien on instrument is holder for value.

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1331.)

NOTES TO DECISIONS

Holder of part of principal 1
Purchase of note at auction 2

1. Holder of part of principal

One may be holder for value and a holder in due course of only a part of the principal amount of a note.

Tucker et ano. v. Meredith (1956, 232 F. 2d 347, 97 U.S. App. D.C. 90).

2. Purchase of note at auction

Where plaintiff executed note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, defendant's status as a holder in due course when taking a note as collateral was not lost when he bought the note at auction sale when note was past due. *Tucker et ano. v. Meredith* (1956, 232 F. 2d 347, 98 U.S. App. D.C. 90).

§ 28-205. Absence or failure of consideration is defense.

Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1332.)

NOTES TO DECISIONS

Defenses 1
Failure of consideration 2
False and fraudulent representations 3
Partial failure of consideration 4
Questions of fact 5
Substitution of notes 6

1. Defenses

Threat to prosecute son is sufficient duress and is good defense on promissory note. *O'Toole v. Lamson* (41 App. D. C. 276).

No particular sanctity attaches to a promissory note and is subject, at the suit of the original payee, to any defense available against the enforcement of a written contract. *McReynolds v. National Woodworking Co.* (1928, 26 F. 2d 975, 58 App. D. C. 197).

2. Failure of consideration

There was no evidence from which a jury could have concluded that there was an absence of consideration, as the record did not show evidence that wife did not give her note in exchange for the husband's or that it should be substituted for husband's note, or that she gave note only as security. *Kiess v. Baldwin* (1937, 90 F. 2d 392, 67 App. D. C. 147).

Where payee of a note fails to furnish promised main or chief consideration therefor, maker should be relieved from paying note sued on. *Pappas v. Courembis* (D. C. Mun. App. 1951, 82 A. 2d 757).

Payee's promise to complete his work was a valid consideration for note, and whatever defense, if any, maker might thereafter have, would be failure, not lack, of consideration. *Gross v. Delaney* (D. C. Mun. App. 1943, 34 A. 2d 629).

One suing wife on spouses' I. O. U. for money advanced by plaintiff on purchase price of restaurant business to be conducted by spouses jointly could not recover on theory that detriment suffered by plaintiff as result of making further advances on account of such business in reliance on wife's signature of instrument constituted sufficient consideration therefor, in absence of evidence that plaintiff told wife that he would make no further advances unless she signed instrument. *Bader v. Williams* (D. C. Mun. App. 1948, 61 A. 2d 637).

Where corporation's president honestly believed that he had interest in land which president and defendant's wife agreed to buy and title to which was conveyed to wife who paid entire purchase price when president failed to pay his half of additional amount required for settlement of purchase contract, and defendant and wife recognized president's claim, note executed by defendant in partial consideration of president's relinquishment of claim was supported by valid consideration, notwithstanding that the consideration passed from president to wife, and that president designated corporation as payee of note. *Bel-fiore v. B. J. Crivella, Inc.* (D.C. Mun. App. 1948, 60 A. 2d 542).

3. False and fraudulent representations

Although contract is in writing and its terms cannot be varied by parol evidence, it is admissible to show evidence of false and fraudulent representations made to

induce the contract as to one of original parties or one substituted for the purpose of excluding the defense of fraud. *First Nat. Bank v. Fox* (40 App. D. C. 430).

4. Partial failure of consideration

A partial failure of consideration would be a defense pro tanto to the note which was given in place of prior notes which he had signed as an indorser, and when he was only liable on part of the prior notes. *Ryan v. Security Sav. & Commercial Bank* (1921, 271 F. 366, 50 App. D. C. 292).

Partial failure of consideration is a defense pro tanto. *Id.*

Because there is a partial failure of consideration sufficient to defeat recovery on one or more notes, it does not necessarily follow that there is sufficient failure of consideration to defeat recovery on an additional note given in same transaction. *Pappas v. Courembis* (D. C. Mun. App. 1951, 82 A. 2d 757).

Where defendant delivered five promissory notes in connection with sale of a business, and in a suit on two of notes defendant raised defense of partial failure of consideration, and judgment was entered thereon, judgment on the two notes was not res judicata to another suit on third note where same defense of partial failure of consideration was interposed, since partial failure of consideration on two of notes did not necessarily mean that there was a failure of consideration on third note, even though it was given as part of same transaction. *Id.*

5. Questions of fact

In action for face value of checks given to defendant's employer by defendant and cashed by plaintiff pursuant to plan whereby defendant and defendant's employer would exchange checks, and defendant's employer would cash defendant's check and deposit proceeds in bank to make good check of defendant's employer when presented for payment, which action was brought after check was returned by defendant's bank for insufficiency of funds, whether plaintiff had cashed check under circumstances making plaintiff holder in due course was for jury under evidence. *Bolitt v. Morgenstein* (D.C. Mun. App. 1951, 81 A. 2d 656).

6. Substitution of notes

Surrender of one note and the taking of another in substitution therefor is a valid consideration for the latter, and the fact that no consideration moves to the maker of the substituted note is immaterial. *Kiess v. Baldwin* (1937, 90 F. 2d 392, 67 App. D. C. 147).

§ 28-206. "Accommodation parties" defined—Liability.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1333.)

NOTES TO DECISIONS

Consideration 1
Defenses 2
Holder for value 3
Married woman 4
Obligation of accommodation maker 5

1. Consideration

In suit on note, accommodation endorser's defense that there was failure of consideration was required to be directed to consideration flowing to maker, not to endorser. *Carter v. Purcellville National Bank* (D.C. Mun. App. 1960, 158 A. 2d 325).

In action against accommodation endorser who claimed that there was no consideration for renewal note, and payee contended that consideration was an extension of time and forbearance to sue on the old notes, that there was no agreement to discharge the old notes and that even if there was such agreement payee was not required to do so before coming into court, there were material issues of fact involved precluding grant of summary judgment on ground of lack of consideration, since whether payee's acceptance of renewal note put payee under duty to cancel original notes depended on whether payee agreed to do so, and intent of parties determined whether such agreement existed, and that in turn was a question of fact. *The Purcellville National Bank v. Carter* (D.C. Mun. App. 1958, 146 A. 2d 206).

2. Defenses

If a defendant in suit on promissory note was accommodation maker, and plaintiff was not holder for value, defendant would have sufficient defense against suit. *Brice v. Herrmann* (D. C. Mun. App. 1957, 128 A. 2d 790).

3. Holder for value

A holder for value of promissory note may recover against accommodation maker, though at time of taking instrument he knew it to be such paper. *Brice v. Herrmann* (D. C. Mun. App. 1957, 128 A. 2d 790).

4. Married woman

Married woman's liability on note dated and made payable in Washington, D. C., which maker signed in Pennsylvania, is determined by law of District of Columbia as to question of wife's capacity to sign note as accommodation maker for her husband. *Kiess v. Baldwin* (1935, 74 F. 2d 470, 64 App. D. C. 66).

5. Obligation of accommodation maker

Obligation of an accommodation maker, though made without value received by him, is none the less an obligation recognized in law to be supported by a valid consideration. *Chase v. Du Pont Nat. Bank* (C. C. A. 3. 1922, 277 F. 235).

Chapter 3.—NEGOTIATION

Sec.

- 28-301. Definition—Bearer instrument—Order instrument.
- 28-302. Indorsement—How made—Sufficiency.
- 28-303. Indorsement must be of entire instrument.
- 28-304. Kinds of indorsement.
- 28-305. Special indorsement—Indorsement in blank.
- 28-306. Blank indorsement may be converted into special indorsement.
- 28-307. Restrictive indorsement.
- 28-308. Effect of restrictive indorsement—Rights of indorsee.
- 28-309. Qualified indorsement.
- 28-310. Conditional indorsement.
- 28-311. Special indorsement—Instrument payable to bearer.
- 28-312. Indorsement by joint payees not partners.
- 28-313. Payable to cashier.
- 28-314. Payee's name misspelled.
- 28-315. Indorsement in representative capacity.
- 28-316. Presumption of negotiation before maturity.
- 28-317. Place of indorsement—Presumption.
- 28-318. Negotiable instrument continues as such.
- 28-319. Striking out indorsements.
- 28-320. Transfer without indorsing—Time of taking effect.
- 28-321. Transfer back to prior party—Rights of intervening party.

§ 28-301. Definition—Bearer instrument—Order instrument.

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder, completed by delivery. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1334.)

NOTES TO DECISIONS

In general 1
Indorsement and delivery 2
Wrongful delivery 3

1. In general

The provisions of this section that instrument payable to bearer is negotiated by delivery and that instrument payable to order is negotiated by indorsement of holder,

completed by delivery, was not intended to define exclusive method of negotiation. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D.C. Mun. App. 1957, 131 A. 2d 404).

2. Indorsement and delivery

When party took title by delivery under the blank indorsement of the payee, its effect was to make the note payable to bearer, and pass by delivery. *Jerman v. Edwards* (29 App. D. C. 535).

It is essential for the negotiation of note payable to order that there be an indorsement and delivery. *McKee v. District Nat. Bank* (38 App. D. C. 465).

3. Wrongful delivery

When bank had possession of note indorsed in blank which belonged to another, and wrongly transferred it to another's file, the executor of the latter is not holder in due course for the note was not negotiated. *Washington Loan & Trust Co. v. Cowgill* (1936, 85 F. 2d 255, 66 App. D. C. 89).

§ 28-302. Indorsement—How made—Sufficiency.

The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1335.)

NOTES TO DECISIONS

1. Order of endorsements

Endorsements on promissory notes are required to be written on the instrument itself or paper attached thereto but there is no requirement that the endorsements be written in any particular order, especially where the true sequence is clearly indicated by the endorsements themselves. *Manzon et ano. v. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

§ 28-303. Indorsement must be of entire instrument.

The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsee severally, does not operate as a negotiation of the instrument; but where the instrument has been paid in part it may be indorsed as to the residue. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1336.)

§ 28-304. Kinds of indorsement.

An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1337.)

§ 28-305. Special indorsement—Indorsement in blank.

A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1338.)

NOTES TO DECISIONS

Effect 1
General indorsement 2
Note 3

1. Effect

A check after having been endorsed in blank may be negotiated by its holder without further endorsement. *Milton v. United States* (1940, 110 F. 2d 556, 71 App. D. C. 394).

2. General indorsement

A general indorsement by demanding bank is the equivalent of representation that bank has valid title to check and to proceeds in its own right and it must make restitution when its warranty is shown to be untrue. *National Metropolitan Bank v. U. S.* (1944, 142 F. 2d 474, 79 U. S. App. D. C. 54, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

3. Note

A note endorsed in blank may be negotiated by delivery. *Mazo v. Ed. L. Stock, Inc.* (1943, 31 A. 2d 660).

§ 28-306. Blank indorsement may be converted into special indorsement.

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1339.)

§ 28-307. Restrictive indorsement.

An indorsement is restrictive which either—

First. Prohibits the further negotiation of the instrument; or,

Second. Constitutes the indorsee the agent of the indorser; or,

Third. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1340.)

NOTES TO DECISIONS

1. Failure to restrict

Where bank presenting checks for payment did not designate or identify itself as agent or trustee for collection, and did not represent itself as acting only for the account of its principal, but instead indorsed checks so as to imply to drawee that prior payments had been made to and acknowledged by identical persons named as payees, and where warranty, which was false, was relied on by the United States, as drawee, the presenting bank could not escape liability on ground that it acted only as agent for another. *National Metropolitan Bank v. U. S.* (1944, 142 F. 2d 474, 79 U. S. App. D. C. 54, affirmed 65 S. Ct. 354, 323 U. S. 454, 89 L. Ed. 383).

An unconditional demand for payment of check was a representation of valid title in demanding bank and a certification that all prior indorsements were regular and valid and entitled the holder to receive the proceeds. *Id.*

§ 28-308. Effect of restrictive indorsement—Rights of indorsee.

A restrictive indorsement confers upon the indorsee the right—

First. To receive payment of the instrument.

Second. To bring any action thereon that the indorser could bring.

Third. To transfer his rights as such indorsee where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1341.)

NOTES TO DECISIONS

Additional endorsements 1
Endorsement for collection account 2

1. Additional endorsements

Where note bore two endorsements, one for collection account of payee and other without recourse to payee, and it did not appear which endorsement was made first, the holder was entitled to maintain suit to collect unpaid

balance of note. *Mazo v. Ed L. Stock, Inc.* (1943, 31 A. 2d 660).

2. Endorsement for collection account

An endorsement for collection account constitutes a "restrictive endorsement" conferring on the endorsee right to bring any action endorser could bring. *Mazo v. Ed L. Stock, Inc.* (1943, 31 A. 2d 660).

§ 28-309. Qualified indorsement.

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1342.)

§ 28-310. Conditional indorsement.

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1343.)

§ 28-311. Special indorsement—Instrument payable to bearer.

Where an instrument payable to bearer is indorsed specially it may, nevertheless, be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1344.)

§ 28-312. Indorsement by joint payees not partners.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1345.)

§ 28-313. Payable to cashier.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1346.)

§ 28-314. Payee's name misspelled.

Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as therein described, adding, if he think fit, his proper signature. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1347.)

§ 28-315. Indorsement in representative capacity.

Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1348.)

§ 28-316. Presumption of negotiation before maturity.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is

deemed prima facie to have been effected before the instrument was overdue. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1349.)

§ 28-317. Place of indorsement—Presumption.

Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1350.)

§ 28-318. Negotiable instrument continues as such.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1351.)

§ 28-319 Striking out indorsements.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1352.)

NOTES TO DECISIONS

In general 1 Restrictive subsequent indorsement 2

1. In general

This section is but declaratory of the law as it was recognized before the adoption of the Negotiable Instruments Act [chapters 1—10 of this title]. *Jerman v. Edwards* (29 App. D. C. 535).

2. Restrictive subsequent indorsement

One is entitled to strike out a subsequent indorsement when he does not claim title thereunder, and when there is no defense to the note as against anyone whose name appears on it, it is immaterial whether or not such subsequent indorsement is restrictive. *Jerman v. Edwards* (29 App. D. C. 535).

§ 28-320. Transfer without indorsing—Time of taking effect.

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1353.)

NOTES TO DECISIONS

Construction 1 Evidence 2 Holder in due course 3 Right to maintain action 4

1. Construction

This section entitling transferee to endorsement applies to negotiable instruments. *Certified Motors, Inc. v. Nolan Loan Co., Inc., etc.* (D. C. Mun. App. 1956, 122 A. 2d 227).

2. Evidence

Plaintiff, to maintain action on negotiable note as transferee without formal indorsement, was required to offer evidence of transfer to it by payee and that such transfer was for value, and production by plaintiff of note did not alone prima facie establish his title or ownership. *Bonuso v. Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

3. Holder in due course

A physical holder of an unindorsed note drawn to order is not a "holder in due course" and a transfer of the note without indorsement, although valid under §§ 28-320 to

28-402, destroys negotiability of the note. *Bonuso v. Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

4. Right to maintain action

This section, by vesting title of transferor in transferee without formal indorsement, entitles transferee to maintain an action in his own name on a negotiable instrument. *Bonuso v. Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

§ 28-321. Transfer back to prior party—Rights of intervening party.

Where an instrument is negotiated back to a prior party such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1354.)

Chapter 4.—RIGHTS OF HOLDER

Sec.

28-401. May sue in own name—Discharge of instrument by payment.

28-402. "Holder in due course" defined.

28-403. Holder in due course—Demand instrument.

28-404. Notice before full amount is paid.

28-405. Defective title—Definition.

28-406. Notice of infirmity—Sufficiency.

28-407. Rights of holder in due course.

28-408. Rights of holder other than holder in due course.

28-409. Presumption as to holding in due course—Burden of proof when transferor's title shown defective.

28-410. Lost or miscarried bill of exchange—Drawer to issue duplicate.

§ 28-401. May sue in own name—Discharge of instrument by payment.

The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1355.)

NOTES TO DECISIONS

Check given as deposit 1

Holder by purchase

After maturity 2

Before maturity 3

Holder under

Indorsement in trust 4

Restrictive indorsement 5

Transferee without indorsement 6

1. Check given as deposit

Where check given as deposit to be applied in part payment of purchase price was made payable to broker handling sale for vendor, broker was the proper party to bring an action on the check. *Schlosberg v. Shannon & Luchs Co.* (D. C. Mun. App. 1947, 53 A. 2d 722).

2. Holder by purchase after maturity

Where a stranger acquires a note from a holder authorized to sell, the transaction, either upon proof of the stranger's intention to purchase or upon the presumption of fact that he intended a purchase, will be held to be a purchase rather than a discharge of the note. As purchaser he would succeed to all the rights in the pledged security; and this is true notwithstanding the notes had passed their maturity date. *Lee v. Mitcham* (1938, 98 F. 2d 298, 69 App. D. C. 17, 117 A. L. R. 1427).

3. Holder by purchase before maturity

Plaintiff established a prima facie case of liability by maker of note, when he introduced note and testified that he purchased the note for value before maturity, that the note was due and unpaid, that he was not a party to the note and that it was purchased without knowledge of defenses. *Klingstein v. Thomas Circle Cafe* (1937, 92 F. 2d 554, 68 App. D. C. 5).

Holder of note payable 60 days after date who purchased note for value and before maturity was entitled to recover

on note from makers, notwithstanding their claim that they signed note under belief that it called for monthly payments of balance owing on contract and that payee breached the contract. *Fabrizio v. Anderson* (D. C. Mun. App. 1948, 62 A. 2d 314).

4. Holder under indorsement in trust

A legal holder under indorsement in trust may bring suit. *National City Bank v. Bankers Trust Co.* (37 App. D. C. 553).

While an indorsement of promissory note in trust restricts the free circulation of a note, and takes it out of the class known as commercial paper, the indorsee, having the legal title thereto, and having authority to receive payment thereof, may bring suit in his own name to enforce payment. *Id.*

Unless circumstances are such that reasonable men could draw only one inference from them, question of whether holder of note is holder in due course is for the jury. *Zier v. Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

5. Holder under restrictive indorsement

An indorsee under a restrictive indorsement has the right to bring any action thereon that the indorser could bring. *McKee v. District Nat. Bank* (38 App. D. C. 465).

6. Transferee without indorsement

Plaintiff, to maintain action on negotiable note as transferee without formal indorsement, was required to offer evidence of transfer to it by payee and that such transfer was for value, and production by plaintiff of note did not alone prima facie establish his title or ownership. *Bonuso v. Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

§ 28-402. "Holder in due course" defined.

A holder in due course is a holder who has taken the instrument under the following conditions:

First. That it is complete and regular upon its face.

Second. That he became the holder of it before it was over due, and without notice that it had been previously dishonored, if such was the fact.

Third. That he took it in good faith and for value.

Fourth. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1356.)

NOTES TO DECISIONS

Bona fide holder 1

Complete and regular 2

Construction 3

Defenses 4

Evidence, sufficiency 5

Examination of witnesses 6

Finance company 7

Forged instruments 8

Installment note 9

Instructions 10

Necessary requisites 11

Notice 12

Place of payment 13

Presumption 14

Questions of fact 15

Security of negotiable instruments 16

Transferee of fraudulent agent 17

Unindorsed note 18

Want of consideration 19

Wrongful delivery 20

1. Bona fide holder

A bona fide holder of a negotiable instrument for a valuable consideration without notice of facts which impeach its validity between antecedent parties if he takes it under an endorsement made before same becomes due, holds title unaffected by such facts, and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity. *Tucker et ano. v. Meredith* (1956, 232 F. 2d 347, 98 U.S. App. D.C. 90).

Where plaintiff executed note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and con-

verted the proceeds, the defendant when he acquired his lien on the plaintiff's note through the contract with the holder, was deemed to have then become a holder for value. *Id.*

2. Complete and regular

By virtue of the unique nature of traveler's checks in that they become cashable upon countersigning by buyer, such checks are complete and regular on their face even though no name has been inserted in the blank space indicating to whose order the check is payable, since act of countersigning is similar to endorsement in blank, and renders check subject to negotiation by delivery. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

Indorsee of an instrument containing a blank as to any material part is not a "holder in due course" because, under such circumstances, instrument when received is not complete and regular on its face. *Zier v. Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

3. Construction

Provisions under this section refer only to negotiable instruments. *Arnett v. Clack* (1921, 198 P. 127, 122 Ariz. 409).

4. Defenses

Although note given for purchase of \$362.50 television set was purchased for \$246.50 on day of sale of television set to maker and purchaser of note had furnished television firm with blank conditional sales contracts, purchaser of note was a holder in due course and took note free from defense that maker had returned television set to television firm as unsatisfactory. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

5. Evidence, sufficiency

In suit for cancellation of note and deed of trust and return of usurious payments, evidence did not sustain finding that defendant was a holder in due course. *Hill v. Hawes* (1944, 144 F. 2d 511, 79 U. S. App. D. C. 168).

In action by indorsee of promissory note against makers, evidence sustained finding that indorsee was holder in due course, notwithstanding claim that note was not complete and regular on its face based on fact that place of payment was not specified in space provided therefor and that it appeared that blanks in printed form had been filled in by different persons using different colored inks. *Manzon et ano v. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

Breach of faith or such circumstances as amount to fraud or knowledge of an infirmity in a negotiable instrument may be established by circumstantial evidence, but an indorsee's bad faith or fraud in acquiring a negotiable note can never be assumed and must be shown by clear and unequivocal testimony and mere suspicion is insufficient to upset proof offered by plaintiff that he is a holder in due course. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

6. Examination of witnesses

Where note sued on was in blank when signed by maker, circumstances surrounding filling of blanks, and negotiation of note had a direct bearing upon whether indorsee was a holder in due course and sustaining of objection to maker's cross-examination of indorsee's credit manager as to who had figured finance charges as embodied in the note and shown by notice sent to maker was reversible error. *Zier v. Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

7. Finance company

Finance company engaged in business of discounting trade acceptances, when purchasing certificate of deposit after inquiry of issuing bank's cashier, is holder in due course. *International Finance Corp. v. Peoples Bank* (D.C. W.Va. 1928, 27 F. 2d 523).

8. Forged instruments

If fraud of payee in procuring execution of notes is not attributable to negligence of maker, the instruments amount in law to forgeries and purported obligation of maker can be terminated notwithstanding notes have come into ownership of another as a holder in due course. *Millrose Corp. v. Hicks* (1959, 271 F. 2d 508, 106 U.S. App. D.C. 242).

Where signatures on notes were procured in such circumstances that signers were not in fact aware that they were executing notes but believed and were deceptively induced to believe that they were signing contracts for improvements and that their liability for payments therefor would accrue only when agreed improvements were completed, and forms used were designed to trick and deceive persons in situation of signers, and signers were not negligent in signing notes, the notes were void and makers were entitled to their cancellation as against a holder in due course. *Id.*

9. Installment note

Where first installment on note was due December 1, and note provided that on failure of maker to pay any installment, all installments would automatically mature, and maker failed to pay first installment by December 1, note matured as of December 1, and therefore one, to whom note was negotiated on December 13, was not a "holder in due course" and took note subject to any defense, which maker had against payees. *Hier v. Federal Glass Co., Inc.* (D. C. Mun. App. 1954, 102 A. 2d 840).

10. Instructions

In action on note which was signed by homeowner and which was made payable to savings and loan association which received note from roofer who induced homeowner to apply to association for a Federal Housing Authority guaranteed property-improvement loan which was paid to roofer, the giving of instruction that association could not be a holder in due course was reversible error. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

11. Necessary requisites

A person designated as payee of a note, having fulfilled the necessary requisites, may be a holder in due course. *Columbia Federal Savings & Loan Ass'n v. Jackson* (D. C. Mun. App. 1957, 131 A. 2d 404).

12. Notice

Where plaintiff received payments on note until shortly before suit was filed no inference could be drawn that plaintiff was not a holder in due course from plaintiff's delay in notifying defendant that it was holder of note. *Eastern Acceptance Corp. v. Henry* (D. C. Mun. App. 1948, 62 A. 2d 309).

13. Place of payment

In action by indorsee against maker on negotiable note, fact that note was made payable at indorsee's office did not preclude indorsee from subsequently acquiring note as a holder in due course, but was to be taken into account along with other circumstances to determine whether indorsee was such a holder. *Zier v. Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

14. Presumption

While knowledge of an infirmity in a negotiable instrument may be established by circumstantial evidence, indorsee's bad faith or fraud in acquiring a negotiable note can never be assumed but must be shown by clear and unequivocal testimony; mere suspicion being insufficient to upset proof offered by indorsee that it is a holder in due course. *Eastern Acceptance Corp. v. Henry* (D. C. Mun. App. 1948, 62 A. 2d 309).

15. Questions of fact

Unless circumstances prove to be such that reasonable men could draw only one inference from them, question whether a person is a holder in due course of a note is for the trier of facts. *White et ano. v. Luber* (D.C. Mun. App. 1958, 144 A. 2d 774).

In action for face value of checks given to defendant's employer by defendant and cashed by plaintiff pursuant to plan whereby defendant and defendant's employer would exchange checks, and defendant's employer would cash defendant's check and deposit proceeds in bank to make good check of defendant's employer when presented for payment, which action was brought after check was returned by defendant's bank for insufficiency of funds, whether plaintiff had cashed check under circumstances making plaintiff holder in due course was for jury under evidence. *Boltt v. Morgenstein* (D.C. Mun. App. 1951, 81 A. 2d 656).

Evidence whether plaintiff was an innocent holder for value, of promissory note sued on, was properly submitted to the jury. *Edwards v. Fox* (40 App. D. C. 439).

16. Security of negotiable instruments

The law regards the security of negotiable instruments in hands of holders who take for value before maturity without notice of infirmities, as of far greater importance than the preservation of defenses of those who executed them. *Tucker et ano. v. Meredith* (1956, 232 F. 2d 347, 98 U.S. App. D.C. 90).

17. Transferee of fraudulent agent

When holder of notes executed extension slips, which were held under indorsements in blank, it did not give notice to subsequent transferee from fraudulent agent of the holder, who had transferred the notes to the bank as security for his own debt, and the transferee remained a good-faith holder. *Ragan v. Wardell* (1937, 91 F. 2d 253, 67 App. D. C. 222).

18. Unindorsed note

A physical holder of an unindorsed note drawn to order is not a "holder in due course" and a transfer of the note without indorsement, although valid, destroys negotiability of the note. *Bonuso v. Shroyer Loan & Finance Co.* (D. C. Mun. App. 1944, 37 A. 2d 760).

19. Want of consideration

Defendant, in addition to the fact that the discount was applied, must also allege that the money, at the time of the notice, remained in the bank to the credit of the discounter. If it has been paid to him or his order, the bank necessarily becomes a holder for value. *Richards v. Street* (31 App. D. C. 427).

20. Wrongful delivery

When bank had possession of note indorsed in blank which belonged to another, and wrongly transferred it to another's file, the executor of the latter is not holder in due course for the note was not negotiated. *Washington Loan & Trust Co. v. Cowgill* (1936, 85 F. 2d 255, 66 App. D. C. 89).

§ 28-403. Holder in due course—Demand instrument.

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1357.)

§ 28-404. Notice before full amount is paid.

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1358.)

§ 28-405. Defective title—Definition.

The title of a person who negotiates an instrument is defective within the meaning hereof when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear or other unlawful means, or for any illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1359.)

NOTES TO DECISIONS

Burden of proof 1
Duty of holder in due course 2
Knowledge of maker 3
Pleading 4
Usury 5

1. Burden of proof

When it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course.

Bowen v. Mount Vernon Sav. Bank (1939, 105 F. 2d 796, 70 App. D. C. 273).

2. Duty of holder in due course

Where plaintiff executed a note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, defendant was under no duty to make suggested inquiries of holder unless he acted in bad faith in not making them. *Tucker et ano. v. Meredith* (1956, 232 F. 2d 347, 98 U.S. App. D.C. 90).

3. Knowledge of maker

Where finance company was named on face of note given for part of purchase price of automobile as dealer's agent to receive payment, it was reasonable to infer that the company was in possession of note and demanded payment in agency capacity, and if so, it was disabled from subsequently acquiring the note in good faith and without notice because of knowledge which it had acquired from maker, when demand for payment was made, that the dealer's title was defective. *Palmer v. Associates Discount Corporation* (1942, 124 F. 2d 225, 74 App. D. C. 386).

4. Pleading

In action on note given for part of purchase price of automobile, affidavit of defense alleging that automobile dealer represented the automobile to be in good condition, that the automobile was found to be in an unsafe and dangerous condition and with numerous and serious defects, that the dealer did not remedy the defect notwithstanding repeated demands and that automobile had been returned to dealer as worthless was sufficient to permit maker of note to establish defenses of failure of consideration, breach of warranty, and that he was induced to purchase the automobile and to sign the note by fraudulent misrepresentations. *Palmer v. Associates Discount Corporation* (1942, 124 F. 2d 225, 74 App. D. C. 386).

5. Usury

The fact that competent businessmen do not purchase notes in substantial sums executed by unknown parties whose credit they have not investigated, together with claim of holder of usurious note, amply secured by trust deed, that he bought note at 40 percent discount, made a prima facie showing of usury which must be explained before holder could be found a holder in due course. *Hill v. Hawes* (1944, 144 F. 2d 511, 79 U. S. App. D. C. 168).

Pretended bona fide purchases of note at large discount, out of the normal course of business, must be viewed with suspicion to protect against usury. *Id.*

§ 28-406. Notice of infirmity—Sufficiency.

To constitute notice of an infirmity in the instrument, or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect or knowledge of such facts that his action in taking the instrument amounted to bad faith. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1360.)

NOTES TO DECISIONS

Actual notice required 1
Bad faith 2
Duty of holder in due course 3
Indorsement in blank 4
Negligence in obtaining notice 5
Subsequent purchaser without notice 6

1. Actual notice required

Party who takes negotiable paper before due for a valuable consideration, without knowledge of any defect of title, in good faith, can hold it against all the world. A suspicion that there is a defect of title in the holder, or a knowledge of circumstances that might excite suspicion in the mind of a cautious person, or even gross negligence at the time, will not defeat the title of the purchaser. That result can be produced only by bad faith, which implies guilty knowledge or wilful ignorance; and the burden of proof lies on the assailant of the title. *Hutchins v. Langley* (27 App. D. C. 234).

Fact that deed of trust was released by trustees before maturity of promissory note secured by it will not be sufficient to charge the purchaser for value of subsequent note secured by a new deed of trust and upon which there

was an indorsement of part payment, with constructive notice that the first note had not been paid, especially if he bought his note a year after release of first deed of trust and recording of its release, and at time when note it secured, if not paid was long overdue. *Martin v. Poole* (36 App. D. C. 281).

When promissory note was obtained from the maker by payee, by fraud and deception, nothing short of guilty knowledge of fraud and deception by subsequent indorsee for value will defeat his right to recover on it, as mere suspicion or even gross negligence is not sufficient. *Hazen v. Van Senden* (43 App. D. C. 161).

To constitute notice of an infirmity in the instrument, or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect; or knowledge of such facts that his action in taking the instrument amounted to bad faith. *Washington Loan & Trust Co. v. Cowgill* (1936, 85 F. 2d 255, 66 App. D.C. 89).

Where notes have been negotiated before a breach occurs, knowledge of fact that notes were given for work to be performed is not notice of an infirmity in payee's title and does not put purchaser from payee on inquiry. *Gross v. Delaney* (D. C. Mun. App. 1943, 34 A. 2d 629).

2. Bad faith

The fact that holder of note payable 60 days after date and given for balance due contractor for remodeling work knew that balance was to be paid in monthly installments did not establish bad faith of holder in purchasing note so as to prevent holder from recovering as a holder in due course against makers. *Fabrizio v. Anderson* (D. C. Mun. App. 1948, 62 A. 2d 314).

3. Duty of holder in due course

Where plaintiff executed a note and deed of trust for \$9,500 and erroneously believed that it was for \$6,000 and holder pledged note as collateral to defendant and converted the proceeds, defendant was under no duty to make suggested inquiries of holder unless he acted in bad faith in not making them. *Tucker et ano. v. Meredith* (1956, 232 F. 2d 347, 98 U.S. App. D.C. 90).

4. Indorsement in blank

When indorsing note in blank and delivering it back to the maker, the payee makes the maker his agent and one who receives the note from the latter in good faith, for value, receives it in due course and may recover. *Howell v. Commercial Nat. Bank* (40 App. D. C. 370).

A note is not "negotiated" which is indorsed in blank and in possession of bank which purchased it for customer—and left in bank for safekeeping. *Washington Loan & Trust Co. v. Cowgill* (1936, 85 F. 2d 255, 66 App. D. C. 89).

5. Negligence in obtaining notice

To effect purchaser for value with constructive notice, it must appear that his failure to obtain actual notice was due to gross or culpable negligence. *Martin v. Poole* (36 App. D. C. 281).

6. Subsequent purchaser without notice

When notes were due in 1931 and payable to bank's cashier and were indorsed by him in blank without recourse and sold to one who let bank retain possession of notes, and maker without knowledge of sale executed extension slip extending maturity of notes to 1934, a subsequent purchase of notes for value in 1932 by one without notice or knowledge of preceding sale and not noticing that part of extension slip to be signed by the holder, but had not been signed, invested title to notes in subsequent purchaser, superior to claim of first purchaser. *Counselman v. Pitzer* (1935, 79 F. 2d 707, 65 App. D. C. 71).

§ 28-407. Rights of holder in due course.

A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1361.)

NOTES TO DECISIONS

In general 1
Complete and regular 2
Conflict of laws 3
Consideration 4
Construction with other laws 5
Defenses 6
Estoppel 7
Holder without notice of defects 8
Security of negotiable instruments 9

1. In general

A bona fide holder of a negotiable instrument for a valuable consideration without notice of facts which impeach its validity between antecedent parties if he takes it under an endorsement made before same becomes due, holds title unaffected by such facts, and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity. *Tucker et ano. v. Meredith* (1956, 232 F. 2d 347, 98 U.S. App. D.C. 90).

2. Complete and regular

By virtue of the unique nature of traveler's checks in that they become cashable upon countersigning by buyer, such checks are complete and regular on their face even though no name has been inserted in the blank space indicating to whose order the check is payable, since act of countersigning is similar to endorsement in blank, and renders check subject to negotiation by delivery. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

3. Conflict of laws

British statutes of 16 Car. 2, ch. 8, and 9 Anne, ch. 14 (§§ 16-701 to 16-705) against gaming, so far as they might or would, if in force, affect the validity of the negotiable instruments which are within the provisions of the Negotiable Instruments Law [chapters 1 to 10 of this title], to the extent that they are so inconsistent or repugnant to the Negotiable Instruments Act, are no longer, as to negotiable instruments, in force in District of Columbia. *Wirt v. Stubblefield* (17 App. D. C. 283).

4. Consideration

To constitute one a "holder in due course" it is not necessary that full consideration be paid for a negotiable instrument. *Interstate Bankers Corporation v. Kennedy* (1943, 33 A. 2d 165).

One purchasing a note, given in consideration of an executory agreement, before breach occurs, acquires an indefeasible title. *Gross v. Delaney* (D.C. Mun. App. 1943, 34 A. 2d 629).

5. Construction with other laws

Under § 11-808 providing for conduct of trial so as to do "substantial justice" in small claims and conciliation branch of municipal court, where payee on note given for horseback riding instructions failed to perform, in action on notes judge of small claims court could not limit recovery by holders in due course to unpaid balance less discount charged by holders for purchase of notes, by ignoring substantive law rule that holder in due course of negotiable instrument was entitled to payment of full amount. *Interstate Bankers Corporation v. Kennedy* (1943, 33 A. 2d 165).

6. Defenses

Promissory note although made upon a gambling consideration is good in the hands of a bona fide purchaser for value without notice. *Wirt v. Stubblefield* (17 App. D. C. 283).

Borrowers of money at usurious rates are not entitled to relief as against innocent holders for value. *Whitpp v. Glueck* (1932, 58 F. 2d 523, 61 App. D. C. 118).

When holder of notes executed extension slips, which were held under indorsements in blank, it did not give notice to subsequent transferee from fraudulent agent of the holder, who had transferred the notes to the bank as security for his own debt, and the transferee remained a good-faith holder. *Ragan v. Wardell* (1937, 91 F. 2d 253, 67 App. D.C. 222).

The failure of an executory consideration is not a defense against a holder in due course of a negotiable instrument. *Interstate Bankers Corporation v. Kennedy* (1943, 33 A. 2d 165).

Knowledge on part of purchaser of a note that it was given in consideration of an executory contract does not

prevent purchaser from becoming a holder in due course, and a breach of the contract after purchase of note is no defense against such a holder. *Fabrizio v. Anderson* (D. C. Mun. App. 1948, 62 A. 2d 314).

In action by indorsee against maker on negotiable note, wherein maker defended on ground that indorsee was not a holder in due course, evidence of maker showing that title of contractor to whom note was originally given was defective, in that contractor negotiated note before completion of work when its contract provided that work was not to be paid for until completed, established prima facie defense. *Zier v. Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

In action on a note, evidence established that plaintiff was a holder in due course and hence took instrument free from defenses available by maker against payee. *Eastern Acceptance Corp. v. Henry* (D. C. Mun. App. 1948, 62 A. 2d 309).

7. Estoppel

Where literate and reasonably intelligent people sign a note, but fail to read it, they are negligent and are estopped from raising question of fraud against holder in due course, though they are not estopped from urging on other grounds that holder is not a holder in due course. *Zier v. Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

8. Holder without notice of defects

Traveler's checks, agreed by buyer to be negotiated only by countersigning in presence of payee, became fully negotiable when countersigned, even though signed out of presence of payee, and in absence of showing of fraud or deceit on part of seller, seller was bound to honor them when presented by holder in due course, notwithstanding fact that they had been stolen from buyer. *Emerson v. American Exp. Co.* (D. C. Mun. App. 1952, 90 A. 2d 236).

A bona fide holder of a negotiable instrument, for a valuable consideration, without any notice of facts which impeach its validity, as between antecedent parties, if he takes it under an indorsement made before the same becomes due, holds the title unaffected by these facts, and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity. *Thompson v. Franklin Nat. Bank* (45 App. D. C. 218, certiorari denied 37 S. Ct. 21, 242 U. S. 637, 61 L. Ed. 540).

9. Security of negotiable instruments

The law regards the security of negotiable instruments in hands of holders who take for value before maturity without notice of infirmities, as of far greater importance than the preservation of defenses of those who executed them. *Tucker et ano. v. Meredith* (1956, 232 F. 2d 347, 98 U.S. App. D.C. 90).

§ 28-408. Rights of holder other than holder in due course.

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1362.)

NOTES TO DECISIONS

Fraud 1
Holder after maturity 2

1. Fraud

Fraud in inception of note on account of which the consideration fails constitutes a good defense against indorsee after maturity. *Lincoln v. Grant* (47 App. D. C. 475).

2. Holder after maturity

Where first installment on note was due December 1, and note provided that on failure of maker to pay any installment, all installments would automatically mature, and maker failed to pay first installment by December 1, note matured as of December 1, and therefore one,

to whom note was negotiated on December 13, was not a "holder in due course" and took note subject to any defense, which maker had against payees. *Hier v. Federal Glass Co., Inc.* (D. C. Mun. App. 1954, 102 A. 2d 840).

Indorsee of negotiable note after maturity takes it subject to defenses which affect the instrument and not to matters such as set-offs which arise out of independent transactions between maker and payee. *Lincoln v. Grant* (47 App. D. C. 475).

§ 28-409. Presumption as to holding in due course—Burden of proof when transferor's title shown defective.

Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1363.)

NOTES TO DECISIONS

Bad faith 1
Burden of proof 2
Dures 3
Presumption of consideration and indorsement 4

1. Bad faith

Breach of faith or such circumstances as amount to fraud or knowledge of an infirmity in a negotiable instrument may be established by circumstantial evidence, but an endorsee's bad faith or fraud in acquiring a negotiable note can never be assumed and must be shown by clear and unequivocal testimony and mere suspicion is insufficient to upset proof offered by plaintiff that he is a holder in due course. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329).

An averment "that I am credibly informed and believe, and expect to prove at the trial, that the plaintiff became holder of promissory note, if holder at all, in bad faith, and without any belief that it was valid obligation of mine, and that plaintiff did not receive my note in regular course of business," taken in connection with other averments tending to show close intimacy between plaintiff and original payee, as well as knowledge of payee's methods of transacting business, is sufficient to send the case to trial. *Hazen v. Van Senden* (43 App. D. C. 161).

Where makers gave negotiable notes payable in monthly installments over a period of a year for instructions in horseback riding and payee failed to perform, purchase of notes by holder in due course at discount of 15 percent was not unreasonable or evidence of bad faith justifying deduction of discount from amounts collectible on notes. *Interstate Bankers Corporation v. Kennedy*, (1943, 33 A. 2d 165).

2. Burden of proof

Every holder of a negotiable instrument is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. *Wilson v. Gorden* (D. C. Mun. App. 1952, 91 A. 2d 329). See, also, *Washington Loan & Trust Co. v. Cowgill* (1936, 85 F. 2d 255, 66 App. D. C. 89).

Where the title of negotiator of note is defective the burden is on holder to prove that it acquired note as a holder in due course. *Palmer v. Associates Discount Corporation* (1942, 124 F. 2d 225, 74 App. D. C. 386).

Where payee's title was defective and endorsement upon which holder relied was undated, as the date of the endorsement was a fact peculiarly within the holder's knowledge, the holder was required to establish it, especially where, whether it took with notice of defenses or without notice after default in payments would depend on that fact. *Id.*

Every holder of a negotiable instrument is deemed prima facie a holder in due course and if party makes showing of any defect in endorsements, endorsee is required to prove his status as a holder in due course. *Manzon v. Greenwald* (D.C. Mun. App. 1958, 145 A. 2d 575).

Where endorsee brought action on promissory note and makers did not show defect in any of the endorsements, it was not necessary for endorsee, in order to recover, to introduce proof of validity of endorsements. *Id.*

Every holder of negotiable instrument is deemed prima facie a holder in due course, but where it is shown that title of any person who had negotiated the instrument was defective, burden is on holder to prove that he or some person under whom he claims acquired title as a holder in due course. *Wilson v. Gordon* (D. C. Mun. App. 1952, 91 A. 2d 329).

In suits on defendant's notes, acquired by plaintiff from payee, instructions to jury that holder of negotiable instrument is deemed prima facie to be holder in due course, but has burden of proving that he or some person under whom he claims acquired title as such holder, if title of any person who negotiated instrument is shown to have been defective, that infirmity in instrument cannot be assumed, but must be clearly shown to upset plaintiff's proof that he is holder in due course, and that title to notes was defective, if payee obtained them by fraud, but that ultimate purchaser could still recover thereon, unless he had actual knowledge of defect or of such facts that his taking of notes amounted to bad faith, correctly explained burden of proof. *Bowles v. Marsh* (D. C. Mun. App. 1951, 82 A. 2d 135).

In action by endorsee against maker on negotiable note, burden was on endorsee to prove that he was a holder in due course. *Zier v. Eastern Acceptance Corp.* (D. C. Mun. App. 1948, 61 A. 2d 106).

3. Duress

As note was obtained by duress, the burden was on the defendant "to prove that he or some person under whom he claims acquired the title as a holder in due course." *O'Toole v. Lamson* (41 App. D. C. 276).

4. Presumption of consideration and indorsement

With the introduction of the notes in evidence, and the admission of the genuineness of the signatures, valuable consideration and indorsement before maturity are presumed. *Catholic University v. Waggaman* (32 App. D. C. 307).

§ 28-410. Lost or miscarried bill of exchange—Drawer to issue duplicate.

In case any inland bill or bills of exchange shall happen to be lost or miscarried within the time limited for payment of the same, then the drawer of the said bill or bills is and shall be obliged to give another bill or bills of the same tenor with those first given, the person or persons to whom they are and shall be so delivered giving security, if demanded, to the said drawer, to indemnify him against all persons whatsoever, in case the said bill or bills of exchange so alleged to be lost or miscarried, shall be found again. (9-10 Wm. 3, ch. 17, § 3; Kilty Rep., p. 244; Alex. Br. Stat., p. 634; Comp. Stat. D. C., p. 66, § 3.)

CODIFICATION

Section was not enacted as part of the Negotiable Instruments Law, which is classified to chapters 1 to 10 of this title.

NOTES TO DECISIONS

1. In general

Where issuing bank, through third party's fraud, issued and cashed a duplicate treasurer's check, payment was not in due course, and loss, as between bank and holder of original check, who was not a holder in due course but who had had no opportunity to protect herself from fraud, fell on bank. *Whitehead v. American Security & Trust Co.* (C.A.D.C. 1960, 285 F. 2d 282).

Chapter 5.—LIABILITIES OF PARTIES

Sec.

28-501. Liability of maker.

28-502. Liability of drawer.

28-503. Liability of acceptor.

28-504. Liability of signer of instrument other than maker, drawer, or acceptor.

28-505. Liability of stranger who signs in blank.

28-506. Warranties of negotiator by delivery or qualified indorsement.

28-507. Warranties of indorser without qualification.

28-508. Liability of indorser of instrument negotiable by delivery.

28-509. Order in which indorsers are liable.

28-510. Liability of agent of undisclosed principal.

§ 28-501. Liability of maker.

The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1364.)

§ 28-502. Liability of drawer.

The drawer, by drawing the instrument, admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1365.)

NOTES TO DECISIONS

1. Bearer paper

A drawer's intent that payee he names shall have no interest in check makes check payable to bearer although drawer knows payee to be an existing person. *Callaway v. Hamilton Nat. Bank of Washington* (1952, 195 F. 2d 556, 90 U.S. App. D.C. 228).

Where plaintiff conceded that at time he drew first check on his account in defendant bank payable to a certain corporation he knew there was no corporation by that name, check was bearer paper and as to that check plaintiff, under his pleadings, was entitled to no recovery against the defendant bank for its honoring endorsement of the nonexistent corporation. *Id.*

§ 28-503. Liability of acceptor.

The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance, and admits—

First. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

Second. The existence of the payee and his then capacity to indorse. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1366.)

§ 28-504. Liability of signer of instrument other than maker, drawer, or acceptor.

A person placing his signature upon an instrument otherwise than as a maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1367.)

NOTES TO DECISIONS

Circumstances of indorsement 1
Indorsement in blank 2

1. Circumstances of indorsement

"The mere fact that he wrote his name on the back of the notes does not show even prima facie that he was a technical indorser. It is important to know when and under what circumstances he wrote his name there. If it was before or near the time the notes were delivered, or after they were delivered, but for the purpose of strengthening the credit of the note, and before the payee had indorsed, he would be a maker, and not entitled to any of the rights or privileges of an indorser." *Ryan v. Security Sav. & Commercial Bank* (1921, 271 F. 366, 50 App. D. C. 292). See, also, *Chandler & Taylor Co. v. Norwood* (14 App. D. C. 357); *Randle v. Davis Coal Co.* (15 App. D. C. 357).

2. Indorsement in blank

When a person indorses a negotiable note in blank, and sends the instrument forth into commercial channels, stamped with all the indicia of commercial paper, negotiable by indorsement or delivery, the mere genuineness of his signature is sufficient, prima facie, to establish liability. *Thompson v. Franklin Nat. Bank* (45 App. D. C. 218).

Party indorsing in blank for the accommodation of maker is liable as indorser, and not as a joint maker. *Bost v. Rexine Co.* (1926, 8 F. 2d 795, 56 App. D. C. 34, 55 A. L. R. 670).

§ 28-505. Liability of stranger who signs in blank.

Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules:

First. If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties.

Second. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

Third. If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1368.)

§ 28-506. Warranties of negotiator by delivery or qualified indorsement.

Every person negotiating an instrument by delivery or by a qualified indorsement warrants—

First. That the instrument is genuine and in all respects what it purports to be.

Second. That he has a good title to it.

Third. That all prior parties had capacity to contract.

Fourth. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1369.)

§ 28-507. Warranties of indorser without qualification.

Every indorser who indorses without qualification warrants to all subsequent holders in due course—

First. The matters and things mentioned in subdivisions one, two, and three of section 28-506; and
Second. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1370.)

NOTES TO DECISIONS

Additional indorser 1

Other contracts 2

Warranty of present and prior indorsers 3

1. Additional indorser

Holders subsequent to forged indorsement, treating the indorsement as genuine and valid, as they were entitled to do, had the right to rely upon the apparent liability of an additional indorser. *Milton v. United States* (1940, 110 F. 2d 556, 71 App. D.C. 394).

2. Other contracts

A bank is not prohibited from entering into other contracts with a company, maker of note, for future loans, because of its ownership of indorsed notes. *Hannan v. Hardee* (1934, 69 F. 2d 394, 63 App. D.C. 76).

3. Warranty of present and prior indorsers

Individual indorser, subsequent to a corporation indorser, was a warranty of the genuineness of the paper of his own title thereto, and of the capacity of all the preceding parties to contract. *Willard v. Crook* (21 App. D. C. 237).

§ 28-508. Liability of indorser of instrument negotiable by delivery.

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1371.)

NOTES TO DECISIONS

1. Fraud

In action against indorsers on note for amount due for gasoline and oil purchased from payee, when no evidence was introduced tending to prove that the payee knew of inaccuracy in the marking of its tank truck compartments nor evidence showing amount by which motor service had been overcharged as a result of inaccuracy in markings, and defendants failed to show that payee had any reasons to question the accuracy, it was insufficient for the jury as to question of fraud in obtaining signatures of indorsers. *Public Motor Service v. Standard Oil Co.* (1938, 99 F. 2d 124, 69 App. D.C. 89).

§ 28-509. Order in which indorsers are liable.

As respects one another indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1372.)

§ 28-510. Liability of agent of undisclosed principal.

Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section 28-506, unless he discloses the name of his principal and the fact that he is acting only as agent. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1373.)

Chapter 6.—PRESENTMENT FOR PAYMENT

Sec.

- 28-601. Necessity for presentment for payment—Tender of payment.
- 28-602. Time for making.
- 28-603. Sufficiency.
- 28-604. Place of presentment.
- 28-605. Instrument must be exhibited—Delivery on payment.
- 28-606. Presentment where instrument payable at bank.
- 28-607. Presentment where principal debtor is dead.
- 28-608. Presentment to persons liable as partners.
- 28-609. Presentment to joint debtors.
- 28-610. When presentment not required to charge drawer.
- 28-611. When presentment not required to charge indorser.
- 28-612. When delay in making presentment is excused.
- 28-613. When presentment dispensed with.
- 28-614. When instrument is dishonored by nonpayment.
- 28-615. Right of action on nonpayment.
- 28-616. When negotiable instrument is payable—Holiday.
- 28-617. Determination of time for payment.
- 28-618. Instrument payable at bank is order on bank to pay.
- 28-619. What constitutes payment in due course.

§ 28-601. Necessity for presentment for payment—Tender of payment.

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument, but if the instrument is by its terms payable at a special place and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1374.)

§ 28-602. Time for making.

Where the instrument is not payable on demand presentment must be made on the day it falls due. Where it is payable on demand presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1375.)

NOTES TO DECISIONS**1. In general**

Statutes of limitations would, in case of a demand note not presented pursuant to statute, commence to run from date of note. *Unstinn et ano. v. Wilson et ano.* (C.A.D.C. 1960, 285 F. 2d 273).

§ 28-603. Sufficiency.

Presentment for payment to be sufficient must be made—

First. By the holder or by some person authorized to receive payment on his behalf.

Second. At a reasonable hour on a business day.

Third. At a proper place, as herein defined.

Fourth. To the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1376.)

CROSS REFERENCE

Presentment by notary public, see § 1-508, 1-509.

§ 28-604. Place of presentment.

Presentment for payment is made at the proper place—

First. Where a place of payment is specified in the instrument and it is there presented.

Second. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented.

Third. Where no place of payment is specified, and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

Fourth. In any other case if presented to the person to make payment wherever he can be found or if presented at his last known place of business or residence. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1377.)

§ 28-605. Instrument must be exhibited—Delivery on payment.

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1378.)

§ 28-606. Presentment where instrument payable at bank.

Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1379.)

§ 28-607. Presentment where principal debtor is dead.

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1380.)

§ 28-608. Presentment to persons liable as partners.

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1381.)

§ 28-609. Presentment to joint debtors.

Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1382.)

§ 28-610. When presentment not required to charge drawer.

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1383.)

§ 28-611. When presentment not required to charge indorser.

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1384.)

§ 28-612. When delay in making presentment is excused.

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1385.)

§ 28-613. When presentment dispensed with.

Presentment for payment is dispensed with—

First. Where, after the exercise of reasonable diligence, presentment as required hereby can not be made.

Second. Where the drawee is a fictitious person.

Third. By waiver of presentment, express or implied. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1386.)

§ 28-614. When instrument is dishonored by nonpayment.

The instrument is dishonored by nonpayment when—

First. It is duly presented for payment and payment is refused or can not be obtained; or,

Second. Presentment is excused and the instrument is overdue and unpaid. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1387.)

§ 28-615. Right of action on nonpayment.

Subject to the provisions hereof, when the instrument is dishonored by nonpayment an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1388.)

§ 28-616. When negotiable instrument is payable—Holiday.

Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. The following days in each year, namely, the first day of January, commonly called New Year's Day; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor's Holiday; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public feasting or thanksgiving, and the day of the inaugu-

ration of the President, in every fourth year, shall be holidays in the District for all purposes. Whenever any day set apart as a legal holiday shall fall on Sunday, then and in such case the next succeeding day shall be a holiday; and in such cases and in all cases in which a Sunday and a holiday shall fall on successive days all commercial paper falling due on any of said days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular or business day succeeding: *Provided*, That every Saturday shall be a holiday in the District and not a business day for (1) every bank or banking institution having an office or banking house located within the District, (2) every Federal savings and loan association whose main office is in the District, and (3) every building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating under the laws of and having an office located within the District; and any act which would otherwise be required, authorized, or permitted to be performed on Saturday in the District at the office or banking house of, or by, any such bank or banking institution, Federal savings and loan association, building association, building and loan association, or savings and loan association, if Saturday were not a holiday, shall or may be so performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1389; June 30, 1902, 32 Stat. 543, ch. 1329; July 13, 1946, 60 Stat. 534, ch. 576.)

AMENDMENTS

1946—Act July 13, 1946, added the proviso designating Saturday as a holiday.

1902—Act June 30, 1902, substituted "for all purposes" for "within the meaning of this section."

NOTES TO DECISIONS

Judicial notice 1
Saturday half-holiday 2

1. Judicial notice

Municipal Court of Appeals for the District of Columbia took judicial notice that Criminal Division of the Municipal Court was in session on Monday, July 5, 1943, for the arraignment and trial of persons held under arrest and unable to give collateral or bond, notwithstanding that that Monday was a legal holiday. *Burns v. District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

2. Saturday half-holiday

Saturday half-holiday not excluded in computing 30 days' notice required under § 1219, D. C. 1901 (§ 45-902). *Ocuppaugh v. Norton* (24 App. D.C. 296). See, also, *McCoy v. Duehay* (1922, 279 F. 1001, 51 App. D.C. 363); *Morse v. Brainerd* (42 App. D.C. 448); *Swenk v. Nicholls* (39 App. D.C. 350).

§ 28-617. Determination of time for payment.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1390.)

NOTES TO DECISIONS

1. In general

This jurisdiction prefers the rule followed in New York and Pennsylvania, which excludes the day on which the cause of action accrues, as a point of time after which the limitation ensues. *Ambrose v. Brown* (42 App. D. C. 25).

§ 28-618. Instrument payable at bank is order on bank to pay.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1391.)

§ 28-619. What constitutes payment in due course.

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1392.)

Chapter 7.—NOTICE OF DISHONOR

Sec.

- 28-701. Notice of dishonor must be given to drawer and indorsers—Effect of noncompliance.
- 28-702. Persons who may give notice.
- 28-703. Notice given by agent.
- 28-704. Effect of notice given on behalf of holder.
- 28-705. Effect of notice given by party entitled to give it.
- 28-706. Notice when instrument in hands of agent is dishonored.
- 28-707. Sufficiency of notice.
- 28-708. Form and service of notice.
- 28-709. Notice may be given to party or his agent.
- 28-710. Notice when party dead.
- 28-711. Notice to partners.
- 28-712. Notice to persons jointly liable.
- 28-713. Notice to bankrupt.
- 28-714. Time within which notice must be given.
- 28-714a. Dishonor of demand items by banks.
- 28-715. When notice to be given if parties reside in same place.
- 28-716. When notice to be given if parties reside in different places.
- 28-717. Mailing notice sufficient.
- 28-718. Depositing notice in post office—What constitutes.
- 28-719. Notice to antecedent parties by party notified by holder.
- 28-720. Where notice must be sent—Sufficiency of actual notice.
- 28-721. Waiver of notice.
- 28-722. Parties bound by waiver of notice.
- 28-723. Waiver of protest.
- 28-724. When notice dispensed with.
- 28-725. Excuse for delay in giving notice.
- 28-726. When notice to drawer is not required.
- 28-727. When notice to indorser is not required.
- 28-728. Notice of nonpayment—When not necessary.
- 28-729. Omission to give notice of nonacceptance.
- 28-730. Protest—Not required except on foreign bills of exchange—Original protest as evidence.

§ 28-701. Notice of dishonor must be given to drawer and indorsers—Effect of noncompliance.

Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1393.)

NOTES TO DECISIONS**1. Indorser**

Diligence in notifying indorser of dishonor. *Bost v. Rexine Co.* (1926, 8 F. 2d 795, 56 App. D.C. 34, 55 A.L.R. 670).

Failure of indorsee of a note to give notice of the nonpayment of the instalments results in discharging the indorser from liability as to those instalments, but has no other effect as to other instalments. *Roberts v. International Bank* (1928, 25 F. 2d 214, 58 App. D.C. 87).

§ 28-702. Persons who may give notice.

The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1394.)

CROSS REFERENCE

Notice by notary public, see §§ 1-508, 1-509.

§ 28-703. Notice given by agent.

Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1395.)

§ 28-704. Effect of notice given on behalf of holder.

Where notice is given by or on behalf of the holder it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1396.)

§ 28-705. Effect of notice given by party entitled to give it.

Where notice is given by or on behalf of a party entitled to give notice it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1397.)

§ 28-706. Notice when instrument in hands of agent is dishonored.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1398.)

§ 28-707. Sufficiency of notice.

A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1399.)

§ 28-708. Form and service of notice.

The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1400.)

§ 28-709. Notice may be given to party or his agent.

Notice of dishonor may be given either to the party himself or to his agent in that behalf. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1401.)

§ 28-710. Notice when party dead.

When any party is dead, and his death is known to the party giving notice, the notice must be given

to a personal representative, if there be one, and if with reasonable diligence, he can be found. If there be no personal representatives, notice may be sent to the last residence or last place of business of the deceased. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1402.)

§ 28-711. Notice to partners.

Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1403.)

§ 28-712. Notice to persons jointly liable.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1404.)

§ 28-713. Notice to bankrupt.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1405.)

§ 28-714. Time within which notice must be given.

Notice may be given as soon as the instrument is dishonored; and unless delay is excused, as herein-after provided, must be given within the time fixed by chapters 1-10 of this title. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1406; June 30, 1902, 32 Stat. 543, ch. 1329.)

CODIFICATION

"Chapters 1-10 of this title" refer to chapter 46 of act Mar. 3, 1901, which is the Uniform Negotiable Instruments Law.

AMENDMENT

1902—Act June 30, 1902, substituted "chapter" for "Act."

§ 28-714a. Dishonor of demand items by banks.

(a) In any case in which a bank in the District of Columbia receives, other than for immediate payment over the counter, a demand item payable by, at, or through such bank and such bank gives credit for such demand item before midnight of the day of receipt of such item, such bank may have until midnight of its next business day after receipt of such item within which to dishonor or refuse payment of such item. Any credit so given, together with all related entries on the books of the receiving bank, may be revoked by such bank, by returning such item, or if such item is held for protest, or at the time is lost, or is not in the possession of such bank, by giving written notice of dishonor, nonpayment, or revocation. Such credit and related entries shall be revoked by such bank only if such item or such written notice is dispatched in the mails or by other expeditious means not later than midnight of such bank's next business day after the item was received. For the purpose of determining when notice of dishonor must be given or protest must be made under the law relative to negotiable instruments, an item duly presented, credit for which is revoked as authorized by this section, shall be deemed dishonored on the day such item or such written notice is dispatched. A bank, revoking credit pursuant to the authority of this section, is entitled to refund of, or credit for, the amount of such item.

(b) For the purposes of this section—

(1) a demand item received by a bank on a day other than its business day, or received on a business day after its regular business hours, or during afternoon or evening periods when it has reopened or remained open for limited functions, shall be deemed to have been received at the opening of such bank's next business day;

(2) the term "credit" includes payment, remittance, advice of credit, or authorization to charge and, in cases where the item is received for deposit as well as for payment, such term also includes the making of appropriate entries to the receiving bank's general ledger without regard to whether such item is posted to individual customers' ledgers;

(3) each branch or office of a bank shall be deemed a separate bank; and

(4) the term "bank" includes any bank or trust company doing business in the District of Columbia.

(c) The effect of this section may be varied by written agreement. (Aug. 7, 1950, 64 Stat. 416, ch. 602, §§ 1-3.)

§ 28-715. When notice to be given if parties reside in same place.

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

First. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the following day.

Second. If given at his residence, it must be given before the usual hours of rest on the day following.

Third. If sent by mail, it must be deposited in the post office in time to reach him in the usual course on the day following. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1407.)

§ 28-716. When notice to be given if parties reside in different places.

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

First. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or, if there be no mail at a convenient hour on that day, by the next mail thereafter.

Second. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail if it had been deposited in the post office within the time specified in the last subdivision. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1408.)

§ 28-717. Mailing notice sufficient.

Where notice of dishonor is duly addressed and deposited in the post office the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1409.)

§ 28-718. Depositing notice in post office—What constitutes.

Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the Post Office Department. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1410.)

§ 28-719. Notice to antecedent parties by party notified by holder.

Where a party receives notice of dishonor he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1411.)

§ 28-720. Where notice must be sent—Sufficiency of actual notice.

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

First. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or,

Second. If he live in one place and have his place of business in another, notice may be sent to either place; or,

Third. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified by chapters 1-10 of this title it will be sufficient, though not sent in accordance with the requirements of this section. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1412; June 30, 1902, 32 Stat. 543, ch. 1329.)

CODIFICATION

"Chapters 1-10 of this title" refer to chapter 46 of act Mar. 3, 1901, which is the Negotiable Instruments Law.

AMENDMENT

1902—Act June 30, 1902, substituted "chapter" for "Act."

§ 28-721. Waiver of notice.

Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be expressed or implied. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1413.)

NOTES TO DECISIONS

1. In general

Evidence was admissible as to waiver of notice, and also admissible under the common counts. *Green v. Hfg. Mfg. Co.* (44 App. D. C. 186).

§ 28-722. Parties bound by waiver of notice.

Where the waiver is embodied in the instrument itself it is binding upon all parties, but where it is written above the signature of an indorser it binds him only. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1414.)

§ 28-723. Waiver of protest.

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1415.)

§ 28-724. When notice dispensed with.

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1416.)

NOTES TO DECISIONS

1. Reasonable diligence

Diligence in effort to find indorser's proper address was

not shown, by notary, by merely searching through city and telephone directory. *Bost v. Rexine Co.* (1926, 8 F. 2d 795, 56 App. D.C. 34, 55 A.L.R. 670).

§ 28-725. Excuse for delay in giving notice.

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate notice must be given with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1417.)

§ 28-726. When notice to drawer is not required.

Notice of dishonor is not required to be given to the drawer in either of the following cases:

First. Where the drawer and the drawee are the same person.

Second. Where the drawee is a fictitious person or a person not having capacity to contract.

Third. Where the drawer is the person to whom the instrument is presented for payment.

Fourth. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; or,

Fifth. Where the drawer has countermanded payment. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1418.)

§ 28-727. When notice to indorser is not required.

Notice of dishonor is not required to be given to an indorser in either of the following cases:

First. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument.

Second. Where the indorser is the person to whom the instrument is presented for payment; or,

Third. Where the instrument was made or accepted for his accommodation. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1419.)

§ 28-728. Notice of nonpayment—When not necessary.

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1420.)

§ 28-729. Omission to give notice of nonacceptance.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1421.)

§ 28-730. Protest—Not required except on foreign bills of exchange—Original protest as evidence.

Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

The original protest of a notary public, under his hand and official seal, of any bill of exchange, check, or order for nonacceptance or nonpayment, or of any promissory note for nonpayment, stating the presentment by him of such bill of exchange, check, order, or promissory note for acceptance or payment and the nonacceptance or nonpayment thereof, and

the service of notice thereof on any of the parties to such bill of exchange, promissory note, or check, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given shall be prima facie evidence of the facts therein contained. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1422; Apr. 19, 1920, 41 Stat. 569, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, struck out "in the District" which appeared after "notary public."

CROSS REFERENCES

Notary, protest by, see § 1-508.

Protest generally, see § 28-928 et seq.

Chapter 8.—DISCHARGE OF NEGOTIABLE INSTRUMENTS

Sec.

28-801. Means of discharge of negotiable instrument.

28-802. Discharge of person secondarily liable.

28-803. Payment by party secondarily liable not a discharge—Further negotiation.

28-804. Discharge by renunciation of rights against party—Except holder in due course.

28-805. Cancellation.

28-806. Alteration—Effect.

28-807. Material alteration—Definition.

§ 28-801. Means of discharge of negotiable instrument.

A negotiable instrument is discharged—

First. By payment in due course by or on behalf of the principal debtor.

Second. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

Third. By the intentional cancelation thereof by the holder.

Fourth. By any other act which will discharge a simple contract for the payment of money.

Fifth. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1423.)

NOTES TO DECISIONS

Acceptance for antecedent debt 1

Oral discharge 2

Payment to person not in possession 3

Place of tender 4

Waiver of defense of usury 5

1. Acceptance for antecedent debt

Acceptance of a negotiable note for an antecedent debt will not extinguish such debt, unless it is expressly agreed that it is received as payment. *Ryan v. Security Sav. & Commercial Bank* (1921, 271 F. 366, 50 App. D.C. 292).

2. Oral discharge

A promise of marriage is a valuable consideration for the discharge of a note and need not be in writing. *Pryor v. Bond* (D.C. Mun. App. 1955, 110 A. 2d 539).

In administrator's action against maker of note, evidence supported finding that note was cancelled in consideration of maker's oral promise of marriage, even though note remained in payee's possession. *Id.*

3. Payment to person not in possession

Payment of a promissory note to a person not in possession of it is at the peril of the payor and imposes the duty of showing by satisfactory evidence that the person to whom payment was made was authorized to receive it. *Davis v. Casey* (1939, 103 F. 2d 529, 70 App. D.C. 27). See, also, *Eastern Acceptance Corp. v. Henry* (D.C. Mun. App. 1948, 62 A. 2d 309).

4. Place of tender

When promissory note is payable at third person's office, it is the duty of the maker or indorsee, in the absence of directions from holder to the contrary, to tender payment there and if the note is in possession of a third person, he has the right to assume that such

person has authority to receive the payment. *Fifth Congregational Church v. Bright* (28 App. D.C. 229, certiorari denied 27 S. Ct. 788, 205 U.S. 541, 51 L. Ed. 921).

5. Waiver of defense of usury

When the debtor under a usurious obligation, which has come into the hands of an innocent purchaser for value, executes a new note to such third person, he will be deemed to have waived his right to set up usury, and the new note will be deemed to be upon a valid consideration. *McNeill v. Lilly* (1936, 82 F. 2d 620, 65 App. D.C. 210).

§ 28-802. Discharge of person secondarily liable.

A person secondarily liable on the instrument is discharged—

First. By an act which discharges the instrument.

Second. By the intentional cancelation of his signature by the holder.

Third. By the discharge of a prior party.

Fourth. By a valid tender of payment made by a prior party.

Fifth. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

Sixth. By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1424.)

NOTES TO DECISIONS

Agreement to pay 1

Cancelation 2

Extension of time without knowledge of indorser 3

New agreement 4

Note of debtor 5

Release of security 6

1. Agreement to pay

Where defendant purchased encumbered property without assuming liability on note secured by a deed of trust but, to obtain extension, agreed to pay note and thereafter sold property to one who did not assume indebtedness, but who obtained extension without defendant's knowledge or consent, §§ 28-119, 28-302, 28-504 and this section regarding party liable on note where inapplicable in determining defendant's liability to holder of note since defendant was not a "party liable on note." *Ober v. Riggs Nat. Bank of Washington, D.C.* (1943, 31 A. 2d 877).

2. Cancelation

Sections 181, 182, and 185, D. C. 1929, title 22 (§§ 28-801, 28-802, 28-805), speak of cancelation but at no place in the statute is there a definition of the term, hence, resort must be had to the rules of the law merchant for proper application of the term. *Washington Loan & Trust Co. v. Colby* (1940, 108 F. 2d 743, 71 App. D.C. 236).

3. Extension of time without knowledge of indorser

Party secondarily liable is discharged if an agreement is entered into between the makers of the note and the payee for an extension of the time of payment without the knowledge or consent of the indorser. It is immaterial whether the extension is made before or after maturity of the note. *Anderson v. Lee D. Butler, Inc.* (1933, 63 F. 2d 271, 61 App. D.C. 380).

4. New agreement

A failure to pay the first note under the bill of sale substituted for the original note without knowledge of the indorser did not operate to revive the obligation of such indorser on the original note. *Anderson v. Lee D. Butler* (1933, 63 F. 2d 271, 61 App. D.C. 380).

5. Note of debtor

Note of debtor himself, or of a third party, is never considered as a payment of a precedent debt, unless there be a special agreement to that effect. *Ryan v. Security Sav. & Commercial Bank* (1921, 271 F. 366, 50 App. D.C. 292).

6. Release of security

Where a purchaser of an automobile, having given note with indorsement, executed instalment notes and bill of sale as security, released indorser without knowledge of such transaction. *Anderson v. Lee D. Butler, Inc.* (1933, 63 F. 2d 271, 61 App. D.C. 380).

§ 28-803. Payment by party secondarily liable not a discharge—Further negotiation.

Where the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except—

First. Where it is payable to the order of a third person and has been paid by the drawer; and,

Second. Where it was made or accepted for accommodation and has been paid by the party accommodated. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1425.)

§ 28-804. Discharge by renunciation of rights against party—Except holder in due course.

The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument; but a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1426.)

§ 28-805. Cancellation.

A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1427.)

NOTES TO DECISIONS

1. Marking note "canceled"

Marking a note "canceled," as was done in the instant case, is sufficient to discharge the note. *Washington Loan & Trust Co. v. Colby* (1940, 108 F. 2d 743, 71 App. D.C. 236).

§ 28-806. Alteration—Effect.

Where a negotiable instrument is materially altered without the assent of all parties liable thereon it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1428.)

NOTES TO DECISIONS

Acknowledgment of altered instrument 1

Alteration before indorsement 2

Burden of proof 3

Explanation of alteration 4

Questions for

Court 5

Jury 6

1. Acknowledgment of altered instrument

While there is a conflict of authority on the point whether one can bind himself by the acknowledgment of

an altered or forged instrument and a promise to pay the same without a new consideration, or some special ground of estoppel; however, he may do so provided the paper is in the hands of one who had no connection with the forgery, and the promise is not involved in an attempt to compound the felony. *Ofenstein v. Bryan* (20 App. D.C. 1). See, also, *National Capital Bank v. Bryan* (20 App. D.C. 26).

2. Alteration before indorsement

If the note in suit has not been materially altered at any time, or if it has been materially altered, but before indorsement thereof by the defendants, the plaintiff is entitled to recover notwithstanding such material alteration. *Towles v. Tanner* (21 App. D. C. 530).

3. Burden of proof

If the defendants have shown such alteration, the burden of proof thereupon shifted to the plaintiff to show that such alteration was made before the indorsement of the note by the defendants; or that, if it was made after such indorsement, it was made with the knowledge or consent of the defendants, or was ratified by them with full knowledge thereof or with the means of knowledge in their possession, or that the note so altered was declared by them to be good and valid with a view to its negotiation. *Towles v. Tanner* (21 App. D. C. 530).

4. Explanation of alteration

Where the alteration is material, and such as reasonably to excite suspicion, it is incumbent upon the party offering it, in support of his claim thereunder, to give some evidence tending to explain its condition. *Ofenstein v. Bryan* (20 App. D.C. 1). See, also, *National Capital Bank v. Bryan* (20 App. D.C. 26).

If upon the face of the note it appears to have been materially altered, and the alteration is such as reasonably to excite suspicion, it is incumbent upon the plaintiff to explain its condition. But if alteration is not so apparent on the face of the paper as reasonably to excite suspicion, which is a question for the court in the first instance, then it is incumbent on the defendants, as matter of defense, to show the alteration. *Towles v. Tanner* (21 App. D. C. 530).

5. Questions for court

Question whether the alteration is material and so plainly suspicious as to warrant the requirement of some explanatory evidence as the condition of its admission, is for the determination of the court. *Ofenstein v. Bryan* (20 App. D. C. 1).

6. Questions for jury

Question whether alteration was made before or after delivery, or with or without the knowledge or consent of the several signers and indorsers, is one that must be submitted to the jury. *Ofenstein v. Bryan* (20 App. D. C. 1).

§ 28-807. Material alteration—Definition.

Any alteration which changes—

First. The date.

Second. The sum payable, either for principal or interest.

Third. The time or place of payment.

Fourth. The number or the relations of the parties.

Fifth. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1429.)

Chapter 9.—BILLS OF EXCHANGE

Sec.

28-901. Definition.

28-902. Bill not an assignment of funds—Liability of drawee.

28-903. Drawee—Joint—Can not be alternative or successive.

28-904. Foreign and inland bills—Definitions.

28-905. When bill may be treated as promissory note.

28-906. Referee in case of need.

ACCEPTANCE

Sec.

- 28-907. Acceptance—Form—Sufficiency.
- 28-908. Holder entitled to acceptance on face of bill.
- 28-909. Acceptance by separate instrument.
- 28-910. Acceptance before bill drawn.
- 28-911. Time allowed for accepting.
- 28-912. Liability of drawee retaining or destroying bill.
- 28-913. Acceptance of incomplete, overdue, or previously dishonored bill.
- 28-914. Kinds of acceptance.
- 28-915. General acceptance.
- 28-916. Qualified acceptance.
- 28-917. Holder not bound to take qualified acceptance—Effect of taking—Notice to drawer and indorser.

PRESENTMENT FOR ACCEPTANCE

- 28-918. When presentment for acceptance must be made.
- 28-919. When failure to present for acceptance releases drawer and indorser.
- 28-920. Acceptance in satisfaction of former debt—When deemed in complete payment.
- 28-921. Presentment for acceptance—How made—To whom.
- 28-922. On what days presentment for acceptance may be made.
- 28-923. Excuses for delay in presenting for acceptance.
- 28-924. Excuses for not presenting for acceptance—Bill treated as dishonored.
- 28-925. When bill dishonored by nonacceptance.
- 28-926. Dishonor by nonacceptance within prescribed time—Right of recourse.
- 28-927. Right of recourse when bill not accepted.

PROTEST

- 28-928. Protest—When necessary—Discharge of drawer and indorsers.
- 28-929. Protest—How made—Contents.
- 28-930. Protest—By whom made.
- 28-931. Protest—When to be made.
- 28-932. Protest—Where made.
- 28-933. Bill may be protested for both nonacceptance and nonpayment.
- 28-934. Protest before maturity if acceptor bankrupt or insolvent.
- 28-935. When protest dispensed with.
- 28-936. Protest when bill lost, destroyed, or wrongfully detained.

ACCEPTANCE FOR HONOR

- 28-937. Acceptance for honor supra protest.
- 28-938. Acceptance for honor supra protest—How made.
- 28-939. Acceptance for honor of drawer.
- 28-940. Liability of acceptor for honor.
- 28-941. Agreement of acceptor for honor.
- 28-942. Maturity of bill payable after sight and accepted for honor.
- 28-943. Protest of bill accepted for honor supra protest or containing a reference in case of need.
- 28-944. Presentment for payment to acceptor for honor—How made.
- 28-945. When delay in making presentment is excused.
- 28-946. Dishonor of bill by acceptor for honor—Protest.

PAYMENT FOR HONOR

- 28-947. Payment for honor supra protest—Who may make.
- 28-948. Payment for honor supra protest—How made.
- 28-949. Declaration before payment for honor supra protest.
- 28-950. Preference of parties offering to pay for honor.
- 28-951. Effect on subsequent parties where bill is paid for honor.
- 28-952. Where holder refuses to receive payment supra protest.
- 28-953. Rights of payer for honor.

BILLS IN A SET

- 28-954. Bills in a set constitute one bill.
- 28-955. Right of holder where other parts negotiated to different holders.

Sec.

- 28-956. Liability upon indorsement of two or more parts of set.
- 28-957. Acceptance of bills in a set—Liability of acceptor.
- 28-958. Payment by acceptor—Liability for outstanding accepted parts.
- 28-959. Effect of discharging one of a set.

§ 28-901. Definition.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1430.)

§ 28-902. Bill not an assignment of funds—Liability of drawee.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1431.)

§ 28-903. Drawee—Joint—Cannot be alternative or successive.

A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or succession. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1432.)

§ 28-904. Foreign and inland bills—Definitions.

An inland bill of exchange is a bill which is or on its face purports to be both drawn and payable within this District. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1433.)

§ 28-905. When bill may be treated as promissory note.

Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1434.)

§ 28-906. Referee in case of need.

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1435.)

ACCEPTANCE

§ 28-907. Acceptance—Form—Sufficiency.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1436.)

§ 28-908. Holder entitled to acceptance on face of bill.

The holder of a bill presenting the same for acceptance may require that the acceptance be written

on the bill, and if such a request is refused may treat the bill as dishonored. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1437.)

§ 28-909. Acceptance by separate instrument.

Where an acceptance is written on a paper other than the bill itself it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1438.)

§ 28-910. Acceptance before bill drawn.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1439.)

§ 28-911. Time allowed for accepting.

The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1440.)

§ 28-912. Liability of drawee retaining or destroying bill.

Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder he will be deemed to have accepted the same. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1441.)

§ 28-913. Acceptance of incomplete, overdue or previously dishonored bill.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1442.)

§ 28-914. Kinds of acceptance.

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1443.)

§ 28-915. General acceptance.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1444.)

§ 28-916. Qualified acceptance.

An acceptance is qualified which is—

First. Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

Second. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

Third. Local; that is to say, an acceptance to pay only at a particular place.

Fourth. Qualified as to time.

Fifth. The acceptance of some one or more of the drawees, but not of all. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1445.)

§ 28-917. Holder not bound to take qualified acceptance—Effect of taking—Notice to drawer and indorser.

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder or he will be deemed to have assented thereto. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1446.)

PRESENTMENT FOR ACCEPTANCE

§ 28-918. When presentment for acceptance must be made.

Presentment for acceptance must be made—

First. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

Second. Where the bill expressly stipulates that it shall be presented for acceptance; or,

Third. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1447.)

§ 28-919. When failure to present for acceptance releases drawer and indorser.

Except as herein otherwise provided, the holder of a bill which is required by section 28-918 to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1448.)

§ 28-920. Acceptance in satisfaction of former debt—When deemed in complete payment.

If any person doth accept any bill of exchange for and in satisfaction of any former debt, or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person, accepting of any such bill for his debt, doth not take his due course to obtain payment thereof, by endeavoring to get the same accepted and paid, and make his protest, either for nonacceptance, or nonpayment thereof: *Provided*, That nothing herein contained shall extend to discharge any remedy, that any person may have against the drawer, acceptor or indorser of such bill. (3 & 4 Ann. ch. 9, §§ 7 & 8 (1704); Kilty's Rep. p. 245; Alex. Br. Stat., p. 653; Comp. Stat. D. C. Code, p. 68, §§ 9 and 10.)

CODIFICATION

Section was not enacted as part of the Negotiable Instruments Law, which is classified to chapters 1 to 10 of this title.

§ 28-921. Presentment for acceptance—How made—to whom.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and,

First. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

Second. Where the drawee is dead, presentment may be made to his personal representative.

Third. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1449.)

CROSS REFERENCE

Presentment by notary public, see §§ 1-508, 1-509.

§ 28-922. On what days presentment for acceptance may be made.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 28-603 and 28-616. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock noon on that day. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1450; June 30, 1902, 32 Stat. 543, ch. 1329.)

§ 28-923. Excuses for delay in presenting for acceptance.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1451.)

§ 28-924. Excuses for not presenting for acceptance—Bill treated as dishonored.

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases:

First. When the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill.

Second. Where after the exercise of reasonable diligence presentment can not be made.

Third. Where, although presentment has been irregular, acceptance has been refused on some other ground. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1452.)

§ 28-925. When bill dishonored by nonacceptance.

A bill is dishonored by nonacceptance—

First. When it is duly presented for acceptance and such an acceptance as is prescribed by chapters

1-10 of this title is refused or can not be obtained; or,

Second. When presentment for acceptance is excused and the bill is not accepted. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1453; June 30, 1902, 32 Stat. 543, ch. 1329.)

CODIFICATION

"Chapters 1-10 of this title" refers to chapter 46 of act Mar. 3, 1901, which is the Negotiable Instruments Law.

§ 28-926. Dishonor by nonacceptance within prescribed time—Right of recourse.

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1454.)

§ 28-927. Right of recourse when bill not accepted.

When a bill is dishonored by nonacceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1455.)

PROTEST

§ 28-928. Protest—When necessary—Discharge of drawer and indorsers.

Where a foreign bill, appearing on its face to be such, is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1456.)

CROSS REFERENCES

Protest by notary public, see § 1-508.

Protest required when, see § 28-730.

NOTES TO DECISIONS

1. Decisions under prior law

Official protest of promissory note is not necessary in District of Columbia to hold indorsers. *Presbrey v. Thomas* (1 App. D. C. 171).

§ 28-929. Protest—How made—Contents.

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

First. The time and place of presentment.

Second. The fact that presentment was made, and the manner thereof.

Third. The cause or reason for protesting the bill.

Fourth. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1457.)

§ 28-930. Protest—By whom made.

Protest can be made by—

First. A notary public; or,

Second. By any respectable resident of the place where the bill is dishonored, in the presence of two

or more credible witnesses. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1458.)

CROSS REFERENCE

Protests by notaries, see §§ 1-508, 1-509.

§ 28-931. Protest—When to be made.

When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1459.)

§ 28-932. Protest—Where made.

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by non-acceptance it must be protested for nonpayment at the time when it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1460.)

§ 28-933. Bill may be protested for both nonacceptance and nonpayment.

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1461.)

§ 28-934. Protest before maturity if acceptor bankrupt or insolvent.

Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1462.)

§ 28-935. When protest dispensed with.

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1463.)

§ 28-936. Protest when bill lost, destroyed, or wrongfully detained.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1464.)

ACCEPTANCE FOR HONOR

§ 28-937. Acceptance for honor supra protest.

Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and

where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1465.)

§ 28-938. Acceptance for honor supra protest—How made.

An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1466.)

§ 28-939. Acceptance for honor of drawer.

Where an acceptance for honor does not expressly state for whose honor it is made it is deemed to be an acceptance for the honor of the drawer. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1467.)

§ 28-940. Liability of acceptor for honor.

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1468.)

§ 28-941. Agreement of acceptor for honor.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1469.)

§ 28-942. Maturity of bill payable after sight and accepted for honor.

Where a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1470.)

§ 28-943. Protest of bill accepted for honor supra protest or containing a reference in case of need.

Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1471.)

§ 28-944. Presentment for payment to acceptor for honor—How made.

Presentment for payment to the acceptor for honor must be made as follows:

First. If it is to be presented in the place where the protest for nonpayment was made it must be presented not later than the day following its maturity.

Second. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 28-716. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1472.)

§ 28-945. When delay in making presentment is excused.

The provisions of section 28-612 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1473.)

§ 28-946. Dishonor of bill by acceptor for honor—Protest.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1474.)

PAYMENT FOR HONOR**§ 28-947. Payment for honor supra protest—Who may make.**

Where a bill has been protested for nonpayment any person may intervene and pay it supra protest for the honor of any person liable thereon, or for the honor of the person for whose account it was drawn. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1475.)

§ 28-948. Payment for honor supra protest—How made.

The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1476.)

§ 28-949. Declaration before payment for honor supra protest.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1477.)

§ 28-950. Preference of parties offering to pay for honor.

Where two or more persons offer to pay a bill for the honor of different parties the person whose payment will discharge most parties to the bill will be given the preference. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1478.)

§ 28-951. Effect on subsequent parties where bill is paid for honor.

Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged; but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1479.)

§ 28-952. Where holder refuses to receive payment supra protest.

Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1480.)

§ 28-953. Rights of payer for honor.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1481.)

BILLS IN A SET**§ 28-954. Bills in a set constitute one bill.**

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the

other parts, the whole of the parts constitute one bill. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1482.)

§ 28-955. Right of holder where other parts negotiated to different holders.

Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1483.)

§ 28-956. Liability upon indorsement of two or more parts of set.

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1484.)

§ 28-957. Acceptance of bills in a set—Liability of acceptor.

The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1485.)

§ 28-958. Payment by acceptor—Liability for outstanding accepted parts.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1486.)

§ 28-959. Effect of discharging one of a set.

Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1487.)

Chapter 10.—PROMISSORY NOTES AND CHECKS
Sec.

28-1001. "Promissory note" defined.

28-1002. "Check" defined—Application of sections applying to bill of exchange.

28-1003. When check must be presented for payment.

28-1004. Checks or other demand instruments to be presented within one year.

28-1005. Certifying check—Effect.

28-1006. Effect where holder of check procures certification.

28-1007. Check not an assignment of funds.

28-1008. Liability of bank or trust company on forged, altered, or raised check.

28-1009. Liability of bank or trust company for nonpayment of check through error.

28-1010. Liability of forwarding bank on failure of payor bank to account for proceeds of check.

28-1011. Revocations, countermands and stop-payment orders.

§ 28-1001. "Promissory note" defined.

A negotiable promissory note, within the meaning hereof, is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order

or to bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1483.)

§ 28-1002. "Check" defined—Application of sections applying to bill of exchange.

A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions hereof applicable to a bill of exchange payable on demand apply to a check. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1489.)

NOTES TO DECISIONS

1. Post-dated checks

Post-dated checks are considered as negotiable instruments similar to bills of exchange payable in the future and their purpose is to obtain extension of credit. *Daine v. Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

§ 28-1003. When check must be presented for payment.

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1490.)

§ 28-1004. Checks or other demand instruments to be presented within one year.

Where a check or other instrument payable on demand at any bank or trust company doing business in the District of Columbia is presented for payment more than one year from its date, such bank or trust company may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof, and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 1.)

CODIFICATION

Section was not enacted as part of the Negotiable Instruments Law, which is classified to chapters 1 to 10 of this title.

NOTES TO DECISIONS

1. Liability generally

This section providing that a check may be dishonored without liability after a year did not apply to treasurer's check of bank to which it was presented. *Whitehead v. American Security & Trust Co.* (C.A.D.C. 1960, 285 F. 2d 282).

Under this section, where a check payable at any bank or trust company doing business in the District of Columbia is presented for payment more than one year from its date, such bank or trust company may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof, and no liability is incurred to the drawer or maker for dishonoring the instrument by nonpayment. *Modern Engineering & Service Corp. v. McCrea* (D. C. Mun. App. 1946, 46 A. 2d 767).

§ 28-1005. Certifying check—Effect.

Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1491.)

§ 28-1006. Effect where holder of check procures certification.

Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1492.)

§ 28-1007. Check not an assignment of funds.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer

with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1493.)

NOTES TO DECISIONS

1. Evidence

In action against administratrix to impress a lien on a certain fund and to have it distributed pro rata to plaintiffs for whom decedent had collected rents, the District Court properly found under the evidence that decedent's delivery to plaintiffs of rental statements and checks drawn on special rent account shortly before his death was not accompanied by an understanding sufficient to constitute an equitable assignment pro tanto of the special fund to plaintiffs. *Brown v. Christman* (1941, 126 F. 2d 625, 75 U.S. App. D. C. 203).

§ 28-1008. Liability of bank or trust company on forged, altered, or raised check.

(a) No bank or trust company doing business in the District of Columbia, which has paid and charged to the account of a depositor any money on a forged, altered, or raised check issued in the name of said depositor shall be liable to said depositor for the amount paid thereon unless either (1) within one year after notice to said depositor that the vouchers representing payments charged to the account of said depositor for the period during which such payment was made are ready for delivery, or (2), in case no such notice has been given, within six months after the return to said depositor of the voucher representing such payment, said depositor shall notify the bank or trust company that the check so paid is forged, altered, or raised.

(b) The notice referred to in subsection (a) may be given by mail to said depositor at his last-known address with postage prepaid.

(c) This section shall not be construed to relieve a depositor from due diligence in the examination of returned vouchers or in otherwise discovering that a check has been forged, altered, or raised, or in notifying the bank or trust company of his actual discovery of a forgery or alteration.

(d) When used in this section the word "check" shall also include drafts, notes, acceptances, or other negotiable instruments payable at a bank or trust company, and the word "forged" shall also include an unauthorized signature by an agent or officer of a depositor.

(e) The provisions of this section shall not be held to apply to the forgery of an endorsement. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 3.)

CODIFICATION

Section was not enacted as part of the Negotiable Instruments Law, which is classified to chapters 1 to 10 of this title.

§ 28-1009. Liability of bank or trust company for nonpayment of check through error.

No bank or trust company doing business in the District of Columbia shall be liable to a depositor because of the nonpayment through mistake or error and without malice of a check, draft, note, acceptance, or other negotiable instrument, payable at any bank or trust company, which should have been paid unless the depositor shall allege and prove actual damage by reason of such nonpayment and in such event the liability shall not exceed the amount of damage so proved. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 6.)

CODIFICATION

Section was not enacted as part of the Negotiable Instruments Law, which is classified to chapters 1 to 10 of this title.

§ 28-1010. Liability of forwarding bank on failure of payor bank to account for proceeds of check.

Any bank or trust company doing business in the District of Columbia receiving for collection or deposit any check, draft, note, acceptance, or other negotiable instrument drawn upon or payable at any other bank, located outside the District of Columbia, may forward such instrument for collection directly to the bank on which it is drawn or at which it is made payable, and such method of forwarding direct to the payer shall be deemed due diligence, and the failure of such payor bank, because of its insolvency or other default, to account for the proceeds thereof shall not render the forwarding bank liable therefor: *Provided, however,* That such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 7.)

CODIFICATION

Section was not enacted as part of the Negotiable Instruments Law, which is classified to chapters 1 to 10 of this title.

§ 28-1011. Revocations, countermands and stop-payment orders.

(a) No revocation, countermand, or stop-payment order hereafter made relating to the payment of any check or draft against an account of a depositor in any bank or trust company doing business in the District of Columbia, or relating to the payment of a note or acceptance made payable at any such bank or trust company, shall be valid unless the same be in writing specifically describing the instrument to which it relates by stating the amount of the item upon which payment is to be stopped, the date thereof, and the name of the payee and be delivered to the bank or trust company at the particular office, or branch, if any, on which such instrument was drawn or at which it was made payable: *Provided, however,* That any stop-payment order transmitted by telephone to an officer of the bank upon which the instrument has been drawn shall be accepted by the bank upon such identification that will insure the order has been transmitted by its depositor as an effective notice for a period of twenty-four hours, after which time it shall no longer be valid unless followed by a written order as otherwise provided herein.

(b) The delivery to one office or branch of a bank or trust company of any such revocation, countermand, or stop-payment order shall not constitute notice, actual or constructive, to any other office or branch of the same bank or trust company and shall not impair the right of such bank or trust company, acting through any such other office or branch, to be a holder in due course of the instrument.

(c) No such written revocation, countermand, or stop-payment order shall remain in effect more than six months after delivery thereof to the bank or trust company, unless same be renewed. The first or any subsequent renewal thereof shall be in writing; shall specifically describe the instrument or the revocation, countermand, or stop-payment order to

which it relates; shall be delivered to the bank or trust company at the particular office or branch, if any, on which such instrument was drawn or at which it was made payable; and shall be in effect for not more than six months from the date of delivery thereof. The bank or trust company to which such a revocation, countermand, or stop-payment order has been delivered may, at its option and without liability, stop the payment of such an instrument after the expiration date of the order or any renewal thereof.

(d) Any revocation, countermand, or stop-payment order existing on July 26, 1949, in any bank or trust company doing business in the District of Columbia may be canceled by the bank or trust company after six months from such date, by giving notice of such cancellation to the depositor at his last known address by registered mail but such a notice shall not be effective until thirty days have elapsed from the time of the mailing of such notice.

(e) Any bank or trust company that pays a check or other instrument drawn by or against the account of a depositor, the payment of which has been ordered stopped, and the order is still in effect, as herein provided, shall be responsible to the depositor for the amount thereof. When restored to such a depositor, the bank shall be subrogated to any benefits receivable, or amounts recoverable, by the depositor but shall pursue its remedy at its own expense. (July 26, 1949, 63 Stat. 481, ch. 365, §§ 1-5.)

CODIFICATION

Section was not enacted as part of the Negotiable Instruments Law, which is classified to chapters 1 to 10 of this title.

Chapter 11.—UNIFORM SALES—FORMATION OF CONTRACT

FORMALITIES OF THE CONTRACT

- Sec.
28-1101. Contract to sell—Sale—Definition—Absolute or conditional—Parties.
28-1102. Capacity of parties—Liabilities for necessities—Definition.
28-1103. Form of contract of sale.
28-1104. Statute of frauds.

SUBJECT MATTER OF CONTRACT

- 28-1105. Existing and future goods.
28-1106. Undivided shares—Fungible goods.
28-1107. Destruction of goods sold—Option of buyer.
28-1108. Destruction of goods contracted to be sold—Option of buyer.

THE PRICE

- 28-1109. Price—Ascertainment—Interest in real property as price.
28-1110. Price and terms to be fixed by third person—Failure to do so—Remedies.

CONDITIONS AND WARRANTIES

- 28-1111. Breach of conditions—Effect—Remedies.
28-1112. Express warranty—Definition.
28-1113. Implied warranties of title.
28-1114. Implied warranty in contract to sell or sale of goods by description—By sample.
28-1115. Implied warranties of quality or fitness—Effect of express warranty.

SALE BY SAMPLE

- 28-1116. Implied warranties in contract to sell or sale by sample.

FORMALITIES OF THE CONTRACT

§ 28-1101. Contract to sell—Sale—Definition—Absolute or conditional—Parties.

(1) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the "price."

(2) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the "price."

(3) A contract to sell or a sale may be absolute or conditional.

(4) There may be a contract to sell or a sale between one part owner and another. (Mar. 17, 1937, 50 Stat. 29, ch. 43, § 1.)

EFFECTIVE DATE

Section 78 of act Mar. 17, 1937, provided that: "This Act [chapters 11 to 16 of this title] shall take effect on the first day of July, 1937."

REPEALS

Section 77 of act Mar. 17, 1937, provided that: "All Acts or parts of Acts inconsistent with this Act [chapters 11 to 16 of this title] are hereby repealed."

CROSS REFERENCES

Bills of lading, see U. S. Code, title 49, ch. 4.
Finance charges in connection with sale of motor vehicles on installment basis, see Title 40, chapter 9.
Sale of securities see U. S. Code, title 15, ch. 2a.

NOTES TO DECISIONS

Conditional sale 1
Consideration 2
Retained title 3
Sale versus consignment 4

1. Conditional sale

The effectiveness of a conditional sales contract must be considered in the light of status of the parties at time contract was made. *Daine v. Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

2. Consideration

In so-called "cash transactions" in which passage of title depends upon payment, a check is generally considered conditional payment only and payment is effected only when check itself is paid. *Daine v. Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

3. Retained title

In this jurisdiction, the retained title is nothing more than a security interest invocable only upon default by the buyer. It is well settled that the happening of such default clothes the seller with immediate right of repossession and also with the right to subject the property to the satisfaction of the unpaid obligation. *District of Columbia v. Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

4. Sale versus consignment

In action for treble damages under Robinson-Patman Act based on alleged book sales to plaintiff's competitors at preferential prices and terms, refusal of plaintiff's requested instruction on distinction between consignment and sale was not error, in view of instruction given on question whether transactions were consignments or sales. *Student Book Co. v. Washington Law Book Co.* (1956, 232 F. 2d 49, 98 U.S. App. D.C. 49, certiorari denied 76 S. Ct. 474, 350 U.S. 988, 100 L. Ed. 854).

A contract constitutes a sale when the consignee agrees to pay a certain price for consigned goods as he sells them and there are no restrictions or limitations imposed upon his right to sell the goods or as to the price on a sale by him, even though the contract contains a clause giving the consignee the right to return unsold goods. *Martin Co. v. Sumpter* (D. C. Mun. App. 1949, 64 A. 2d 425).

If a contract under which personal property is delivered to another permits him to sell the same at retail at prices fixed by himself and to retain the proceeds, his only obligation being to pay for the property as and when sold at

prices fixed by the contract, the contract is not one of consignment but one of sale. *Id.*

§ 28-1102. Capacity of parties—Liabilities for necessities—Definition.

Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

"Necessaries" in this section means goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 2.)

NOTES TO DECISIONS

1. Infants

Where infant did not misrepresent his age in purchasing a motor scooter he could recover purchase price, for inability to return the consideration and restore the status quo may not deprive him of his rights to repudiate. Emancipation does not give an infant enlarged capacity to contract. *Dawson v. Fox* (D. C. Mun. App. 1949, 64 A. 2d 162).

§ 28-1103. Form of contract of sale.

Subject to the provisions of chapters 11-16 of this title and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth or may be inferred from the conduct of the parties. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 3.)

§ 28-1104. Statute of frauds.

(1) A contract to sell or a sale of any goods or choses in action of the value of \$500 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 4.)

NOTES TO DECISIONS

Acceptance 1
Necessity of objection 2

1. Acceptance

Evidence justified a finding that delivery of goods amounted to an "assent on the part of the buyer to take existing and identified goods as owner" so as to constitute

acceptance within this section. *Stamates v. Andelman* (D. C. Mun. App. 1949, 68 A. 2d 903).

2. Necessity of objection

Contention that recovery was barred by statute of frauds could not be made for the first time on motion for new trial. *Ford v. Spivey* (D.C. Mun. App. 1951, 79 A. 2d 565).

SUBJECT MATTER OF CONTRACT

§ 28-1105. Existing and future goods.

(1) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in chapters 11-16 of this title called future goods.

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 5.)

§ 28-1106. Undivided shares—Fungible goods.

(1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight, or measure of the goods in the mass, and though the number, weight, or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight, or measure bought bears to the number, weight, or measure of the mass. If the mass contains less than the number, weight, or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 6.)

CROSS REFERENCE

Sale of an undivided share, see § 28-1201.

§ 28-1107. Destruction of goods sold—Option of buyer.

(1) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a) As avoided; or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 7.)

§ 28-1108. Destruction of goods contracted to be sold—Option of buyer.

(1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby voided.

(2) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a) As avoided; or

(b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 8.)

THE PRICE

§ 28-1109. Price—Ascertainment—Interest in real property as price.

(1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2) The price may be made payable in any personal property.

(3) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, chapters 11-16 of this title shall not apply.

(4) Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 9.)

§ 28-1110. Price and terms to be fixed by third person—Failure to do so—Remedies.

(1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer can not or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by chapters 14 and 15 of this title. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 10.)

CONDITIONS AND WARRANTIES

§ 28-1111. Breach of conditions—Effect—Remedies.

(1) Where the obligation of either party to a contract to sell or a sale is subject to any condition

which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first-mentioned party may also treat the nonperformance of the condition as a breach of warranty.

(2) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligations to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 11.)

§ 28-1112. Express warranty—Definition.

Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 12.)

NOTES TO DECISIONS

Adoption of warranties	1
Authority of agent	2
Burden of proof	3
Circumstances indicating express warranty	4
Evidence	5
Pleading	6
Presumption	7
Remedy	8
Statements of salesmen	9

1. Adoption of warranties

The mere resale of an article to which the manufacturer has affixed his warranty is not sufficient in itself to constitute an adoption of the warranty by the seller. There must be in addition some affirmation of fact or promise by the seller himself which tends to induce the buyer to purchase the article. *Orrison v. Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

2. Authority of agent

A customer who went to defendant's retail jewelry store and was there shown jewelry by a salesman could reasonably assume that salesman was defendant's agent, and not acting as an independent jeweler, in selling a watch to customer and making a warranty as to its quality, and defendant was liable for acts of salesman on theory of salesman's "apparent authority." *Livingston v. Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

3. Burden of proof

One suing for a breach of warranty has the burden of establishing the warranty and its breach. *Livingston v. Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

Buyer's burden of proving a breach of warranty that a watch was "waterproof" was not sustained by proof that watch was rusty and beyond repair at end of six months, in the absence of proof as to conditions under which the watch was used and the treatment it received. *Id.*

4. Circumstances indicating express warranty

Where plaintiff asked for a waterproof watch at defendant's jewelry store and was shown watches purporting to answer that description, and receipt for watch purchased recited payment for a waterproof watch, there was an "express warranty" that watch was waterproof. *Livingston v. Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

5. Evidence

In action to recover down payment on automobile for breach of a warranty that automobile was in good condition, evidence relating to repairs necessary immediately

after purchase was sufficient to sustain judgment for buyer. *Moore-Day Motors, Inc. v. Wright* (D. C. Mun. App. 1954, 102 A. 2d 304).

6. Pleading

In action on note given for part of purchase price of automobile, affidavit of defense alleging that automobile dealer represented the automobile to be in good condition, that the automobile was found to be in an unsafe and dangerous condition and with numerous and serious defects, that the dealer did not remedy the defect notwithstanding repeated demands, and that automobile had been returned to dealer as worthless was sufficient to permit maker of note to establish defenses of failure of consideration, breach of warranty, and that he was induced to purchase the automobile and to sign the note by fraudulent misrepresentations. *Palmer v. Associates Discount Corporation* (1942, 124 F. 2d 225, 74 App. D.C. 386).

Where subject matter of the present suit was returned after suit was filed but prior to the filing of the answer, evidence warranted the invocation of the rule providing that when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleadings. *Orrison v. Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

7. Presumptions

In the absence of evidence of the meaning of the word "waterproof" as applied to watches, the court could not assume that a warranty of a waterproof watch warrants the watch to be waterproof regardless of conditions and treatment. *Livingston v. Fuhrman* (D. C. Mun. App. 1944, 37 A. 2d 747).

8. Remedy

Where buyer purchased automobile and paid a down payment upon an express warranty by seller that automobile was in good condition, but automobile would not start the day after it was purchased and required \$50 repairs, the remedy of rescission was open to the buyer even though rescission was made after the sending of the repair bill. *Moore-Day Motors, Inc. v. Wright* (D. C. Mun. App. 1954, 102 A. 2d 304).

9. Statements of salesmen

In action for rescission of sale of hearing aid, trial court's conclusion that statements of seller's salesman that instrument was of sufficient power for buyer's hearing deficiency, and best help she could get, were an express warranty, was correct. *Hagedorn etc. v. Taggart* (D.C. Mun. App. 1955, 114 A. 2d 430).

In action for rescission of contract of sale of hearing aid, evidence was sufficient to support finding of breach of warranty that hearing aid was sufficient to correct buyer's hearing deficiency. *Id.*

Whether statements made by dealers is mere "puffing" or a warranty depends upon the surrounding circumstance, the manner in which they are made, and the ordinary effect of the words used. *Moore-Day Motors, Inc., v. Wright* (D. C. Mun. App. 1954, 102 A. 2d 304).

Salesman's statement, in reply to buyer's inquiry, that carpet was of a very good grade and should give buyer satisfactory wear, and that it was made by well-known rug maker, did not constitute an express warranty. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

§ 28-1113. Implied warranties of title.

In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared

¹ So in original. Probably should be "seller."

or known to the buyer before or at the time when the contract or sale is made.

(4) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law, goods in which a third person has a legal or equitable interest. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 13.)

NOTES TO DECISIONS

1. Liability for breach

Where defendant by contract authorized wrecking company to demolish lumber sheds and retain as its property the salvaged lumber but defendant had previously by lease with oil company transferred to oil company right to the salvaged material, defendant having failed through no fault of wrecking company to perform unqualified undertaking to deliver merchandise was liable for damages. *Stern v. Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

§ 28-1114. Implied warranty in contract to sell or sale of goods by description—By sample.

Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 14.)

§ 28-1115. Implied warranties of quality or fitness—Effect of express warranty.

Subject to the provisions of chapters 11-16 of this title and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be merchantable quality.

(3) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4) In the case of a contract to sell or sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to the quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under chapters 11-16 of this title unless inconsistent therewith. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 15.)

NOTES TO DECISIONS

Altered goods 1
Burden of proof 2
Circumstances of sale 3

Description, sale by 4
Direction of verdict 5
Evidence
Admissibility 6
Sufficiency 7
General use, fitness for 8
Instructions 9
Intended use, knowledge of 10
Loss of warranties 11
Manufacturer's liability for negligence 12
Particular purpose 13
Questions for jury 14
Reliance of buyer 15
Sales of food 16
Successor in interest 17
Summary judgment 18
Trade-name 19
Waiver 20

1. Altered goods

Warranties given by a vendor ordinarily extend to and cover goods only in the condition in which they exist at the time of purchase and a vendor is not liable for breach of warranty, if, prior to the alleged breach, the vendee changes or alters the nature and quality of the goods in a manner not contemplated by the parties. *Jelleff, Inc., to Use of Liberty Mut. Ins. Co. v. Pollak Bros. Inc.* (1959, 171 F.Supp. 467).

In action by retailer of a smock to compel manufacturer to satisfy judgment obtained against the retailer by purchaser of a smock which ignited and burst into flames, in addition to proof that the smock sold to the buyer was purchased from the defendant the retailer must demonstrate that there was no change or alteration in the condition of the smock between the date of the purchase and the date of the subsequent sale to the buyer. *Id.*

2. Burden of proof

Buyer suing for breach of warranty in sale of a carpet had burden of proving that in making purchase buyer relied on seller's skill or judgment and that carpet was not reasonably fit for its known purpose. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

3. Circumstances of sale

An "implied warranty" that goods sold are reasonably fit for the purpose of the purchaser is never in writing, is not created by a meeting of the minds of the parties, and does not constitute any portion of the contractual elements of the agreement, but is a product of the law operating upon the circumstances of the sale. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

4. Description, sale by

Where seller's salesman suggested to buyer that buyer select a carpet at a store and obtain the number and identifying description from the tag, and that salesman would then procure such carpet from manufacturer, sale of carpet obtained from manufacturer was by description, as regards whether there was an implied warranty as to fitness of the carpet. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

5. Direction of verdict

That buyer's nonexpert testimony that fur coat had several spots where fur was worn off after three months' wear was contradicted by seller's experts who testified that fur was not worn off but merely "matted down" and could be restored by heavy brushing did not require direction of verdict for seller in buyer's action for breach of implied warranty of fitness because buyer introduced no expert testimony, where coat involved was admitted in evidence for jury's inspection. *Woodward & Lothrop v. Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

6. Evidence, admissibility

In buyer's action against retailer for breach of warranty in sale of a "brunch" coat which ignited and burned the buyer when it came into contact with an electric stove, where retailer had filed a complaint against manufacturer of the garment seeking indemnity and complaint represented that the garment was flammable and not reasonably safe for the purposes for which it was intended, admitting the complaint to prove that the retailer claimed that the garment was flammable was proper. *Jelleff, Inc. v. Braden* (1956, 233 F. 2d 671, 98 U.S. App. D.C. 180, 63 A.L.R. 2d 400).

In buyer's action for breach of warranty in sale of a "brunch" coat which ignited and seriously burned buyer

when it touched an electric stove, ruling excluding evidence as to the absence of complaints from other customers concerning the flammability of garments manufactured by the manufacturer of the coat purchased by plaintiff was not an abuse of discretion. *Id.*

In buyer's action for breach of warranty in sale of a "brunch" coat which ignited and seriously burned buyer when it came in contact with an electric stove, ruling excluding evidence as to the absence of complaints from other customers was not prejudicial in view of other testimony admitted. *Id.*

Purchase order signed by both parties to sale of hearing aid, which contained statement that buyer had examined hearing aid and that there was no understanding, verbal or written, which would modify or amend effect of order, did not operate as a bar to introduction and consideration of evidence establishing an implied warranty that hearing aid was suitable for buyer's needs, since buyer had informed seller of the particular purpose for which the hearing aid was needed, and had relied upon the skill and judgment of seller in prescribing and furnishing a suitable hearing aid. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

Instrument purporting to be a purchase order but which was marked "paid in full, thank you" and executed on same day purchase was made and hearing aid delivered to buyer, was not a complete contract between the parties, but a mere receipt and, therefore, evidence of an oral express warranty made by seller to buyer as to fitness of aid for buyer's particular purpose was admissible. *Id.*

Where issue of fact is a condition of an article, such as a fur coat involved in action for breach of implied warranty of fitness, the introduction in evidence of such article to enable jury to observe its condition is competent and persuasive evidence. *Woodward & Lothrop v. Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

7. Evidence, sufficiency

In buyer's action for breach of warranty in sale of a set of automobile tires, buyer's testimony that he contracted to purchase genuine white wall tires, after being shown a picture of a white wall tire by one of sellers, was sufficient to support finding that buyer relied upon seller's skill and judgment in selecting the particular tires. *Grove v. Lepcofker* (D.C. Mun. App. 1954, 101 A. 2d 259).

In action to rescind contract of sale for purchase of hearing aid and to recover purchase price, for breach of seller's implied warranty of fitness for buyer's needs, evidence supported finding that buyer had not waived right to rescind contract by retaining possession of hearing aid several months after date of purchase. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

In action for breach of warranty in sale of carpet, evidence which merely showed the retail price of carpet at time of delivery, had its quality answered to the warranty was insufficient basis for jury's award of damages. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

Evidence that carpet corresponding to number, pattern and color was delivered at buyer's apartment, and that after carpet had been used for 2½ years buyer noticed that carpet had faded and that one spot in living room was badly worn did not support a finding that carpet was not of "merchantable quality" within intent of implied warranty provision of this section. *Id.*

Where defects allegedly developed in fur coat purchased by fur wearing out after only three months' wear, evidence of durability of a comparable object was not required to sustain buyer's action for breach of implied warranty of fitness. *Woodward & Lothrop v. Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

8. General use, fitness for

Since outer garments intended for domestic wear are not unlikely to come into momentary contact with lighted matches, tobacco or stoves, a robe, which when this contact occurs instantly bursts into flame and inflicts severe injury is unreasonably dangerous and unfit for use, and there is a breach of seller's implied warranty of fitness. *Deffebach v. Lansburgh & Bro.* (1945, 150 F. 2d 591, 80 U. S. App. D. C. 185, 168 A. L. R. 1052, certiorari denied 66 S. Ct. 177, 326 U. S. 772, 90 L. Ed. 466).

Record established that defendant in selling a dry-cleaning plant which, although not in operation at time

contract was entered into, was complete and ready for operation save for connection of equipment on situs, impliedly warranted that plant would be ready for operation on connection of existing equipment, and that such warranty was breached by the defendant. *Himmelstein v. Budner* (1951, 93 F. Supp. 946).

The implied warranty of fitness of article sold prescribed by subsection (1) of this section must be reasonably construed in light of common knowledge in reference to nature of such article. *Woodward & Lothrop v. Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

Where carpet sold was for use in usual apartment occupied for residence purposes by a small family, fitness for a known purpose implied under implied warranty provision of this section was fitness for general use, so that there where no special conditions requiring a carpet of unusual specifications, or one of other than a quality reasonably fit for its purpose. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

9. Instructions

In buyer's action for breach of warranty in sale of carpet, instructions should take into consideration evidence concerning durability of carpet of period and comparable in price with that purchased, seller's warranty being that carpet is of not less than the fair minimum grade or quality of typical carpets of the price range at the time of the sale. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

Where plaintiff who was not an expert in textiles purchased a robe from defendant for use as a lounging robe and her examination of the robe could not have revealed the fact that it would burn up in an instant if it came in contact with flame, the court erred in failing to instruct jury, in action for breach of warranty, that if the robe caught fire and burned as plaintiff testified, there was a breach of defendant's implied warranty of fitness. *Deffebach v. Lansburgh & Bro.* (1945, 150 F. 2d 591, 80 U.S. App. D. C. 185, 168 A. L. R. 1052, certiorari denied 66 S. Ct. 177, 326 U. S. 772, 90 L. Ed. 466).

10. Intended use, knowledge of

Where contract provided for installation of boiler for heating purposes, and purpose for which boiler was to be used was made known to seller prior to contract, an "implied warranty" existed that the boiler was reasonably fit for that purpose. *Griffith-Consumers Co. v. Noonan* (App. D. C. 1943, 136 F. 2d 271).

In action to rescind sale of hearing aid and to recover purchase price, finding that seller was fully aware of needs and purpose of plaintiff in buying hearing aid, and that in purchasing the hearing aid plaintiff relied upon seller's skill and judgment in prescribing, selecting and furnishing hearing aid, gave rise to implied warranty that the goods sold were reasonably fit for plaintiff's purpose. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

Representations made by seller of hearing aid to buyer that seller had been engaged in business for nearly 20 years and had experimented with hearing aids, were not merely expressions of opinion, but were representations of fact, and supported findings of reliance by buyer on further statements by seller as to the adaptability of the hearing aid to buyer's particular purpose. *Id.*

11. Loss of warranties

Where the evidence was clear that the customer made the original repairs herself and the machine then worked, but that thereafter the machine stopped completely and "you could see the damage in the gear," such evidence does not indicate the need for a minor repair but rather for general overhauling and possible replacement of parts. Against such defective materials or workmanship there was no implied warranty by the dealer since it would have been inconsistent with the written express warranty of the manufacturer who agreed to replace such parts. *Orri-son v. Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

12. Manufacturer's liability for negligence

Where elastic exerciser, which was made of rubber rope, and which was in shape of a child's skipping rope, was without defect or accessory gadgets and did not break or fail, manufacturer would not be liable, on grounds of negligence, for detachment of retina sustained by plaintiff who had purchased the exerciser and who was struck

in eye when exerciser slipped off her foot while plaintiff was doing a simple exercise, even though manufacturer had failed to warn any user that the exerciser might slip off a foot in such manner. *Jamieson v. Woodward & Lothrop* (1957, 247 F. 2d 23, 101 U.S. App. D.C. 32, certiorari denied 78 S. Ct. 84, 355 U.S. 855, 2 L. Ed. 2d 63).

13. Particular purpose

Implied warranty under this section to effect that when buyer makes known to seller purpose for which goods are required and relies on seller's judgment, there is implied warranty that goods shall be reasonably fit for such purpose, was not applicable to construction contract, in view of fact that furnishing of materials was only incidental to work and labor performed. *Foley Corp. v. Dove* (D. C. Mun. App. 1954, 101 A. 2d 841).

Evidence disclosed that defendants, sellers of set of automobile tires, breached implied warranty of fitness for particular purpose by selling to plaintiff as genuine white wall tires a set of black tires painted white from which white was rubbing off after several months' use. *Giove v. Lepcofker* (D.C. Mun. App. 1954, 101 A. 2d 259). This section providing that in case of sale of specified article under trade name there is no implied warranty as to its fitness for any "particular purpose" uses quoted phrase as meaning a usage other or different in kind or extent than the ordinary uses the article was made to meet. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

14. Questions for jury

In action for breach of warranty of fitness by buyer of a "brunch" coat which ignited, causing serious injuries, when the coat came in contact with an electric stove, evidence as to the igniting and burning rate, the metallic burning odor, the completeness of destruction of the portions burned and the serious burns of the buyer presented a question for the jury. *Jelleff, Inc. v. Braden* (1956, 233 F. 2d 671, 98 U.S. App. D.C. 180, 63 A.L.R. 2d 400).

In buyer's action for breach of implied warranty of fitness of fur coat purchased, buyer's nonexpert testimony that she purchased coat on assurance of defendant's salesman that it would wear well and that she relied on his skill and judgment, but that after three months' careful wear fur had worn off in several places, though contradicted by seller's experts, presented jury issue as to whether coat was reasonably fit for purpose for which sold. *Woodward & Lothrop v. Heed* (D. C. Mun. App. 1945, 44 A. 2d 369).

15. Reliance of buyer

In order to give rise to an implied warranty under this section, the buyer's reliance need not necessarily be a total reliance, and buyer may rely on his own judgment as to some matters, and on skill or judgment of seller as to others. *Himmelstein v. Budner* (1951, 93 F. Supp. 946).

16. Sales of food

The language of the statute held sufficiently broad to cover sales of food. *Hanback v. Dutch Baker Boy, Inc.* (1940, 107 F. 2d 203, 70 App. D. C. 398).

17. Successor in interest

Donee—consumer of food not successor in interest of the buyer. *Hanback v. Dutch Baker Boy, Inc.* (1940, 107 F. 2d 203, 70 App. D. C. 398).

18. Summary judgment

In action by retailer of a smock to compel manufacturer to satisfy judgment obtained against retailer by purchaser of smock which ignited and burst into flames injuring the purchaser, in view of the admission that the retailer did not process or alter the smock, the question of whether it was in the same condition when sold to the purchaser as it was when sold by the manufacturer to the retailer was no longer a triable factual issue and summary judgment was properly granted for the retailer. *Jelleff, Inc., to Use of Liberty Mut. Ins. Co. v. Pollak Bros. Inc.* (1959, 171 F. Sup. 467).

19. Trade-name

Fact that hearing aid was sold under trade-name and designated so in purchase order did not exclude an implied warranty of fitness for buyer's use, for buyer had not relied upon the trade-name on the hearing aid, but

had relied upon the seller's skill and judgment to furnish an appropriate hearing aid. *Buchanan v. Dugan* (D. C. Mun. App. 1951, 82 A. 2d 911).

20. Waiver

Where implied warranty that a dry-cleaning plant which defendant sold to plaintiff would be ready for operation on connection of existing equipment was breached by defendant in that plant was defective and incapable of operation, and defendant did not attempt to correct defects, plaintiff did not waive warranty of fitness by substituting different equipment when plaintiff put plant into operation. *Himmelstein v. Budner* (1951, 93 F. Supp. 946).

SALE BY SAMPLE

§ 28-1116. Implied warranties in contract to sell or sale by sample.

In the case of a contract to sell or a sale by sample—

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 28-1307.

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 16.)

Chapter 12.—TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

Sec.

- 28-1201. No property passes until goods are ascertained.
- 28-1202. Property in specific goods passes when parties so intend.
- 28-1203. Rules for ascertaining intention.
- 28-1204. Reservation by seller of right of possession or property to secure performance by buyer—Bill of lading.
- 28-1205. Sale by auction—Separate contracts—When sale complete—Seller's right to bid—Notice.
- 28-1206. Risk of loss.

TRANSFER OF TITLE

- 28-1207. Sale by a person not the owner.
- 28-1208. Sale by one having a voidable title.
- 28-1209. Sale by seller in possession of goods already sold.
- 28-1210. Creditors' rights against sold goods in seller's possession.
- 28-1211. Negotiable documents of title—Definition.
- 28-1212. Negotiation of negotiable documents by delivery.
- 28-1213. Negotiation of negotiable documents by endorsement.
- 28-1214. Negotiable documents of title marked "Not negotiable."
- 28-1215. Transfer of nonnegotiable documents.
- 28-1216. Who may negotiate a negotiable document.
- 28-1217. Title and rights of person to whom negotiable document has been negotiated.
- 28-1218. Rights of transferee of document—Nonnegotiable document—Notice to bailee—Remedy of creditors of transferor.
- 28-1219. Transfer of negotiable document without endorsement—Time of taking effect.
- 28-1220. Warranties on sale of document.
- 28-1221. Liability of endorser—Limitation.
- 28-1222. Negotiation to bona fide holder for value without notice not impaired by breach of duty, fraud, mistake, or duress.
- 28-1223. Attachment or levy upon goods for which a negotiable document has been issued.
- 28-1224. Creditors' remedies to reach negotiable documents.

§ 28-1201. No property passes until goods are ascertained.

Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 28-1106. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 17.)

EFFECTIVE DATE

Chapter effective on July 1, 1937, see section 78 of act Mar. 17, 1937, set out as a note under 28-1101.

§ 28-1202. Property in specific goods passes when parties so intend.

(1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 18.)

NOTES TO DECISIONS

Intent, determination of 1
Passage of title 2

1. Intent, determination of

In determining when title passes from seller to buyer under chapter 11 to 16, actual intent of parties must be determined from the terms of the contract, the conduct of the parties and all the circumstances. *Secor v. Charles H. Tompkins Co.* (D.C. Mun. App. 1946, 45 A. 2d 117).

2. Passage of title

Where nothing remains to be done but completion of payment, title was transferred as the parties to the contract intended and unless a contrary intention appears, in an unconditional contract to sell specific goods in a deliverable state, property passes to the buyer when the contract is made and it is immaterial whether time of payment or delivery be postponed. *Daine v. Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

§ 28-1203. Rules for ascertaining intention.

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1. Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing is done.

Rule 3. (1) When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other simi-

lar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4. (1) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 28-1204. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 19.)

CROSS REFERENCE

Delivery to carrier on behalf of buyer, see § 28-1306.

NOTES TO DECISIONS

Delivery at destination 1
Loss or damage in transit 2
Passage of title 3
Prepayment of freight 4
Sale versus consignment 5

1. Delivery at destination

Where sale contract requires delivery at point of destination, title usually remains in the shipper, and the risks of transportation must be borne by him. *Secor v. Charles H. Tompkins Co.* (D. C. Mun. App. 1946, 45 A. 2d 117).

Under Uniform Sales Act § 28-1101 et seq., title to goods did not pass to buyer until physical delivery at the point of destination was accomplished, so as to make seller liable for loss by breakage in transit, where contract required seller to ship the goods by freight to point of destination by a carrier not specified by buyer, and seller was to pay the freight. *Id.*

2. Loss or damage in transit

In determining whether loss by breakage during transit falls on buyer or seller of goods, the general rule is that loss or damage to goods in transit usually follows title to the goods. *Secor v. Charles H. Tompkins Co.* (D. C. Mun. App. 1946, 45 A. 2d 117).

3. Passage of title

When seller's payment or allowance of transportation charges on goods shipped to District of Columbia buyer from point outside District is a factor pointing toward

passage of title in District, nevertheless the seller's payment of such charges may have to do with price only and not with delivery. *District of Columbia v. Upjohn Co.* (1951, 185 F. 2d 992, 88 U.S. App. D.C. 34).

Where nothing remains to be done but completion of payment, title was transferred as the parties to the contract intended and, unless a contrary intention appears in an unconditional contract to sell specific goods in a deliverable state, property passes to the buyer when the contract is made and it is immaterial whether time of payment or delivery be postponed. *Daine v. Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

4. Prepayment of freight

The prepayment of freight by seller and use of the term "f. o. b." in sales contract are only two of the facts to be given consideration in determining time and place at which parties intended to pass title, and the answer must be found in all facts showing actual intention of the parties. *Electric Storage Battery Co. v. District of Columbia* (App. D. C. 1946, 155 F. 2d 867).

Under written contract entered into by taxpayer, which was a New Jersey corporation maintaining a branch office but no warehouse or stock of merchandise in District of Columbia, with one to act as its wholesale distributor in District, the title to goods passed from taxpayer to distributor when delivery was made by taxpayer to carrier outside of the District, so that the sales made to distributor were not required to be reported as gross income from sources within the District, notwithstanding that taxpayer agreed to pay cost of transportation and reserved the right to select the carrier. *Id.*

5. Sale versus consignment

In action for treble damages under Robinson-Patman Act [U.S. Code, Title 15, §§ 13 to 13b and 21a] based on alleged book sales to plaintiff's competitors at preferential prices and terms, refusal of plaintiff's requested instruction on distinction between consignment and sale was not error, in view of instruction given on question whether transactions were consignments or sales. *Student Book Co. v. Washington Law Book Co.* (1956, 232 F. 2d 49, 98 U.S. App. D.C. 49, certiorari denied 76 S. Ct. 474, 350 U.S. 988, 100 L. Ed. 854).

§ 28-1204. Reservation by seller of right of possession or property to secure performance by buyer—Bill of lading.

(1) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the

buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is endorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading endorsed by the consignee named therein, or of the goods, without notice of the facts, making the transfer wrongful. (Mar. 17, 1937, 50 Stat. 34, ch. 43, § 20.)

§ 28-1205. Sale by auction—Separate contracts—When sale complete—Seller's right to bid—Notice.

In the case of a sale by auction—

(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 21.)

§ 28-1206. Risk of loss.

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 22.)

TRANSFER OF TITLE

§ 28-1207. Sale by a person not the owner.

(1) Subject to the provisions of chapters 11-16 of this title, where goods are sold by a person who

is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in chapters 11-16 of this title, however, shall affect—

(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell or sale under any special common-law or statutory power of sale or under the order of a court of competent jurisdiction. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 23.)

NOTES TO DECISIONS

Estoppel 1
Notice to buyer 2
Reasonable care 3

1. Estoppel

The general rule is that the seller of chattels can confer no better title than he himself has, but a recognized exception to the rule is based on estoppel. *General Credit v. Universal Credit Co.* (1938, 99 F. 2d 115, 69 App. D. C. 80).

If the owner of automobiles stands by and permits a licensed dealer in automobiles to hold himself out as the owner, to treat the goods as his own and place them with similar goods in a public show room and to offer them for sale to the public, he will be estopped from asserting his ownership against a purchaser for value without notice. *Id.*

Where automobile owner believed that he was selling automobile to motor company agent, and alleged motor company agent gave owner stolen blank check filled in with a stolen motor company check writer in payment, and owner assigned certificate of title in blank, left his license plates on the automobile, and his registration card, driver's permit and insurance card on the steering post, owner was negligent and was precluded from asserting his title against bona fide purchaser for value. *Chiplock v. Steuart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

Rule that where no title has passed to buyer, seller may follow the property and recover it from an innocent purchaser does not operate to defeat a bona fide purchaser for value when the owner has been negligent or is otherwise estopped from asserting his title. *Id.*

2. Notice to buyer

Where buyer of automobile, which has been purportedly sold to alleged wrongdoer through fraudulent transaction in which wrongdoer had been assigned certificate of title in blank, believed that he was dealing with the person whose name appeared as owner on the certificate of title, the lack of a verification of a signature on the back of the certificate of title did not constitute notice that the wrongdoer had fraudulently secured title. *Chiplock v. Steuart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

3. Reasonable care

In action by owner who sold his automobile to alleged motor company agent and received stolen blank check filled in with a stolen motor company check writer in payment against buyer of the automobile from the alleged agent, evidence sustained finding that buyer acted with reasonable care and was not negligent in failing to discover facts which may or may not have aroused the suspicions of a reasonable man. *Chiplock v. Steuart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

§ 28-1208. Sale by one having a voidable title.

Where the seller of goods has a voidable title thereto, but his title has not been voided at the time of the sale, the buyer acquires a good title to the

goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 24.)

§ 28-1209. Sale by seller in possession of goods already sold.

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 25.)

§ 28-1210. Creditors' rights against sold goods in seller's possession.

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 26.)

§ 28-1211. Negotiable documents of title—Definition.

A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title within the meaning of chapters 11-16 of this title. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 27.)

§ 28-1212. Negotiation of negotiable documents by delivery.

A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer; or

(b) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same, undertakes to deliver the goods to the order of a specified person, and such person or a subsequent endorsee of the document has endorsed it in blank or to the bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been endorsed in blank or to bearer, any holder may endorse the same to himself or to any specified person, and in such case the document shall thereafter be negotiated only by the endorsement of such endorsee. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 28.)

§ 28-1213. Negotiation of negotiable documents by endorsement.

A negotiable document of title may be negotiated by the endorsement of the person to whose order the goods are by the terms of the document deliverable. Such endorsement may be in blank, to bearer, or to a specified person. If endorsed to a specified person, it may be again negotiated by the endorsement of

such person in blank, to bearer, or to another specified person. Subsequent negotiations may be made in like manner. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 29.)

§ 28-1214. Negotiable documents of title marked "Not negotiable."

If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "nonnegotiable," or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of chapters 11-16 of this title. But nothing in chapters 11-16 of this title contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title or placing thereon the words "not negotiable," "nonnegotiable," or the like. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 30.)

§ 28-1215. Transfer of nonnegotiable documents.

A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable document cannot be negotiated and the endorsement of such a document gives the transferee no additional right. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 31.)

§ 28-1216. Who may negotiate a negotiable document.

A negotiable document may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the document, the bailee issuing it undertakes to deliver the goods to the order of such person, or if at the time of negotiation the document is in such form that it may be negotiated by delivery. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 32.)

§ 28-1217. Title and rights of person to whom negotiable document has been negotiated.

A person to whom a negotiable document of title has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and

(b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 33.)

§ 28-1218. Rights of transferee of document—Nonnegotiable document—Notice to bailee—Remedy of creditors of transferor.

A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is nonnegotiable, such person also acquires the right to notify the bailee who issued the

document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a nonnegotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 34.)

§ 28-1219. Transfer of negotiable document without endorsement—Time of taking effect.

Where a negotiable document of title is transferred for value by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the endorsement is actually made. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 35.)

§ 28-1220. Warranties on sale of document.

A person who for value negotiates or transfers a document of title by endorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

- (a) That the document is genuine;
- (b) That he has a legal right to negotiate or transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the document; and
- (d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 36.)

§ 28-1221. Liability of endorser—Limitation.

The endorsement of a document of title shall not make the endorser liable for any failure on the part of the bailee who issued the document or previous endorsers thereof to fulfill their respective obligations. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 37.)

§ 28-1222. Negotiation to bona fide holder for value without notice not impaired by breach of duty, fraud, mistake, or duress.

The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress, or conversion. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 38.)

§ 28-1223. Attachment or levy upon goods for which a negotiable document has been issued.

If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them, they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 39.)

§ 28-1224. Creditors' remedies to reach negotiable documents.

A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 40.)

Chapter 13.—PERFORMANCE OF CONTRACT

Sec.

- 28-1301. Duty of seller to deliver and buyer to accept and pay for goods.
- 28-1302. Delivery and payment are concurrent conditions.
- 28-1303. Delivery — Time — Place — Manner—Demand—Expense.
- 28-1304. Delivery of wrong quantity or mixed with other goods.
- 28-1305. Delivery in installments.
- 28-1306. Delivery to a carrier on behalf of the buyer—Duty of seller to contract with carrier—Insurance.
- 28-1307. Right of buyer to examine the goods—Exception—Authorized delivery to carrier.
- 28-1308. Acceptance—Definition.
- 28-1309. Acceptance does not bar action for damages or breach of warranty—Notice required.
- 28-1310. Buyer is not bound to return goods not accepted—Notice to seller.
- 28-1311. Buyer's liability for failing to accept delivery—Rights of seller.

§ 28-1301. Duty of seller to deliver and buyer to accept and pay for goods.

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 41.)

EFFECTIVE DATE

Chapter effective on July 1, 1937, see section 78 of act Mar. 17, 1937, set out as a note under § 28-1101.

NOTES TO DECISIONS

1. Action for damages

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D.C. Mun. App. 1952, 99 A. 2d 84).

§ 28-1302. Delivery and payment are concurrent conditions.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 42.)

NOTES TO DECISIONS

1. Concurrent conditions

Where the contract contemplates a single act or exchange of acts, unless the circumstances show a contrary intention, the court will interpret a promise which does not in terms state the time of performance as intending performance in a reasonable time. *Martin Co. v. Sumpter* (D. C. Mun. App. 1949, 64 A. 2d 425).

Delivery of goods and payment of the price are ordinarily concurrent conditions, but the act recognizes that parties may make any terms they wish. Where in the alleged transaction, sales were made on credit with the only difference relating to the terms of such credit, the rule is that until the term of the credit has expired, the buyer is not obligated to pay. *Id.*

§ 28-1303. Delivery—Time—Place—Manner—Demand—Expense.

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 43.)

§ 28-1304. Delivery of wrong quantity or mixed with other goods.

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the

seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 44.)

NOTES TO DECISIONS

Agreement on quantity 1
Evidence, sufficiency 2
Purchaser, rights of 3

1. Agreement on quantity

Subsection (2) of this section does not apply unless delivery is made under contract wherein quantity has been fixed by agreement. *Shpetner v. Hollywood Credit Clothing Co.* (D. C. Mun. App. 1945, 42 A. 2d 522).

2. Evidence, sufficiency

Where buyer's order of two dozen ladies' hats was subject to confirmation by seller, and without further notice seller shipped four boxes each containing two dozen hats and first box was accepted by buyer, and other boxes later received were rejected, and copy of shipping receipt delivered to buyer bore notation, "No. Pieces 4", in seller's action to recover for the other six dozen hats evidence warranted judgment for buyer. *Shpetner v. Hollywood Credit Clothing Co.* (D. C. Mun. App. 1945, 42 A. 2d 522).

3. Purchaser, rights of

On receiving an order for merchandise may submit a counter offer by shipping different goods or greater quantity of goods ordered, and that is but a tender which purchaser may accept, thereby becoming bound for the whole, or reject without incurring liability, but, if he retains part and rejects part, no contract is created requiring him to pay for the whole unless delivery was expressly made subject to that condition or other circumstances exist from which it may be found that he assented to delivery not conforming to terms of his order. *Shpetner v. Hollywood Credit Clothing Co.* (D. C. Mun. App. 1945, 42 A. 2d 522).

§ 28-1305. Delivery in installments.

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

(2) Where there is a contract to sell goods to be delivery by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to make delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation but not to a right to treat

the whole contract as broken. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 45.)

§ 28-1306. Delivery to a carrier on behalf of the buyer—Duty of seller to contract with carrier—Insurance.

(1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 28-1203, rule 5, or unless a contrary intent appears.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 46.)

§ 28-1307. Right of buyer to examine the goods—Exception—Authorized delivery to carrier.

(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 47.)

§ 28-1308. Acceptance—Definition.

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 48.)

NOTES TO DECISIONS

1. In general

If buyer resells or attempts to resell goods without first notifying original seller that he is rescinding because of defects, such act is sufficient "acceptance" to render buyer liable for full purchase price, but if seller, after receiving notice of defects, refuses to receive back the goods and fails to give instructions as to disposition to be made of them, buyer has right to resell on seller's account and is then liable only for proceeds. *North American Contracting Corp. v. Haley* (D.C. Mun. App. 1958, 140 A.2d 314).

Evidence warranted finding that buyer accepted back-hoe by attempting to resell it and hence was liable for full purchase price despite alleged defects. *Id.*

Evidence justified a finding that goods delivered amounted to an "assent on the part of the buyer to take existing and identified goods as owner" and constituted acceptance. *Stamates v. Andelman* (D. C. Mun. App. 1949, 68 A.2d 903).

§ 28-1309. Acceptance does not bar action for damages or breach of warranty—Notice required.

In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 49.)

NOTES TO DECISIONS

Notice 1
Substantial compliance 2

1. Notice

Even if goods involved were defective, seller was nonetheless entitled to full purchase price where seller never received any actual notice of alleged defects. *Dodge Engineering Associates v. Noland Co. Inc.* (D. C. Mun. App. 1957, 128 A.2d 655).

Failure of buyer to comply with this section relating to notice to seller of alleged defects would preclude buyer from asserting any rights because of claimed breach of warranty, and seller would be entitled to recover full amount of purchase price notwithstanding existence of alleged defects. *Id.*

Notice to manufacturer's representative, who had procured orders for boilers from buyer, of defects, was not notice to manufacturer's exclusive distributor, who had made contract with buyer and who in turn had sent orders on to manufacturer, where representative was not distributor's agent, and obligation still remained to give notice to seller to charge seller with liability for breach of warranty. *Id.*

Where, though trial judge did not make specific finding on question whether person to whom buyer had sent notice was seller's agent, court did find that it was obligatory on buyer to contact seller, to charge seller with liability for breach of warranty, it would be assumed by court on appeal that trial court had held that buyer's obligation to notify seller was not satisfied by notice to other person because other person was not seller's agent. *Id.*

2. Substantial compliance

In action by seller for balance due on purchase price for certain boiler burner units, wherein buyer claimed right of reimbursement for expenses incurred in remedying alleged defects, evidence warranted finding that delivery of goods substantially met requirements of buyer and that delivery of goods was in accordance with order. *Dodge Engineering Associates v. Noland Co., Inc.* (D. C. Mun. App. 1957, 128 A.2d 655).

§ 28-1310. Buyer is not bound to return goods not accepted—Notice to seller.

Unless otherwise agreed, where goods are delivered to the buyer, and he refused to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 50.)

§ 28-1311. Buyer's liability for failing to accept delivery—Rights of seller.

When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the right against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 51.)

NOTES TO DECISIONS

1. Limitations

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D. C. Mun. App. 1953, 99 A.2d 84).

**Chapter 14.—RIGHTS OF UNPAID SELLER
AGAINST GOODS**

Sec.

- 28-1401. Unpaid seller—Definition.
28-1402. Remedies of an unpaid seller.

UNPAID SELLER'S LIEN

- 28-1403. When right of lien may be exercised.
28-1404. Lien after part delivery.
28-1405. When lien is lost.

STOPPAGE IN TRANSITU

- 28-1406. Seller may stop goods in transitu on buyer's insolvency.
28-1407. When goods are in transit.
28-1408. Ways of exercising the right of stoppage in transitu—Duty of carrier or bailee in possession.

RESALE BY THE SELLER

- 28-1409. Unpaid seller's right to resell—Notice—Validity of sale.

RESCISSION BY THE SELLER

- 28-1410. Unpaid seller's right to rescind the transfer of title—Notice of intention to rescind.
28-1411. Effect of sale by buyer of goods subject to lien or stoppage in transitu—Bona fide purchaser of negotiable document of title.

§ 28-1401. Unpaid seller—Definition.

(1) The seller of goods is deemed to be an unpaid seller within the meaning of chapters 11-16 of this title—

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2) In this part of chapters 11-16 of this title the term "seller" includes an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 52.)

EFFECTIVE DATE

Chapter effective on July 1, 1937, see section 78 of act Mar. 17, 1937, set out as a note under § 28-1101.

CROSS REFERENCE

Finance charges in connection with sale of motor vehicles on installment basis, see Title 40, chapter 9.

NOTES TO DECISIONS

1. In general

Under Maryland law, automobile retailer making cash sale of vehicle to buyer whose check in partial payment thereof was dishonored, was an unpaid seller and had a right, upon return of vehicle by buyer, to resell vehicle if it had a lien on it and if there was a default by buyer for an unreasonable length of time. *Suburban Cadillac-Oldsmobile Co. Inc. v. Bryars* (D.C. Mun. App. 1958, 144 A. 2d 695).

§ 28-1402. Remedies of an unpaid seller.

(1) Subject to the provisions of chapters 11-16 of this title, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such has—

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of insolvency of the buyer, the right of stopping the goods in transitu after he has parted with the possession of them;

(c) A right of resale as limited by chapters 11-16 of this title; and

(d) A right to rescind the sale as limited by chapters 11-16 of this title.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 53.)

NOTES TO DECISIONS

1. Limitations

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D.C. Mun. App. 1953, 99 A. 2d 84).

UNPAID SELLER'S LIEN

§ 28-1403. When right of lien may be exercised.

(1) Subject to the provisions of chapters 11-16 of this title, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely—

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired; and

(c) Where the buyer becomes insolvent

(2) The seller may exercise his right of lien, notwithstanding that he is in possession of the goods as agent or bailee for the buyer. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 54.)

§ 28-1404. Lien after part delivery.

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 55.)

§ 28-1405. When lien is lost.

(1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods; and

(c) By waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 56.)

NOTES TO DECISIONS

Judgment for price 1
Passage of title 2
Transfer of possession 3

1. Judgment for price

Where conditional seller was awarded a money judgment for amount due by conditional buyer under conditional sales contract, and there was no evidence as to who had possession of the merchandise, provision of this section that unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for price of goods, made it necessary to modify judgment by deleting from it provision reading that should merchandise be in possession of seller, merchandise should be delivered to buyer. *Marvins Credit v. Morgan* (D.C. Mun. App. 1952, 87 A. 2d 530).

2. Passage of title

Where nothing remains to be done but completion of payment, title was transferred as the parties to the contract intended. Unless a contrary intention appears in an unconditional contract to sell specific goods in a deliverable state, property passes to the buyer when the contract is made and it is immaterial whether time of payment or delivery be postponed. *Daine v. Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

3. Transfer of possession

A seller's lien is predicated upon possession and is lost when the buyer lawfully obtains possession of the goods. *Daine v. Price* (D. C. Mun. App. 1949, 63 A. 2d 767).

STOPPAGE IN TRANSITU

§ 28-1406. Seller may stop goods in transitu on buyer's insolvency.

Subject to the provisions of chapters 11-16 of this title when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu; that is to say, he may resume possession of the

goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 57.)

§ 28-1407. When goods are in transit.

(1) Goods are in transit within the meaning of section 28-1406—

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee; and

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2) Goods are no longer in transit within the meaning of section 28-1406—

(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer; and

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 58.)

§ 28-1408. Ways of exercising the right of stoppage in transitu—Duty of carrier or bailee in possession.

(1) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee,

he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancelation. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 59.)

RESALE BY THE SELLER

§ 28-1409. Unpaid seller's right to resell—Notice—Validity of sale.

(1) Where the goods are of perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. (Mar. 17, 1937, 50 Stat. 43, ch. 43, § 60.)

RESCISSION BY THE SELLER

§ 28-1410. Unpaid seller's right to rescind the transfer of title—Notice of intention to rescind.

(1) An unpaid seller having the right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted. (Mar. 17, 1937, 50 Stat. 43, ch. 43, § 61.)

§ 28-1411. Effect of sale by buyer of goods subject to lien or stoppage in transitu—Bona fide purchaser of negotiable document of title.

Subject to the provisions of chapters 11-16 of this title, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiations be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 62.)

Chapter 15.—ACTIONS FOR BREACH OF CONTRACT

Sec.

- 28-1501. Action for the price.
- 28-1502. Action for damages for nonacceptance of the goods—Measure of damages.
- 28-1503. When seller may rescind contract to sell or sale—Notice to buyer.
- 28-1504. Action for converting or detaining goods.
- 28-1505. Action for damages for nondelivery—Measure of damages.
- 28-1506. Action for specific performance.
- 28-1507. Remedies for breach of warranty—Rescinding the contract—Measure of damages.
- 28-1508. Recovery of interest and special damages.

§ 28-1501. Action for the price.

(1) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3) Although the property in the goods has not passed, if they can not readily be resold for a reasonable price, and if the provisions of section 28-1502 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 63.)

EFFECTIVE DATE

Chapter effective on July 1, 1937, see section 78 of act Mar. 17, 1937, set out as a note under § 28-1101.

§ 28-1502. Action for damages for nonacceptance of the goods—Measure of damages.

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may main-

tain an action against him for damages for nonacceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing toward carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 64.)

NOTES TO DECISIONS

1. Limitations

Where buyer cancelled order for aluminum in May of 1949 and seller, acting as buyer's agent, resold aluminum in May of 1950 and at that time made formal demand of buyer for the loss, an action for damages commenced in March of 1953 was barred by three year statute of limitations, since cause of action accrued when contract was breached and not when seller ascertained its damages. *Reynolds Metals Co. v. McCrea* (D. C. Mun. App. 1953, 99 A. 2d 84).

§ 28-1503. When seller may rescind contract to sell or sale—Notice to buyer.

Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 65.)

NOTES TO DECISIONS

1. Mutual misunderstanding

Where defendant by contract authorized wrecking company to demolish lumber sheds and retain as its property the salvaged lumber, but defendant had previously by lease with oil company transferred to oil company right to the salvaged material, defendant was not entitled to rescission of contract with wrecking company on ground of mutual mistake. *Stern v. Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

§ 28-1504. Action for converting or detaining goods.

Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 66.)

§ 28-1505. Action for damages for nondelivery—Measure of damages.

(1) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects

or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

(2) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered or if no time was fixed, then at the time of the refusal to deliver. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 67.)

NOTES TO DECISIONS

Amount of recovery 1
 Impossibility of performance 2
 Knowledge of inability to perform 3
 Speculative damages 4

1. Amount of recovery

Where seller breached obligation to deliver used lumber and buyer's witnesses made detailed count and measurement of lumber and based on such measurement and on actual sales of part of lumber, gave estimate of value, and trial judge found that strong preponderance of evidence as to value supported buyer's estimate but in entering finding for buyer reduced claim by about 20 percent, defendant could not complain. *Stern v. Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

2. Impossibility of performance

Where defendant by contract authorized wrecking company to demolish lumber sheds and retain as its property the salvaged lumber but defendant had previously by lease with oil company transferred to oil company right to the salvaged material and wrecking company did not know of prior claim of oil company, defendant could not escape liability for damages on theory of impossibility of performance. *Stern v. Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

3. Knowledge of inability to perform

Neither defense of mistake nor impossibility of performance can prevail if the inability to perform was known to, or foreseeable by, or caused by the promisor, and unknown to the promisee. *Stern v. Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

4. Speculative damages

Where seller breached obligation to deliver used lumber and buyer's witnesses made detailed count and measurement of lumber and based on such measurement and on actual sales of part of lumber gave estimate of value, seller testified that though he had not measured or counted lumber, buyer's estimates were too high and seller gave lower figure as representing fair market value, recovery by buyer was not precluded on theory that damages claimed were speculative. *Stern v. Ace Wrecking Co.* (D. C. Mun. App. 1944, 38 A. 2d 626).

§ 28-1506. Action for specific performance.

Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 68.)

§ 28-1507. Remedies for breach of warranty—Rescinding the contract—Measure of damages.

(1) Where there is a breach of warranty by the seller, the buyer may, at his election—

(a) Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty; and

(d) Rescind the contract to sell, or the sale, and refuse to receive the goods; or if the goods have already been received return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2) When the buyer has claimed and has been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 28-1402.

(6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 69.)

NOTES TO DECISIONS

Appraisalment of damages 1
 Election of remedies 2
 Evidence, sufficiency 3
 Measure of damages 4
 Reasonable time 5
 Recoupment 7
 Rescission 6
 Review 10
 Sales of food 8
 Successor in interest 9

1. Appraisalment of damages

The jury's appraisalment of damages for breach of warranty must be based upon evidence, not speculation. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

2. Election of remedies

One who has been induced to enter into a contract by false and fraudulent representations may rescind the contract; or he may affirm it, keeping what he has received under it, and maintain an action to recover damages as sustained by reason of the fraud; or he may set up damages as a complete or partial defense if sued on the contract by the other party. *Simmons v. Brook* (D. C. Mun. App. 1949, 66 A. 2d 517).

A final and decisive choice of the equitable remedy by way of rescission and cancellation operates as an election of remedies and bars a subsequent action at law for damages. *Id.*

3. Evidence, sufficiency

In action for breach of warranty in sale of carpet, evidence which merely showed the retail price of carpet at time of delivery, had its quality answered to the warranty, was insufficient basis for jury's award of damages. *Mars v. Herman* (D. C. Mun. App. 1944, 37 A. 2d 351).

4. Measure of damages

Under the Uniform Sales Act, it is the general rule that the measure of damages for breach of warranty is difference between value of goods at time of delivery and value they would have had if they had answered warranty but rule is not exclusive, and where by reasonable expenditures goods may be made to conform to warranty, cost of expenditures may be measure of damages. *Discount Motor Sales, Inc. v. Shubrooks* (D.C. Mun. App. 1960, 163 A. 2d 818).

Though damages for breach of warranty did not have to be measured with mathematical accuracy, there was required to be some reasonably fair and accurate basis for award of compensatory damages. *Id.*

In case of rescission by buyer, buyer is entitled to full amount paid. *Campbell Music Co. v. Singer* (D. C. Mun. App. 1953, 97 A. 2d 340).

In the case of breach of warranty of quality, the loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. *Orrison v. Ferrante* (D. C. Mun. App. 1950, 72 A. 2d 771).

A buyer loses his right to rescind and recover the price paid by continuing to treat the property as his own. *Id.*

5. Reasonable time

What constitutes a reasonable time within which buyer may rescind sale for breach of warranty is ordinarily a question of fact, but where facts are clear and support but one inference, the question is one of law. *Campbell Music Co. v. Singer* (D. C. Mun. App. 1953, 97 A. 2d 340).

Delay in giving notice of rescission of contract of sale may be excused if induced by acts or promises of seller. *Id.*

6. Rescission

Where buyer of television set retained possession for 16 months despite immediate knowledge that set was unsatisfactory, and made substantial part payments several weeks after delivery, he could not thereafter rescind sale for breach of warranty. *Campbell Music Co. v. Singer* (D. C. Mun. App. 1953, 97 A. 2d 340).

A buyer loses his right to rescind and recover price paid by continuing to treat the property as his own. *Id.*

Where in buyer's action for rescission and seller's counterclaim for balance of purchase price, no objection was made by either party to submission of issue of damages for breach of warranty, case would be treated as

claim for damages and amount of verdict for buyer would be subtracted from balance due seller. *Id.*

7. Recoupment

In case of breach of warranty, one is not compelled to seek rescission, but may keep goods and set up against seller breach by way of recoupment in diminution of selling price. *Campbell Music Co. v. Singer* (D. C. Mun. App. 1953, 97 A. 2d 340).

8. Sales of food

The language of chapters 11 to 16 of this title is sufficiently broad to cover sales of food. *Hanback v. Dutch Baker Boy, Inc.* (1940, 107 F. 2d 203, 70 App. D.C. 398).

9. Successor in interest

Child who ate food purchased by its mother held not a successor in interest of the buyer. *Hanback v. Dutch Baker Boy, Inc.* (1940, 107 F. 2d 203, 70 App. D. C. 398).

10. Review

Where automobile buyer's action against seller was based on claim for breach of express warranty and not for rescission, only evidence relating to damages for breach was that of needed repairs costing approximately \$240 and no evidence as to difference of value of automobile as received and if it had answered warranty was introduced but jury returned verdict for \$1,500, after counsel had been erroneously permitted to tell jury, in substance, that buyer was entitled to recover entire purchase price and court had so instructed, judgment was required to be reversed with instructions to grant new trial. *Discount Motor Sales, Inc. v. Shubrooks* (D.C. Mun. App. 1960, 163 A. 2d 818).

§ 28-1508. Recovery of interest and special damages.

Nothing in chapters 11-16 of this title shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 70.)

Chapter 16.—INTERPRETATION

Sec.

- 28-1601. Variation of implied obligations.
- 28-1602. Rights may be enforced by action.
- 28-1603. Rule for cases not provided.
- 28-1604. Interpretation shall give effect to purpose of uniformity.
- 28-1605. Provisions not applicable to mortgages.
- 28-1606. Definitions.
- 28-1607. Application to existing sales or contracts to sell.
- 28-1608. Short title.

§ 28-1601. Variation of implied obligations.

Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 71.)

EFFECTIVE DATE

Chapter effective on July 1, 1937, see section 78 of act Mar. 17, 1937, set out as a note under § 28-1101.

NOTES TO DECISIONS

1. Sales of food

The language of chapters 11 to 16 of this title is sufficiently broad to cover sales of food. *Hanback v. Dutch Baker Boy, Inc.* (1940, 107 F. 2d 203, 70 App. D. C. 398).

§ 28-1602. Rights may be enforced by action.

Where any right, duty, or liability is declared by chapters 11-16 of this title, it may, unless otherwise by chapters 11-16 of this title provided, be enforced by action. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 72.)

§ 28-1603. Rule for cases not provided for.

In any case not provided for in chapters 11-16 of this title, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 73.)

§ 28-1604. Interpretation shall give effect to purpose of uniformity.

Chapters 11-16 of this title shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those States which enact it. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 74.)

§ 28-1605. Provisions not applicable to mortgages.

The provisions of chapters 11-16 of this title relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 75.)

§ 28-1606. Definitions.

(1) In chapters 11-16 of this title, unless the context or subject matter otherwise requires—

“Action” includes counterclaim, set-off, and suit in equity.

“Buyer” means a person who buys or agrees to buy goods or any legal successor in interest of such person.

“Defendant” includes a plaintiff against whom a right of set-off or counterclaim is asserted.

“Delivery” means voluntary transfer of possession from one person to another.

“Divisible contract to sell or sale” means a contract to sell or a sale in which by its term the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

“Document of title to goods” includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by endorsement or by delivery, goods represented by such document.

“Fault” means wrongful act or default.

“Fungible goods” means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale.

“Goods” include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

“Order” in sections of chapters 11-16 of this title relating to documents of title means an order by indorsement on the documents.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

“Plaintiff” includes defendant asserting a right of set-off or counterclaim.

“Property” means the general property in goods, and not merely a special property.

“Purchaser” includes mortgagee and pledgee.

“Purchases” includes taking as a mortgagee or as a pledgee.

“Quality of goods” includes their state or condition.

“Sale” includes a bargain and sale as well as a sale and delivery.

“Seller” means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

“Specific goods” means goods identified and agreed upon at the time a contract to sell or a sale is made.

“Value” is any consideration sufficient to support a simple contract. An antecedent or preexisting claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith” within the meaning of chapters 11-16 of this title when it is in fact done honestly, whether it be done negligently or not.

(3) A person is insolvent within the meaning of chapters 11-16 of this title who either has ceased to pay his debts in the ordinary course of business or can not pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the Federal Bankruptcy Law or not.

(4) Goods are in a “deliverable state” within the meaning of chapters 11-16 of this title when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. (Mar. 17, 1937, 50 Stat. 47, ch. 43, § 76.)

REFERENCES IN TEXT

Federal Bankruptcy Law, referred to in the text, is classified to U.S. Code, title 11, § 1 et seq.

§ 28-1607. Application to existing sales or contracts to sell.

None of the provisions of chapters 11-16 of this title shall apply to any sale, or to any contract to sell, made prior to the taking effect of chapters 11-16 of this title. (Mar. 17, 1937, 50 Stat. 48, ch. 43, § 76a.)

§ 28-1608. Short title.

Chapters 11-16 of this title may be cited as the “Uniform Sales Act.” (Mar. 17, 1937, 50 Stat. 48, ch. 43, § 79.)

Chapter 17.—BULK SALES

Sec.

28-1701. Sales in bulk—Written statement as to creditors.

28-1702. Sale presumed fraudulent and void unless notice is given by vendee to creditors of vendor.

28-1703. Sale in bulk—Definition.

28-1704. Sales by executors, administrators, receivers, or public officers excepted.

28-1705. Presumptions and rules of evidence not affected.

§ 28-1701. Sales in bulk—Written statement as to creditors.

It shall be the duty of every person who shall bargain for or purchase any stock of goods, wares, or merchandise in bulk, for cash or credit, within the District of Columbia, to demand and receive from the vendor thereof, and if the vendor be a corporation then from a managing officer or agent thereof, at least five days before the consummation of such bargain or purchase and at least five days before paying or delivering to the vendor any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness therefor, a written statement, under oath, containing the names and addresses of all of the creditors of said vendor, together with the amount of indebtedness due or owing, or to become due or owing, by said vendor to each of such creditors, and if there be no such creditors, a written statement, under oath, to that effect; and it shall be the duty of such vendor to furnish such statement at least five days before any sale or transfer by him of any stock of goods, wares, or merchandise in bulk. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 1.)

CROSS REFERENCE

Sale of corporation assets in their entirety, see § 29-240.

NOTES TO DECISIONS

Attaching creditors right to hearing 1
Final order 2
Partnership dissolution 3
Previous decisions, effect of 4

1. Attaching creditors right to hearing

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under this chapter. *Smith v. Anderson* (D.C. Mun. App. 1954, 107 A. 2d 126).

2. Final order

Where defendants did not answer complaint, based on violation of this chapter, within time required and a default was entered by clerk, with notation "to be set for ex parte proof v. both defendants," but before assignment commissioner had set date for taking of proof, one defendant filed motion to set aside the entry of default, denial of motion was not a final order or judgment and was not appealable. *Efantis v. Decker Distributing Co.* (D. C. Mun. App. 1957, 135 A. 2d 655).

3. Partnership dissolution

This chapter has no applicability to situation where one partner transfers the assets of a partnership to another partner pursuant to dissolution agreement. *Barlow v. Cornwell* (D.C. Mun. App. 1956, 125 A. 2d 63).

4. Previous decisions, effect of

Where garnishee's answer in suit by attaching creditor alleged that certain trust holders, agents and attorneys enjoyed preferred lien status as to proceeds of sale of grocery business of debtor, attaching plaintiff who had filed traverse was entitled to determination of such alleged preferred lien status and was not bound by amount paid. *Troshinsky v. Feldman* (D.C. Mun. App. 1951, 81 A. 2d 91).

§ 28-1702. Sale presumed fraudulent and void unless notice is given by vendee to creditors of vendor.

After having received from the vendor the written statement, under oath, mentioned in section 28-1701,

the vendor¹ shall, at least five days before the consummation of such bargain or purchase, and at least five days before paying or delivering to the vendor any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness for the same, in good faith notify or cause to be notified, personally or by wire or by registered letter, each of the creditors of the vendor named in said statement of the proposed purchase by him of such stock of goods, wares, or merchandise; and whenever any person shall purchase any stock of goods, wares, or merchandise in bulk, or shall pay the purchase price or any part thereof, or execute or deliver to the vendor thereof or to his order, or to any person for his use, any promissory note or other evidence of indebtedness for said stock, or any part thereof, without having first demanded and received from his vendor the statement, under oath, as provided in section 28-1701, and without also having notified or caused to be notified all of the creditors of the vendor named in such statement, as in this section prescribed, such purchase, sale, or transfer shall, as to any and all creditors of the vendor, be conclusively presumed fraudulent and void. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 2.)

§ 28-1703. Sale in bulk—Definition.

Any sale or transfer of a stock of goods, wares, or merchandise out of the usual or ordinary course of the business or trade of the vendor, or whenever thereby substantially the entire business or trade theretofore conducted by the vendor shall be sold or conveyed, or attempted to be sold or conveyed, to one or more persons, shall be deemed a sale or transfer in bulk, in contemplation of sections 28-1701 to 28-1705. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 3.)

NOTES TO DECISIONS

1. In general

Where parties interested do not contest sale of undivided interest under the act, their court will not determine whether such interest is within the purview of said act *Second Natl. Bank v. Yankon* (1925, 4 F. 2d 445, 55 App. D. C. 252).

This chapter has no applicability to situation where one partner transfers the assets of a partnership to another partner pursuant to dissolution agreement. *Barlow v. Cornwell* (D.C. Mun. App. 1956, 125 A. 2d 63).

§ 28-1704. Sales by executors, administrators, receivers, or public officers excepted.

Nothing contained in sections 28-1701 to 28-1705 shall apply to sales made by executors, administrators, receivers, or any public officer conducting a sale in his official capacity. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 4.)

§ 28-1705. Presumptions and rules of evidence not affected.

Except as expressly provided in sections 28-1701 to 28-1705, nothing therein contained, nor any act thereunder shall change or affect the rules of evidence or the presumptions of law. (Apr. 28, 1904, 33 Stat. 556, ch. 1809, § 5.)

¹ So in original. Probably should be "vendee."

Chapter 18.—WAREHOUSE RECEIPTS—ISSUANCE OF RECEIPTS

Sec.

- 28-1801. Persons who may issue receipts.
- 28-1802. Form of receipts—Essential terms—Liability for omissions.
- 28-1803. Form of receipts—What terms may be inserted.
- 28-1804. Nonnegotiable receipt—Definition.
- 28-1805. Negotiable receipt—Definition—"Nonnegotiable provision" void.
- 28-1806. Duplicate receipts must be so marked—Liability for failure to do so.
- 28-1807. Nonnegotiable receipt must be so marked—Effect of failure to do so.

§ 28-1801. Persons who may issue receipts.

Warehouse receipts may be issued by any warehouseman. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 1.)

CROSS REFERENCE

Regulations for withdrawal of bonded liquors, see § 25-115.

NOTES TO DECISIONS

1. Construction

Chapters 18 to 22 of this title do not attempt to codify or regulate laws applicable to warehousemen, but are an act to make uniform the law of warehouse receipts. *Terminal Warehouse & Refrigeration Co. v. Cross Transp. Co.* (1943, 33 A. 2d 617).

§ 28-1802. Form of receipts—Essential terms—Liability for omissions.

Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

- (a) The location of the warehouse where the goods are stored;
- (b) The date of issue of the receipt;
- (c) The consecutive number of the receipt;
- (d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
- (e) The rate of storage charges;
- (f) A description of the goods or of the packages containing them;
- (g) The signature of the warehouseman, which may be made by his authorized agent;
- (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby for all damage caused by the omission from a negotiable receipt of any of the terms herein required. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 2.)

NOTES TO DECISIONS

1. Liability for contents

Where locked chest obviously having contents was deposited for storage, it was within contemplation of parties that warehouseman should be responsible not only for chest itself but the contents as well. *Barrett v. Freed* (D.C. Mun. App. 1944, 35 A. 2d 180).

§ 28-1803. Form of receipts—What terms may be inserted.

A warehouseman may insert in a receipt issued by him any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to the provisions of chapters 18-22 of this title;

(b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 3.)

NOTES TO DECISIONS

1. Negligence of warehouseman

In absence of any statute, neither a conditional vendee nor a mortgagor may by any contract with a warehouseman subordinate the interest of the conditional vendor or mortgagee to the warehouseman's lien. *Smiths Transfer & Storage Co. v. Reliable Stores Corp.* (1932, 58 F. 2d 511, 61 App. D. C. 106).

§ 28-1804. Nonnegotiable receipt—Definition.

A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 4.)

§ 28-1805. Negotiable receipt—Definition—"Nonnegotiable provision" void.

A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is nonnegotiable. Such provision, if inserted, shall be void. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 5.)

§ 28-1806. Duplicate receipts must be so marked—Liability for failure to do so.

When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value, supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 6.)

§ 28-1807. Nonnegotiable receipt must be so marked—Effect of failure to do so.

A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "nonnegotiable" or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 7.)

CROSS REFERENCE

Effect of warehouseman's placing words "nonnegotiable" on negotiable document of title to personal property, see § 28-1214.

Chapter 19.—OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RIGHTS

Sec.

- 28-1901. Obligation of warehouseman to deliver—Excuse for refusal.
- 28-1902. Persons to whom warehouseman may deliver with justification.
- 28-1903. Warehouseman's liability for misdelivery.
- 28-1904. Negotiable receipts must be canceled when goods delivered—Liability of warehouseman.
- 28-1905. Negotiable receipts must be canceled or marked when part of goods delivered—Liability of warehouseman.
- 28-1906. Altered receipts—Liability of warehouseman—Right of purchaser for value without notice.
- 28-1907. Delivery of goods where receipt lost or destroyed—Bond—Holder for value of receipt without notice.
- 28-1908. Duplicate receipts—Effect—Liability of warehouseman.
- 28-1909. Warehouseman cannot set up title in himself.
- 28-1910. Interpleader of adverse claimants.
- 28-1911. Warehouseman has reasonable time to determine validity of claims.
- 28-1912. Adverse title is no defense, except as above provided.
- 28-1913. Liability for nonexistence or misdescription of goods.
- 28-1914. Liability for care of goods.
- 28-1915. Goods must be kept separate.
- 28-1916. Fungible goods may be commingled, if warehouseman authorized.
- 28-1917. Liability of warehouseman to depositors of commingled goods.
- 28-1918. Judicial proceeding affecting title.
- 28-1919. Attachment or levy upon goods for which a negotiable receipt has been issued—Surrender of receipt.
- 28-1920. Creditors' remedies to reach negotiable receipts.
- 28-1921. Claims included in the warehouseman's lien.
- 28-1922. Against what property the lien may be enforced.
- 28-1923. How the lien may be lost.
- 28-1924. Negotiable receipt must state charges for which lien is claimed.
- 28-1925. Warehouseman need not deliver until lien is satisfied.
- 28-1926. Warehouseman's lien does not preclude other remedies.
- 28-1927. Satisfaction of lien—Notice required—Sale by auction—Notice of sale—Proceeds—Right of claimant.
- 28-1928. Perishable and hazardous goods—Notice to owner—Sale—Disposition of proceeds.
- 28-1929. Other methods of enforcing liens.
- 28-1930. Effect of sale.

§ 28-1901. Obligation of warehouseman to deliver—Excuse for refusal.

A warehouseman, in the absence of some lawful excuse provided by chapters 18-22 of this title, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

- (a) An offer to satisfy the warehouseman's lien;
- (b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 8.)

NOTES TO DECISIONS

- Absence of instructions 1
 Estoppel 2
 Surrender of non-negotiable receipt 3

1. Absence of instructions

Where one ships goods to a warehouseman without instructions, the warehouseman agrees to keep goods, subject to orders of shipper. *Terminal Warehouse & Refrigeration Co. v. Cross Transp. Co.* (1943, 33 A. 2d 617).

2. Estoppel

Where plaintiff's wife deposited household goods in warehouse of defendant giving non-negotiable receipt not requiring surrender of receipt in advance of withdrawal, and defendant refused to deliver goods to plaintiff paying charges but not surrendering receipt before delivery as requested by defendant, and plaintiff in reliance thereon did not get written authorization to withdraw from wife, and thereafter defendant permitted plaintiff to withdraw a part and implied that defendant had contractual relationship with plaintiff, defendant was estopped from asserting that plaintiff was not holder of receipt, and hence plaintiff's demand for goods was valid and he could recover goods or their value without paying storage charges from demand. *De Bobula v. Manhattan Storage & Transfer Co.* (1952, 194 F. 2d 885, 90 U.S. App. D.C. 202).

3. Surrender of non-negotiable receipt

The Uniform Warehouse Receipts Act [chapters 18 to 22 of this title] does not require holder of non-negotiable warehouse receipt to surrender receipt before withdrawal of goods. *De Bobula v. Manhattan Storage & Transfer Co.* (1952, 194 F. 2d 885, 90 U.S. App. D.C. 202).

§ 28-1902. Persons to whom warehouseman may deliver with justification.

A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods or his agent;

(b) A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 9.)

§ 28-1903. Warehouseman's liability for misdelivery.

Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of section 28-1902, and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 10.)

NOTES TO DECISIONS

Conversion 1
 Determination of liability 2
 Negligence of carrier 3

1. Conversion

Failure of a warehouseman to account for goods to depositor is a "conversion" although delivery to or sale for an unauthorized person was not negligent. *Terminal Warehouse & Refrigeration Co. v. Cross Transp. Co.* (1943, 33 A.2d 617).

Where goods transported by carrier were delivered to warehouseman as consignee, a subsequent delivery of the goods to a third person by warehouseman, without authority from either shipper or carrier, was a "conversion" for which warehouseman was liable. *Id.*

2. Determination of liability

The liability of a warehouseman to an owner or depositor who has not obtained a formal warehouse receipt for goods consigned to it is to be determined by reference to applicable rules of law of bailments, independently of any provisions of chapters 18 to 22 of this title. *Terminal Warehouse & Refrigeration Co. v. Cross Transp. Co.* (1943, 33 A.2d 617).

3. Negligence of carrier

Fact that carrier was negligent in failing to note on bills of lading that shipment to warehouseman, as consignee, was C. O. D., if established, did not prevent carrier under doctrine of "equitable estoppel" from recovering from warehouseman for a conversion of the goods, resulting from warehouseman's delivery of goods to a third party without authority from either shipper or carrier. *Terminal Warehouse & Refrigeration Co. v. Cross Transp. Co.* (1943, 33 A.2d 617).

§ 28-1904. Negotiable receipts must be canceled when goods delivered—Liability of warehouseman.

Except as provided in section 28-1930, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 11.)

§ 28-1905. Negotiable receipts must be canceled or marked when part of goods delivered—Liability of warehouseman.

Except as provided in section 28-1930, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 12.)

§ 28-1906. Altered receipts—Liability of warehouseman—Right of purchaser for value without notice.

The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

- (a) Immaterial,
- (b) Authorized, or
- (c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the

receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 13.)

§ 28-1907. Delivery of goods where receipt lost or destroyed—Bond—Holder for value of receipt without notice.

Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties, to be approved by the court, to protect the warehouseman from any liability or expense which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 14.)

§ 28-1908. Duplicate receipts—Effect—Liability of warehouseman.

A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 15.)

§ 28-1909. Warehouseman cannot set up title in himself.

No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 16.)

§ 28-1910. Interpleader of adverse claimants.

If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 17.)

§ 28-1911. Warehouseman has reasonable time to determine validity of claims.

If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 18.)

§ 28-1912. Adverse title is no defense, except as above provided.

Except as provided in sections 28-1910, 28-1911 and in sections 28-1902 and 28-1930, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 19.)

§ 28-1913. Liability for nonexistence or misdescription of goods.

A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate or of the kind they were said to be by the depositor. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 20.)

§ 28-1914. Liability for care of goods.

A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 21.)

NOTES TO DECISIONS

1. Unauthorized removal

Where warehouseman breached bailment contract by removing goods without authority of owner from place specified in warehouse receipt, warehouseman was liable for loss by fire and his liability was not limited by provision in warehouse receipt limiting liability. *Barrett v. Freed* (D. C. Mun. App. 1944, 35 A. 2d 180).

Where warehouseman limited his liability to \$50 for stored goods and goods were destroyed by fire after removal without owner's authority from specified place designated in contract causing owner to lose protection of his insurance, warehouseman could not rely on such limitation since removal was gross negligence. *Id.*

If bailee without authority deviates from contract as to place of storage of bailed property and loss occurs which would not have occurred had property been kept at agreed place, bailee is liable for such loss, even though he is not negligent. *Id.*

§ 28-1915. Goods must be kept separate.

Except as provided in section 28-1916, a warehouseman shall keep the goods, so far separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit at all times the identification and redelivery of the goods deposited. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 22.)

§ 28-1916. Fungible goods may be commingled, if warehouseman authorized.

If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 23.)

§ 28-1917. Liability of warehouseman to depositors of commingled goods.

The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 24.)

§ 28-1918. Judicial proceeding affecting title.

Whenever the title or right of possession to any goods, wares, merchandise, or personal property on storage shall be put in issue by any judicial proceeding, the same shall be delivered upon the order of the court, after prepayment of the storage charges and cash advances then due by the person at whose instance such change of possession is so ordered, and who shall be entitled to recover such payment as part of the costs in such proceeding, or, if defeated therein, he shall be credited with such payment in taxation of costs against him. And unless the person, firm, association, or corporation so conducting a storage business shall claim some right, title, or interest in said stored property other than the lien herein above authorized, he, it, or they shall not be made a party to such judicial proceedings. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1621.)

CODIFICATION

Section was not enacted as part of the Warehouse Receipts Law, which is classified to chapters 18 to 22 of this title.

§ 28-1919. Attachment or levy upon goods for which a negotiable receipt has been issued—Surrender of receipt.

If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 25.)

§ 28-1920. Creditors' remedies to reach negotiable receipts.

A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 26.)

§ 28-1921. Claims included in the warehouseman's lien.

Subject to the provisions of section 28-1924, a warehouseman shall have a lien on goods deposited or on proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisement of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 27.)

NOTES TO DECISIONS

1. Rights of conditional vendor or mortgagee

Neither a conditional vendee nor a mortgagor may by any contract with a warehouseman subordinate the interest of the conditional vendor or mortgagee to the warehouseman's lien. *Smiths Transfer & Storage Co. v. Reliable Stores Corp.* (1932, 58 F. 2d 511, 61 App. D. C. 106).

When the conditional sale contract was neither acknowledged nor recorded, and there was actual delivery of the chattels to the purchaser, whose possession was such that a pledge of the goods by him to one taking them in good faith for value would have been valid, the warehouseman's lien was superior to the claim of the furniture company. *Fidelity Storage Co. v. Reliable Stores Corp.* (1934, 69 F. 2d 569, 63 App. D.C. 83).

§ 28-1922. Against what property the lien may be enforced.

Subject to the provisions of section 28-1924, a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 28.)

NOTES TO DECISIONS

Prior liens 1.
Recorded conditional sales 2.
Unrecorded conditional sales 3.

1. Prior liens

There is no provision of law making a warehouseman's lien superior to a prior lien of a conditional vendor or mortgagee. *Smiths Transfer & Storage Co. v. Reliable Stores Corp.* (1932, 58 F. 2d 511, 61 App. D. C. 106).

2. Recorded conditional sales

A recorded conditional sale contract is superior to the lien of a warehouseman where goods were stored after removing them from State without seller's consent. *Smiths Transfer & Storage Co. v. Reliable Stores Corp.* (1932, 58 F. 2d 511, 61 App. D. C. 106).

3. Unrecorded conditional sales

Warehouseman's lien for goods stored by one who claimed to be the owner was superior to lien of vendor under a conditional sales contract which was neither acknowledged nor recorded. *Fidelity Storage Co. v. Reliable Stores Corp.* (1934, 69 F. 2d 569, 63 App. D. C. 83).

§ 28-1923. How the lien may be lost.

A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of chapters 18-22 of this title. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 29.)

§ 28-1924. Negotiable receipt must state charges for which lien is claimed.

If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 28-1921, although the amount of the charges so enumerated is not stated in the receipt. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 30.)

§ 28-1925. Warehouseman need not deliver until lien is satisfied.

A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 31.)

§ 28-1926. Warehouseman's lien does not preclude other remedies.

Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 32.)

§ 28-1927. Satisfaction of lien—Notice required—Sale by auction—Notice of sale—Proceeds—Right of claimant.

A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last-known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed an advertisement of the sale, describing the goods to be sold and stating the name of the owner or person on whose account the goods are held and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of chapters 18-22 of this title, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 33.)

§ 28-1928. Perishable and hazardous goods—Notice to owner—Sale—Disposition of proceeds.

If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of sec-

tion 28-1927. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 34.)

§ 28-1929. Other methods of enforcing liens.

The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 35.)

NOTES TO DECISIONS

1. Replevin suit

A warehouseman who did not elect to proceed by bill in equity, and who has lost possession of the goods in a replevin suit, may not thereafter file a bill in equity to enforce his warehouseman's lien, as his rights will be fully protected in the replevin suit. *Sachs v. Kinyoun* (47 App. D. C. 561).

§ 28-1930. Effect of sale.

After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 36.)

Chapter 20.—NEGOTIATION AND TRANSFER OF RECEIPTS

Sec.

- 28-2001. Negotiation of negotiable receipts by delivery.
- 28-2002. Negotiation of negotiable receipts by indorsement.
- 28-2003. Transfer of receipts.
- 28-2004. Who may negotiate a receipt.
- 28-2005. Rights of person to whom a receipt has been negotiated.
- 28-2006. Rights of transferee of receipt—Nonnegotiable receipt—Notice to warehouseman—Remedy of creditors of transferor.
- 28-2007. Transfer of negotiable receipt without indorsement.
- 28-2008. Warranties on sale of receipt.
- 28-2009. Liability of indorser—Limitation.
- 28-2010. No warranty implied from accepting payment of a debt.
- 28-2011. Negotiation to purchaser for value without notice not impaired by breach of duty, fraud, mistake, or duress.
- 28-2012. Subsequent negotiation.
- 28-2013. Negotiation defeats unpaid seller's lien—A right of stoppage in transitu.

§ 28-2001. Negotiation of negotiable receipts by delivery.

A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt

shall thereafter be negotiated only by the indorsement of such indorsee. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 37.)

§ 28-2002. Negotiation of negotiable receipts by indorsement.

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 38.)

§ 28-2003. Transfer of receipts.

A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A nonnegotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 39.)

§ 28-2004. Who may negotiate a receipt.

A negotiable receipt may be negotiated—

(a) By the owner thereof; or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 40.)

§ 28-2005. Rights of person to whom a receipt has been negotiated.

A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 41.)

§ 28-2006. Rights of transferee of receipt—Nonnegotiable receipt—Notice to warehouseman—Remedy of creditors of transferrer.

A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer.

If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferrer or transferee of a nonnegotiable receipt, the title of the transferrer to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 42.)

§ 28-2007. Transfer of negotiable receipt without indorsement.

Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 43.)

§ 28-2008. Warranties on sale of receipt.

A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine;

(b) That he has a legal right to negotiate or transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt; and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 44.)

§ 28-2009. Liability of indorser—Limitation.

The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 45.)

§ 28-2010. No warranty implied from accepting payment of a debt.

A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 46.)

§ 28-2011. Negotiation to purchaser for value without notice not impaired by breach of duty, fraud, mistake, or duress.

The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to

intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 47.)

§ 28-2012. Subsequent negotiation.

Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 48.)

§ 28-2013. Negotiation defeats unpaid seller's lien—A right of stoppage in transitu.

Where a negotiable receipt has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 49.)

Chapter 21.—CRIMINAL OFFENSES

Sec.

- 28-2101. Issue of receipt for goods not received.
- 28-2102. Issue of receipt containing false statement.
- 28-2103. Issue of duplicate receipts not so marked.
- 28-2104. Issue for warehouseman's goods of receipts which do not state that fact.
- 28-2105. Delivery of goods without obtaining negotiable receipts.
- 28-2106. Negotiation of receipt for mortgaged goods.

§ 28-2101. Issue of receipt for goods not received.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 50.)

§ 28-2102. Issue of receipt containing false statement.

A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167 § 51.)

§ 28-2103. Issue of duplicate receipts not so marked.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 28-1907, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 52.)

§ 28-2104. Issue for warehouseman's goods of receipts which do not state that fact.

Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 53.)

§ 28-2105. Delivery of goods without obtaining negotiable receipts.

A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 28-1907 and 28-1930, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 54.)

§ 28-2106. Negotiation of receipt for mortgaged goods.

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 55.)

Chapter 22.—INTERPRETATION

Sec.

- 28-2201. When rules of common law still applicable.
- 28-2202. Interpretation shall give effect to purpose of uniformity.
- 28-2203. Definitions.
- 28-2204. Receipts prior to April 15, 1910, exempt.
- 28-2205. Short title.

§ 28-2201. When rules of common law still applicable.

In any case not provided for in chapters 18-22 of this title, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 56.)

NOTES TO DECISIONS

1. Generally

The liability of a warehouseman to an owner or depositor who has not obtained a formal warehouse receipt for goods consigned to it is to be determined by reference to applicable rules of law of bailments, independently of any provisions of chapters 18 to 22 of this title. *Terminal Warehouse & Refrigeration Co. v. Cross Transp. Co.* (1943, 33 A. 2d 617).

§ 28-2202. Interpretation shall give effect to purpose of uniformity.

Chapters 18-22 of this title shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 57.)

§ 28-2203. Definitions.

First. In chapters 18-22 of this title, unless the context or subject matter otherwise requires—

“Action” includes counterclaim, set-off, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

Second. A thing is done “in good faith” within the meaning of chapters 18-22 of this title when it is in fact done honestly, whether it be done negligently or not. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 58.)

NOTES TO DECISIONS

1. Holder

Where plaintiff's wife deposited household goods in warehouse of defendant giving non-negotiable receipt not requiring surrender of receipt in advance of withdrawal, and defendant refused to deliver goods to plaintiff paying charges but not surrendering receipt before delivery

as requested by defendant, and plaintiff in reliance thereon did not get written authorization to withdraw from wife, and thereafter defendant permitted plaintiff to withdraw a part and implied that defendant had contractual relationship with plaintiff, defendant was estopped from asserting that plaintiff was not holder of receipt, and hence plaintiff's demand for goods was valid and he could recover goods or their value without paying storage charges from demand. *De Bobula v. Manhattan Storage & Transfer Co.* (1952, 194 F. 2d 885, 90 U.S. App. D.C. 202).

§ 28-2204. Receipts prior to April 15, 1910, exempt.

The provisions of chapters 18-22 of this title do not apply to receipts made and delivered prior to April 15, 1910. (Apr. 15, 1910, 36 Stat. 311, ch. 167, § 59.)

§ 28-2205. Short title.

Chapters 18-22 of this title may be cited as the Warehouse Receipts Act. (Apr. 15, 1910, 36 Stat. 311, ch. 167, § 62.)

Chapter 23.—FIDUCIARIES

SUBCHAPTER I.—UNIFORM FIDUCIARIES ACT

Sec.

28-2301. Definitions.

28-2302. Application of payment made to fiduciaries.

28-2303. Repealed.

28-2304. Transfer of negotiable instruments by fiduciary.

28-2305. Check drawn by fiduciary payable to third person.

28-2306. Check drawn by and payable to fiduciary.

28-2307. Deposit in name of fiduciary as such.

28-2308. Deposit in name of principal—Check drawn thereon by fiduciary—Check payable to drawee bank.

28-2309. Deposit in fiduciary's personal account.

28-2310. Deposit in names of two or more trustees.

28-2311. Law not retroactive.

28-2312. Cases not provided for in subchapter.

28-2313. Uniformity of interpretation.

28-2314. Short title.

SUBCHAPTER II.—UNIFORM FIDUCIARY SECURITY TRANSFERS ACT

28-2321. Definitions.

28-2322. Registration in name of a fiduciary.

28-2323. Assignment by a fiduciary.

28-2324. Evidence of appointment of incumbency.

28-2325. Adverse claims.

28-2326. Nonliability of corporation and transfer agent.

28-2327. Nonliability of third persons.

28-2328. Territorial application.

28-2329. Tax obligations.

28-2330. Uniformity of interpretation.

SUBCHAPTER I.—UNIFORM FIDUCIARIES ACT

§ 28-2301. Definitions.

The following provisions concerning liability for participation in breaches of fiduciary obligations, and to make uniform the law with reference thereto, shall be in force in the District of Columbia, namely:

(1) In this subchapter unless the context or subject matter otherwise requires:

“Bank” includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

“Fiduciary” includes a trustee under any trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person

acting in a fiduciary capacity for any person, trust, or estate.

"Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

(2) A thing is done "in good faith" within the meaning of this subchapter, when it is in fact done honestly, whether it be done negligently or not. (May 14, 1928, 45 Stat. 509, ch. 545, § 1.)

CROSS REFERENCE

Transfer of securities to and by fiduciaries, see §§ 28-2321 to 28-2330.

NOTES TO DECISIONS

1. In general

Considered in its entirety, it is manifest that the effect of the act (this subchapter) is to enlarge the ability of fiduciaries to avoid the limitations imposed by the common law, although the liabilities of the fiduciaries as such are not affected, but only those of persons dealing with them. *Colby v. Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D.C. 259, 114 A.L.R. 1065).

§ 28-2302. Application of payment made to fiduciaries.

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary. (May 14, 1928, 45 Stat. 510, ch. 545, § 2.)

CROSS REFERENCE

Trust or joint accounts, deposits, or safe-deposit boxes, see § 26-201 et seq.

NOTES TO DECISIONS

Incompetent's committee 1 Misappropriation 2

1. Incompetent's committee

Where corporation lending money to incompetent made checks payable to members of incompetent's committee without adding word "committee" to checks and members of committee allegedly embezzled proceeds of checks, recovery against indorsees cashing checks for members of committee was not precluded merely by absence of word "committee" from checks, and corporation would not be responsible for loss on such theory, in absence of evidence that indorsees had knowledge that members of committee were breaching their fiduciary obligation or had knowledge of such facts rendering the taking of checks by indorsees bad faith. *Espey v. Lawyers Title Ins. Corp. of Richmond, Va.* (1954, 210 F. 2d 728, 93 U.S. App. D.C. 280).

2. Misappropriation

The word "misappropriation" means wrong appropriation, or the use of a fund for a different purpose than that for which it was created, but not necessarily a dishonest purpose. *Colby v. Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D. C. 259, 114 A. L. R. 1065).

§ 28-2303. Repealed. July 5, 1960, 74 Stat. 324, Pub. L. 86-584, § 12.

Section, act May 14, 1928, 45 Stat. 510, ch. 545, § 3, related to registration of transfer of securities held by fiduciaries. See § 28-2321 et seq.

§ 28-2304. Transfer of negotiable instruments by fiduciary.

If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered

to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument. (May 14, 1928, 45 Stat. 510, ch. 545, § 4.)

NOTES TO DECISIONS

Knowledge of bad faith 1 Liability of lender 2

1. Knowledge of bad faith

Where plaintiff's check was presented at a bank by president of the payee personally who endorsed on the back of it the name of the company and his own name as president and in addition signed his own name as individual and the bank credited the amount of the check to the personal account of the president, maker was not entitled to recover the amount thereof from the bank where there was no suggestion of bad faith by the bank and no proof which would have put it on notice that the president was guilty of a breach of faith in negotiating the check and depositing the proceeds to his own credit. *Evans v. Prentice et al.* (D.C. Mun. App. 1951, 79 A. 2d 396).

2. Liability of lender

Where court authorized members of incompetent's committee to negotiate loan on security of incompetent's realty, lender made checks payable to members of committee without adding word "committee" and such members thereafter allegedly embezzled proceeds of checks, omission of word "committee" was not cause of alleged embezzlement, making lender responsible therefor, in view of fact that presence of word would not have prevented members from cashing checks or from embezzling proceeds. *Espey v. Lawyers Title Ins. Corp. of Richmond, Va.* (1954, 210 F. 2d 728, 93 U.S. App. D.C. 280).

§ 28-2305. Check drawn by fiduciary payable to third person.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach

of his obligation as fiduciary in drawing or delivering the instrument. (May 14, 1928, 45 Stat. 510, ch. 545, § 5.)

NOTES TO DECISIONS

1. In general

A third person who knowingly participates in the breach of a fiduciary's obligation can be required to make good the resulting loss. *Anacostia Bank v. U. S. Fidelity & Guaranty Co.* (1941, 119 F. 2d 455, 73 App. D. C. 388, 134 A. L. R. 995).

§ 28-2306. Check drawn by and payable to fiduciary.

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. (May 14, 1928, 45 Stat. 511, ch. 545, § 6.)

NOTES TO DECISIONS

1. Trust deposit transferred

Where trust deposit in the name of the individual trustees and trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, the transaction was not covered by this section, but comes within the scope of § 28-2312 and must be decided under common-law principles. *Colby v. Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D. C. 259, 114 A. L. R. 1065).

§ 28-2307. Deposit in name of fiduciary as such.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (May 14, 1928, 45 Stat. 511, ch. 545, § 7.)

§ 28-2308. Deposit in name of principal—Check drawn thereon by fiduciary—Check payable to drawee bank.

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such checks without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that

its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (May 14, 1928, 45 Stat. 511, ch. 545, § 8.)

§ 28-2309. Deposit in fiduciary's personal account.

If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith. (May 14, 1928, 45 Stat. 511, ch. 545, § 9.)

NOTES TO DECISIONS

1. Trust deposit transferred

Where trust deposit in the name of the individual trustees and the trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, it was not the case of a transfer by the fiduciary in payment of a personal debt, but was a transfer by one set of fiduciaries to another, and the bank was not liable unless it had actual knowledge of misappropriation. *Colby v. Riggs Nat. Bank* (1937, 67 App. D. C. 259, 92 F. 2d 183, 114 A. L. R. 1065).

§ 28-2310. Deposit in names of two or more trustees.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith. (May 14, 1928, 45 Stat. 512, ch. 545, § 10.)

§ 28-2311. Law not retroactive.

The provisions of this subchapter shall not apply to transactions that took place prior to May 14, 1928. (May 14, 1928, 45 Stat. 512, ch. 545, § 11.)

§ 28-2312. Cases not provided for in subchapter.

In any case not provided for in this subchapter the rules of law and equity, including the law merchant and those rules of law and equity relating to

trusts, agency negotiable instruments, and banking, shall continue to apply. (May 14, 1928, 45 Stat. 512, ch. 545, § 12.)

§ 28-2313. Uniformity of interpretation.

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (May 14, 1928, 45 Stat. 512, ch. 545, § 13.)

NOTES TO DECISIONS

Construction 1 Purpose 2

1. Construction

In construing this chapter, recourse may be had to the reports of the committees of Congress and to the notes of the Commissioners. *Colby v. Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D. C. 259, 114 A. L. R. 1065).

2. Purpose

The purpose of this chapter was to establish uniform and definite rules in place of the diverse and indefinite rules formerly prevailing as to constructive notice of breaches of fiduciary obligations. It is obvious that in the use of the words "actual knowledge" Congress meant to change the rule previously applied in many courts of constructive, implied or imputed knowledge. *Colby v. Riggs Nat. Bank* (1937, 92 F. 2d 183, 67 App. D. C. 259, 114 A. L. R. 1065).

§ 28-2314. Short title.

This subchapter may be cited as the Uniform Fiduciaries Act. (May 14, 1928, 45 Stat. 512, ch. 545, § 14.)

SUBCHAPTER II.—UNIFORM FIDUCIARY SECURITY TRANSFERS ACT

§ 28-2321. Definitions.

In this subchapter, unless the context otherwise requires:

(a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(c) "Corporation" means a private or public corporation, association or trust issuing a security.

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation. (July 5, 1960, 74 Stat. 322, Pub. L. 86-584, § 1.)

EFFECTIVE DATE

Section 13 of act July 5, 1960, provided that: "This act [this subchapter] shall take effect on the date of its enactment [July 5, 1960]."

SHORT TITLE

Section 11 of act July 5, 1960, provided that: "This Act [this subchapter] may be cited as the 'District of Columbia Uniform Act for Simplification of Fiduciary Security Transfer.'"

§ 28-2322. Registration in name of a fiduciary.

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. (July 5, 1960, 74 Stat. 322, Pub. L. 86-584, § 2.)

§ 28-2323. Assignment by a fiduciary.

Except as otherwise provided in this subchapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary—

(a) may assume without inquiry that the assignment, even though to the fiduciary himself or his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession (July 5, 1960, 74 Stat. 322, Pub. L. 86-584, § 3.)

§ 28-2324. Evidence of appointment of incumbency.

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the transfer; or

(b) In any other case, a copy of a document showing the appointment of a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect

to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency. (July 5, 1960, 74 Stat. 323, Pub. L. 86-584, § 4.)

§ 28-2325. Adverse claims.

(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this subchapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order. (July 5, 1960, 74 Stat. 323, Pub. L. 86-584, § 5.)

§ 28-2326. Nonliability of corporation and transfer agent.

A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this subchapter. (July 5, 1960, 74 Stat. 323, Pub. L. 86-584, § 6.)

§ 28-2327. Nonliability of third persons.

(a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this subchapter incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent. (July 5, 1960, 74 Stat. 324, Pub. L. 86-584, § 7.)

§ 28-2328. Territorial application.

(a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This subchapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in the District of Columbia in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in the District of Columbia the signature of a fiduciary in connection with such a transaction. (July 5, 1960, 74 Stat. 324, Pub. L. 86-584, § 8.)

§ 28-2329. Tax obligations.

This subchapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of the District of Columbia. (July 5, 1960, 74 Stat. 324, Pub. L. 86-584, § 9.)

§ 28-2330. Uniformity of interpretation.

This subchapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it. (July 5, 1960, 74 Stat. 324, Pub. L. 86-584, § 10.)

Chapter 24.—BONDS AND UNDERTAKINGS

Sec.

- 28-2401. Bond—Definition.
- 28-2402. Undertaking—Definition.
- 28-2403. Fiduciary's bond—Undertaking to be given in lieu thereof — Form — Judgments thereon — Jurisdiction of District Court—Actions, remedies, proceedings.
- 28-2404. Counsel fee may be allowed on bond or undertaking for restraining order or injunction.
- 28-2405. Actions on bonds in a penal sum containing an avoidance condition.
- 28-2406. Action upon bond to United States by fiduciary or public officer in which private person has an interest.
- 28-2407. Bonds of trustees or other fiduciaries—No discharge by fiduciary's payment to himself in another capacity of trust.

§ 28-2401. Bond—Definition.

A bond, when required or referred to, in the provisions of this code, shall be understood to signify an obligation in a certain sum or penalty, subject to a condition, on breach of which it is to become absolute and to be enforceable by action. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 478.)

CROSS REFERENCES

Attachment and garnishment bond, see § 16-301.
Sureties generally, see § 16-2001 et seq.

NOTES TO DECISIONS

1. Bonds and undertakings distinguished

Unlike the ordinary appeal bond, which is an obligation under seal, with a fixed penalty, and a definite condition, limited to become effective or otherwise by the determination of the appeal, an undertaking is without seal, or fixed penalty, and without condition; and is simply a promise or an assumption of liability, to perform a judgment, or to pay damages and costs. *Tenney v. Taylor* (1 App. D. C. 223).

§ 28-2402. Undertaking—Definition.

An undertaking shall be understood to signify an agreement entered into by a party to a suit or proceeding, with or without sureties, upon which a judgment or decree may be rendered in the same suit or proceeding against said party and his sureties, if any, the said party and sureties submitting themselves to the jurisdiction of the court for that purpose. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 479.)

CROSS REFERENCE

Replevin, undertaking in, see § 16-1804.

NOTES TO DECISIONS

Automobile negligence action against nonresident 1
Purpose and effect 2

1. Automobile negligence action against nonresident

The undertaking in favor of a nonresident defendant which is required of a plaintiff who institutes automobile negligence action in District of Columbia against such nonresident by service of process on Director of Vehicles and Traffic, is such an "undertaking" as is defined as an agreement by a party to a suit upon which a judgment or decree may be rendered in same suit or proceeding in which it has been filed. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

2. Purpose and effect

While an undertaking differs in form from the bond, its essential purpose and effect are the same as those of the bond, to give the guaranty of an additional person as security for the costs that might be incurred and the damages that might result to an appellee by the prosecution of an appeal that prevents him from realizing his claim as speedily and as effectively as he might otherwise have done. *Tenney v. Taylor* (1 App. D. C. 223).

§ 28-2403. Fiduciary's bond—Undertaking to be given in lieu thereof—Form—Judgments thereon—Jurisdiction of District Court—Actions, remedies, proceedings.

In all cases where, by the provisions of this code, a bond is required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of creditors, or any other fiduciary appointed or confirmed by the United States District Court for the District of Columbia, or any member thereof, or where a bond is required from any party to a cause or proceeding pending in such court, such bond shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises, and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court shall direct; that the court may give judgment thereon in favor of any person thereby aggrieved against such principal and sureties for the damages suffered or sustained by such aggrieved party, and that such judgment may be rendered in said cause or proceeding against all or any of the parties whose names are thereto signed.

And the said United States District Court for the District of Columbia and its respective special terms, be, and they are hereby, vested with and given

jurisdiction and authority to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon such undertaking as law and justice shall require: *Provided*, That nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

All provisions of this Code relating to actions, remedies and proceedings upon bonds of such fiduciaries shall apply and be effective as to such undertakings to the same extent as if such undertaking had been expressly mentioned and referred to therein. (Apr. 19, 1920, 41 Stat. 564, ch. 153, § 479a; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

In general 1
Action on bond 2
Amount of recovery 3

1. In general

This section does not repeal section 16-301, relative to attachment bonds. *Tri-State Motor Corp. v. Standard Steel Car Co.* (1922, 276 F. 631, 51 App. D. C. 109).

A bond executed to the United States is valid, although there is no previous statutory authorization therefor. *United States v. Pumphrey* (11 App. D. C. 44).

2. Action on bond

Action to recover on bond for damages from wrongful suing out of an attachment is maintainable under this section providing that when a bond is referred to in statutes it signifies an obligation in a certain sum or penalty subject to condition on breach of which bond becomes absolute and is enforceable by action. *Davis v. Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

Where action was brought and attachment issued, failure of plaintiff's suit resulted in a "wrongful suing out of attachment" authorizing property owner to bring suit on bond. *Id.*

3. Amount of recovery

Where plaintiffs in attachment filed bond and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *Davis v. Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

§ 28-2404. Counsel fee may be allowed on bond or undertaking for restraining order or injunction.

In any proceeding in the United States District Court for the District of Columbia or any special term thereof to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction the court, in assessing damages to be recovered thereunder, may include such reasonable counsel or attorney fees as the party aggrieved or damaged by such restraining order or injunction may have been put to or incurred in obtaining a dissolution thereof. (Apr. 19, 1920, 41 Stat. 565, ch. 153, § 479b; June 25, 1936, 49

Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

Attorney fees allowed 1
Sureties 2

1. Attorney fees allowed

Attorney fees, incurred in procuring the dissolution of an injunction improperly issued, are recoverable as damages upon the injunction bond, whether the dissolution of the wrongful injunction be obtained by interlocutory or final decree. *Local Union No. 368 v. Barker Painting Co.* (1928, 24 F. 2d 879, 58 App. D. C. 51).

Counsel fees are not allowed in action on injunction bond after successfully defending action on contract and defeating injunction. *Stanfield v. Vollbehr* (1932, 60 F. 2d 670, 61 App. D. C. 239).

Addition of \$2,000 attorneys' fees as part of damages for wrongful injunction against sale of property under a trust deed was unauthorized under the circumstances. *Maiaico v. Mortgage Security Corp.* (1932, 60 F. 2d 1081, 61 App. D. C. 245).

2. Sureties

Interest in excess of maximum penalty of the undertaking may become due from surety but only because of surety's own default. *Cunningham v. Cunningham* (App. D. C. 1947, 157 F. 2d 859).

§ 28-2405. Actions on bonds in a penal sum containing an avoidance condition.

A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act, or of certain duties, shall have the same effect for the purpose of maintaining an action upon it as if it contained a covenant to pay the money or perform the act or the duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, shall not exceed the penalty of the bond. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 480.)

NOTES TO DECISIONS

Construction 1
Forgery 2
Sureties 3

1. Construction

In suit against sureties bond is to be strictly construed. *United States v. Maloney* (4 App. D. C. 505).

Recitals in bond, and all material traversable matter set forth in breaches assigned and which have not been traversed are to be taken as admitted and withdrawn from the province of the jury. *Id.*

2. Forgery

Surety can not plead forgery of principal's name to bond when surety executes it after its purported execution by the principal. *United States v. Boyd* (8 App. D. C. 440).

3. Sureties

By the execution of a bond and its return to the principal or his agent for delivery to the obligee the surety becomes estopped to set up any condition not known to that obligee, upon which his signature has been obtained. *United States v. Boyd* (8 App. D. C. 440).

Discontinuance of a suit as to the principal will not, in the absence of explanation, be sufficient to release the sureties on his bond who were named as codefendants. *Starr v. United States* (8 App. D. C. 552, reversed on other grounds 17 S. Ct. 223, 164 U.S. 627, 41 L. Ed. 577).

§ 28-2406. Action upon bond to United States by fiduciary or public officer in which private person has an interest.

Whenever a bond is executed to the United States by any fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are interested, any such person, aggrieved by a breach of such condition, shall be entitled to maintain an action thereon in his own name against the obligor and his sureties to recover damages for the injury suffered by him in consequence of such breach; and it shall be the duty of the custodian of such bond to furnish a certified copy thereof to said party for the purpose aforesaid on payment of the legal fees therefor. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 481; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out "persons," before "aggrieved," and inserted "person" in lieu thereof.

NOTES TO DECISIONS

Action on official bond 1
Disbursing officer 2
Plumbing inspector 3
Questions on appeal 4

1. Action on official bond

Action on an official bond running to the District of Columbia cannot be maintained by one not a party thereto, in the absence of the consent of the District or an express statute authorizing such action. *District of Columbia to Use of Langelotti v. Fidelity & Deposit Co.* (1921, 271 F. 383, 50 App. D. C. 309).

2. Disbursing officer

Although bond required of a disbursing officer of the Government when first filed was not properly executed and it was returned to the principal who properly executed it, there is no presumption against its genuineness, in a suit by the Government against the surety, and in such transaction the relation between the Government and the disbursing officer is not that of principal and agent. *Howgate v. United States* (3 App. D. C. 277, affirmed 17 S. Ct. 682, 166 U. S. 571, 41 L. Ed. 1119).

In action by United States on the bond of an alleged delinquent disbursing officer, a duly authenticated transcript from the Treasury Department of the accounts of the disbursing officer offered in evidence by the United States is not admissible, for it does not include all transactions with the United States during term of service, but only those transactions connected with the appropriations for which such official is alleged to be in default need be shown by such transcript. *Goff v. United States* (22 App. D. C. 512).

3. Plumbing inspector

Those injured by neglect of the inspector of plumbing in the performance of his official duties may maintain an action in the name of the District of Columbia to his use on the bond given by the inspector, under a plumbing regulation requiring the inspector to give a bond of \$5,000, "conditioned for the faithful performance of the duties of his office." *District of Columbia v. Ball* (22 App. D. C. 543).

Plumbing regulations of District of Columbia requiring inspector of plumbing to give bond with sureties for benefit of persons aggrieved by his acts of neglect, is valid, although the act of Congress of April 23, 1892 (27 Stat. 21, ch. 53) authorizing appointment of inspector of plumbing does not require bond. *Id.*

One who purchases house in which plumbing is defective without knowledge of such facts existing, may maintain action on official bond of inspector of plumbing for failure to inspect plumbing when the house was in the course of construction. *Id.*

4. Questions on appeal

Where person claiming to have posted collateral under agreement for surety bond for release of certain alien did

not, in suit for recovery for alleged breach of such agreement, mention this section providing cause of action for those aggrieved by breach of bond given to United States to secure performance of a duty, this section could not be relied upon on appeal. *Chong Moe Dan v. Maryland Casualty Co. of Baltimore* (D.C. Mun. App. 1953, 93 A. 2d 286).

§ 28-2407. Bonds of trustees or other fiduciaries—No discharge by fiduciary's payment to himself in another capacity of trust.

If any person appointed by order or decree of the court to the office of trustee or to any other fiduciary office shall give bond, with surety or sureties, for the due performance of his duties, he shall not be allowed to discharge said bond by receipts, releases, or acquittances from himself, as attorney for parties interested, to himself as such trustee or other fiduciary; but the funds or estate for the due application whereof he is responsible shall be considered as remaining in his hands, and said bond shall continue in force as against both principal and sureties until said funds or estate shall be fully accounted for and paid over or delivered to the parties interested therein, or their attorney, other than said trustee or other fiduciary duly authorized to receive the same. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 482.)

NOTES TO DECISIONS

1. Sale trustee

Bond of a trustee appointed by court in an equity cause to sell real estate which runs to the United States, can be put in suit by person injuriously affected and in such suit the United States is the nominal plaintiff only. *Morse v. United States ex rel. Hine* (29 App. D. C. 433).

When decree for sale of infant's real estate is void for want of jurisdiction, the bond of trustee appointed to make the sale is void also, and the surety may show such invalidity in a suit against him on the bond by the United States. *Id.*

This section does not apply where payment was by the sale trustee to himself as testamentary trustee. *United States Fidelity & Guar. Co. v. Klein* (1932, 54 F. 2d 828, 60 App. D. C. 354, certiorari denied 52 S. Ct. 394, 285 U. S. 544, 76 L. Ed. 936).

Chapter 25.—ASSIGNMENT OF CHOSSES IN ACTION

Sec.

- 28-2501. Judgment.
- 28-2502. Bonds.
- 28-2503. Nonnegotiable contracts.
- 28-2504. General assignments.
- 28-2505. Contract for assignment of future salary or wages—Penalties for attempting to enforce such assignments.

§ 28-2501. Judgment.

A judgment or money decree may be assigned in writing, and upon the assignment thereof being filed in the clerk's office the assignee may maintain an action or sue out a scire facias or execution on said judgment in his own name, as the original plaintiff might have done. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 431.)

CROSS REFERENCE

Parties to actions generally, see § 13-401 and notes.

FEDERAL RULES OF CIVIL PROCEDURE

Writs of scire facias have been abolished in the district courts, similar relief may be obtained by action or motion as prescribed by court rules, see Rule 81 (b), U. S. Code, Title 28, Appendix.

NOTES TO DECISIONS

- Attorney's equitable lien 1
- Decree for alimony 2
- Judgment improperly entered 3

1. Attorneys' equitable lien

The interest in client's judgment of attorneys created by contingent fee contract was not equivalent to an assignment of a cause of action and resulting judgment, but rather attorneys' interest was like an equitable lien, and, hence, attorneys, in seeking to enforce collection of the judgment for benefit of client and themselves upon refusal of client to do so, was not required to observe provisions of statute relating to assignment of judgments. *Falcone and Millstein v. Hall et al.* (1956, 235 F. 2d 860, 98 U.S. App. D.C. 363).

2. Decree for alimony

"A decree ordering the payment of a periodical allowance of alimony in the future is not assignable," although accrued alimony (under an order which it was beyond the power of the court in its discretion to modify or vacate) may be assigned. *Lynham v. Hufty* (44 App. D. C. 589).

3. Judgment improperly entered

Where the rules require that judgment shall not be entered for four days after verdict, a judgment improperly entered by the clerk within that time is not absolutely void, and may be assigned. *Hutchinson v. Brown* (8 App. D. C. 157).

§ 28-2502. Bonds.

Any bond or obligation under seal for the payment of money may be assigned under the name and seal of the obligee therein named, and the assignee may maintain an action thereon in his own name. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 432.)

CROSS REFERENCE

Parties to actions generally, see § 13-401.

§ 28-2503. Nonnegotiable contracts.

All nonnegotiable written agreements for the payment of money, including nonnegotiable bills of exchange and promissory notes, or for the delivery of personal property, all open accounts, debts, and demands of a liquidated character, except claims against the United States or the salaries of public officers, may be assigned in writing, so as to vest in the assignee a right to sue for the same in his own name. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 433.)

CROSS REFERENCES

- Assignment of motor-vehicle lien, see §§ 40-708, 40-709.
- Parties to actions generally, see § 13-401 et seq.
- Set-off of nonnegotiable debts, see § 16-1904.
- Teachers' retirement annuity may not be assigned, see § 31-718.

NOTES TO DECISIONS

- Action by assignor after assignment 1
- Indispensable party 2
- Possessory action 3
- Purpose 4
- Real party in interest 5
- Single cause of action 6
- Stock certificates 7
- Subscriptions to capital stock of corporation 8

1. Action by assignor after assignment

Evidence tending to prove that action was brought, not in the name of the assignee, or in the name of the assignor to the use of the assignee, but by the assignor after his assignment, was properly excluded where such defense had not been pleaded. *Pierce v. Gillet & Co.* (1935, 75 F. 2d 675, 64 App. D. C. 156).

Where corporation had sold its claim against defendant prior to commencement of its action against defendant, corporation had no right to enforce such claim. *York Blouse Corp. v. Kaplowitz Bros.* (D. C. Mun. App. 1953, 97 A. 2d 465).

In action by corporation, which had sold its claim against defendant prior to bringing of action, for purchase price of certain merchandise, allegedly sold and delivered, request of corporation for leave to add as additional parties plaintiff the stockholders of corporation was properly denied. *Id.*

Where assignors assigned claims for the purpose of permitting assignee to manage the litigation and there was no evidence of fraud or any other circumstance which raised any questions as to assignee's legal title to the claims he was asserting, assignee had the right to maintain an action on the claims assigned in his own name. *Compton v. Atwell* (D. C. Mun. App. 1952, 86 A. 2d 623).

2. Indispensable party

When the rights of an assignee will be affected by an action, the assignee is an indispensable party. *York Blouse Corp v. Kaplowitz Bros.* (D. C. Mun. App. 1953, 97 A. 2d 465).

3. Possessory action

Owners' agent for management of realty, who was made assignee of leases from agent for former owners, had a right to bring a possessory action against tenant in his own name under the right of an assignee of a nonnegotiable instrument to sue in his own name. *Koehne v. Harvey* (D.C. Mun. App. 1946, 45 A. 2d 780).

4. Purpose

Obvious purpose of this section was to vest in the assignee the right to sue in his own name. Since the procedural right had not been previously available to him, as the real party in interest, he is able to sue in the name of his assignor. *District of Columbia v. Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

5. Real party in interest

Where defendant owed four small accounts and three of his creditors made written assignment, purporting to be absolute, of their accounts to the fourth creditor, but the creditors had orally agreed that assignments were only for purpose of enabling one creditor to sue, action brought by assignee was within exception provided by Municipal Court Rules allowing a party to sue in his own name without joining party for whose benefit action was brought. *Compton v. Atwell* (1953, 207 F. 2d 139, 93 U.S. App. D.C. 99).

Where corporation had sold its claim against defendant prior to commencement of its action against defendant, assignee was the real party in interest and indispensable party. *York Blouse Corp. v. Kaplowitz Bros.* (D. C. Mun. App. 1953, 97 A. 2d 465).

When substantive law gives an assignee the right to sue in his own name and rule of court requires suit by the real party in interest, action on assigned claim must be brought by the assignee in his own name. *Id.*

6. Single cause of action

Creditor has no right to split up a single cause of action, either by the institution in his own name of separate suits upon separate fractions thereof, or by the assignment of such several parts to several persons without knowledge and consent of the debtor, so as to require the latter to respond to different actions and to incur accumulation. *Sincell v. Davis* (24 App. D. C. 218).

A single cause of action may be assigned, and the assignee may sue upon it in his own name, usually subject to all the equities existing between the assignor and the debtor; but this does not authorize the distribution of a single cause of action into fractional parts, and their assignment to several persons without the consent of the debtor. *Id.*

7. Stock certificates

It is well settled that certificates of stock are not negotiable instruments. At the same time, they are so constantly used as collateral and passed from hand to hand, when the blank transfer and power of attorney on their backs has been formally executed by the party to whom they were issued, that the general custom in the city of Washington is to regard the holder as the owner for the purpose of selling or pledging them. *National Safe Deposit Sav. & Trust Co. v. Hibbs* (32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U. S. 391, 57 L. Ed. 1241).

While indorsed certificates of stock do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser. *Id.*

8. Subscriptions to capital stock of corporation

Subscriptions to the capital stock of a corporation may be assigned by the corporation, so as to give the assignee a right to sue in his own name. *Crook v. International Trust Co.* (32 App. D. C. 490).

§ 28-2504. General assignments.

In case of a general assignment which shall include choses in action, it shall not be necessary to execute a separate assignment of each chose in action, but the assignee shall be entitled, by virtue of the general assignment, to sue in his own name on the several choses in action included therein. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 434.)

NOTES TO DECISIONS

1. Action by assignor after assignment

As defenses must be pleaded the court did not err in excluding evidence even though it might have proved that the action was not in the name of the assignee, or in the name of the assignor to the use of the assignee, as the practice was at common law, but an action by an assignor after his assignment. *Pierce v. Gillet & Co.* (1935, 75 F. 2d 675, 64 App. D.C. 156).

§ 28-2505. Contract for assignment of future salary or wages—Penalties for attempting to enforce such assignments.

(a) Every contract attempting or purporting to transfer or assign salary or wages to be earned by the debtor after the date of such contract, shall, if made in the District of Columbia, be invalid and contrary to public policy and unenforceable, and if made outside the District of Columbia, be unenforceable in any court within the District of Columbia.

(b) It shall be unlawful for any person in the District of Columbia to demand or receive from such debtor any assignment of salary or wages to be thereafter earned by such debtor, or to notify any employer that he holds an assignment of such salary or wages. Any person violating this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than \$200 or by imprisonment for not more than sixty days. Prosecutions under this subsection shall be upon information filed in the Criminal Branch of the Municipal Court of the District of Columbia by the Corporation Counsel of the District of Columbia or one of his assistants. (Mar. 3, 1901, ch. 854, § 434-A, as added Dec. 20, 1944, 58 Stat. 819, ch. 610, § 3.)

Chapter 26.—ASSIGNMENTS FOR BENEFIT OF CREDITORS

Sec.

- 28-2601. Inventory of estate—List of creditors.
- 28-2602. Assignee—Assent in writing—Acknowledgment—Recordation of assignment.
- 28-2603. Bond of assignee.
- 28-2604. Failure of assignee to comply—Appointment of trustee by court—Death or removal of trustee or assignee.
- 28-2605. Duties of assignee.
- 28-2606. Preferences to be void.
- 28-2607. Proceedings by one or more of several creditors—Benefit of all—Costs.
- 28-2608. Assignments made to hinder, delay, or defraud.
- 28-2609. Notices to creditors.
- 28-2610. Exempt property not to be included.

§ 28-2601. Inventory of estate—List of creditors.

In all cases of voluntary assignments made in the District of Columbia for the benefit of creditors,

the debtor shall annex to such assignment an inventory, under oath or affirmation, of his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, their respective residences and places of business, if known, and the amounts of their respective demands; but such inventory shall not be conclusive as to the amount of the debtor's estate, and such assignment shall vest in the assignee the title to any other property, except what is legally exempt, belonging to the debtor at the time of making the assignment and comprehended within the general terms of the same. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 435.)

NOTES TO DECISIONS

1. Decisions under prior law

All parts of a deed of assignment for the benefit of creditors will be considered in arriving at the general intention of the instrument, and if consistent with the language two constructions can be given, that is to be adopted which will render it legal and operative rather than illegal and void. *Cissell v. Johnston* (4 App. D. C. 335).

An attempt to limit the benefit of the trust to such creditors only as shall release their demands if not paid in full is a preference within the meaning of act Feb. 24, 1893, 27 Stat. 474, and void, and all liabilities within the provisions of the assignment shall be paid pro rata from the assets thereof. *Id.*

Assignment by debtor to a creditor of a fund due him under a contract with District of Columbia for erection of school buildings, with directions to the assignee after paying his own claim, to distribute the residue among certain other creditors, passes the legal title to the fund and creates a trust for creditors named although at the time some of them had no knowledge of the transaction and did not assent to it. *Smith v. Herrell* (11 App. D. C. 425).

Confession of judgment by an insolvent debtor in favor of a bona fide creditor is not such a preference as is prohibited by act Feb. 24, 1893, 27 Stat. 474, § 2, declaring void preferences of one creditor over another. *Strasburger v. Dodge* (12 App. D. C. 37).

Under laws of Maryland the general words of an assignment for benefit of creditors are restricted by particular description of a schedule which is made part of it; and where such assignment executed in Washington, D. C., purports to convey a life estate of the assignor in lands in Maryland as expressed in schedule, the assignee will take only such life estate, although assignment purports to convey all of assignor's property. *Keane v. Chamberlain* (14 App. D.C. 84).

§ 28-2602. Assignee—Assent in writing—Acknowledgment—Recordation of assignment.

The assignee in every such assignment shall be a resident of the District of Columbia, his assent shall appear in writing in, or at the end of, or indorsed on, the assignment, and the assignment shall be invalid unless duly acknowledged and recorded within five days after its execution in the land records of the said District. The trust created by such assignment shall be executed under the supervision and control of the United States District Court for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 436; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

Jurisdiction of municipal court 1
Right to maintain action 2
Validity of deed of trust 3

1. Jurisdiction of municipal court

Where dispute between judgment creditor and garnishee involved much less than \$3,000 jurisdiction of Municipal Court for District of Columbia, Civil Division, such court had jurisdiction to decide that there were funds in garnishee's hands which should be subjected to payment of judgment, and in so deciding such court was not administering or supervising a trust which should have been under supervision and control of United States District Court and which was in an amount far in excess of such \$3,000 jurisdictional amount, notwithstanding that garnishee, in acquiring assets and funds of judgment debtor, may have acted as trustee for benefit of creditors in transactions totalling some \$35,000. *Pinkston v. Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

2. Right to maintain action

Assignment is admissible in evidence in a suit by the assignee to show his right to maintain the action. *Mazza v. Russell* (47 App. D. C. 87).

3. Validity of deed of trust

Where deed of trust conveying assets of company was not recorded within five days from date of execution as required by this section, company had its principal place of business in District of Columbia but trustee was not resident of district as required, deed reserved surplus for benefit of company's stockholders, no creditors were named therein, deed authorized trustee to operate business as far as seemed practicable to trustee and person who executed deed as secretary for company had not held that office or any other office for some eight months, deed was invalid and did not create a lien or right superior to that of attaching judgment creditor, and claim of trustee to commission must yield to claim of judgment creditor. *Pinkston v. Carter* (D.C. Mun. App. 1959, 150 A. 2d 629).

§ 28-2603. Bond of assignee.

Immediately upon the filing of such assignment for record it shall be the duty of the assignee to execute and file in the clerk's office of the United States District Court for the District of Columbia his bond to the United States, in an amount and with security to be approved by the justice holding the equity court, conditioned for the faithful performance of his duties according to law, and said court may from time to time require said assignee, or any trustee appointed in his place, to give additional security whenever the interests of the creditors demand the same. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 437; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

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Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 28-2604. Failure of assignee to comply—Appointment of trustee by court—Death or removal of trustee or assignee.

If the assignee named in any such assignment shall fail or refuse to comply with any of the requirements aforesaid, the justice holding the equity court may, on the application of the assignor or any creditor

interested in such assignment, remove said assignee and appoint a trustee in his place to execute the trusts created by said assignment, who shall give bond as the court may require. And said court shall have power to accept the resignation of any assignee or trustee, and in case of his resignation, death, or removal from the District to appoint a trustee in his place. The court shall also have power, for cause shown, on the application of any surety, creditor, or other person interested, to remove any assignee or trustee and appoint a trustee in his place, and to make and enforce all orders necessary to put the newly appointed trustee in possession of all property, moneys, books, papers, and other effects covered by the assignment. And in case of the death of any assignee or trustee the court may require his executor or administrator to settle the account of said assignee or trustee and to deliver over to his successor all property and other effects belonging to the trust, in default of which said successor may bring suit upon the bond of said deceased assignee or trustee or upon the bond of such executor or administrator, accordingly as such assignee or trustee, executor or administrator is the party in default. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 438; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added "or upon the bond of such executor or administrator, accordingly as such assignee or trustee, executor or administrator is the party in default."

§ 28-2605. Duties of assignee.

It shall be the duty of the assignee or trustee, after giving bond as aforesaid, to collect and take into his possession all the property and effects covered by the assignment, and to that end he may bring suit in his own name to recover debts due or property belonging to the assignor and embraced in the assignment. And the court may require the assignor to be examined under oath touching his said property, and may pass all orders necessary to prevent any fraudulent transfer of or change in the property of the assignor. The said assignee or trustee shall return inventories of the assets coming to his hands and, under the direction of the court, sell and dispose of the same, and his conveyance of any property of the assignor, real or personal, shall transfer the entire title of the assignor therein to any purchaser. When the assets have been converted into money the said assignee or trustee shall settle his accounts and make distribution among the creditors, under the direction of the court, according to the usual course of proceeding in equity in creditor's suits. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 439.)

§ 28-2606. Preferences to be void.

Every provision in any voluntary assignment made for the payment of one debt or liability in preference to another shall be void, and all debts and liabilities within the provisions of the assignment shall be paid pro rata from the assets: *Provided*, That nothing herein contained shall be held to affect the priority of liens and incumbrances created bona fide and existing before the execution of such assignment. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 440.)

§ 28-2607. Proceedings by one or more of several creditors—Benefit of all—Costs.

Any proceeding instituted under this chapter by one or more creditors shall be deemed to be for the equal benefit of all creditors, but the court may make such allowance to the creditor or creditors instituting the same, out of the fund to be distributed, for expenses, including counsel fees, as may be just and equitable. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 441.)

§ 28-2608. Assignments made to hinder, delay, or defraud.

Nothing contained in this chapter shall prevent any creditor otherwise entitled from attacking any assignment as made to hinder, delay, or defraud the creditors of the assignor, and whenever any such assignment shall appear to the court to have been made with such intent, the court may enjoin any proceeding thereunder, and upon finally decreeing the same to be void may appoint a trustee with power to take possession of all the effects of the debtor and may pass and enforce all orders necessary to put him in possession of the same, and said trustee shall qualify in the same manner and perform the same duties as the trustee provided for in sections 28-2601 to 28-2607. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 442.)

CROSS REFERENCE

Fraudulent conveyances, generally, see § 12-401 et seq.

§ 28-2609. Notices to creditors.

In all cases of assignment the court shall require the trustee or trustees, whether named in the assignment or appointed by the court, in pursuance of the sections aforesaid, to give notice as the court may think proper to all the creditors of the assignor to produce and prove their respective claims against the assignor before the auditor of the court, to the end that they may be fairly adjudicated and the said creditors may share equally the assets of the insolvent assignor, subject, however, to any legal priorities created by valid incumbrances antedating the assignment. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 443.)

§ 28-2610. Exempt property not to be included.

No assignment for the benefit of creditors shall be construed to include or cover any property exempt from levy or sale on execution unless the exemption is expressly waived; and the court may direct the manner in which exempt property may be ascertained and set aside before any sale by the trustee or trustees. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 444.)

CROSS REFERENCE

Exemptions generally, see § 15-401 et seq.

Chapter 27.—INTEREST AND USURY

Sec.

- 28-2701. Rate of interest in absence of agreement—Judgments against the District.
- 28-2702. Rate of interest—Express contracts.
- 28-2703. Usury—Definition.
- 28-2704. Action to recover usury paid—Limitation.
- 28-2705. Unlawful interest to be credited on principal debt—Bona fide indorsee of negotiable paper.
- 28-2706. Parties may be made to testify.
- 28-2707. Interest on judgments for liquidated debt.

Sec.

28-2708. Interest on judgments for damages in actions in contract or tort.

28-2709. Interest on judgment in suits on contracts made elsewhere.

§ 28-2701. Rate of interest in absence of agreement—Judgments against the District.

The rate of interest in the District upon the loan or forbearance of any money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract as to such rate of interest, shall be six dollars upon one hundred dollars for one year, and at that rate for a greater or less sum or for a longer or shorter time: *Provided*, That interest, when authorized by law, on judgments against the District of Columbia, shall be at the rate of not exceeding 4 per centum per annum. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1178; July 1, 1902, 32 Stat. 610, ch. 1352.)

AMENDMENT

1902—Act July 1, 1902, added the proviso relating to the maximum interest chargeable on judgments against the district.

CROSS REFERENCE

Interest and charges permitted under Money Lenders Law, see § 26-601 et seq.

NOTES TO DECISIONS

Judgments 1
Legal rates 2
Occasional loans on real estate 3
Usury 4

1. Judgments

While act April 22, 1870, 16 Stat. 91, ch. 59, fixed the rate of interest on judgments it did not cause such judgments or decrees to bear interest which would not have borne interest previously thereto. *Washington & G. R. Co. v. Tobriner* (1893, 13 S. Ct. 557, 147 U. S. 571, 37 L. Ed. 284).

If a judgment regularly rendered in the Supreme (District) Court of the District in a common-law action of tort cannot bear interest a fortiori it should not be permitted to run upon the judgment of the court of claims. *Gray v. District of Columbia* (1 App. D. C. 20).

2. Legal rates

When debtor defaults, compensation equal to value of the money, which is legal interest upon it, will be permitted during time the party is in default, provided a claim is made in declaration for the interest. *District of Columbia v. Metropolitan R. Co.* (8 App. D. C. 322, affirmed 25 S. Ct. 28, 195 U. S. 322, 49 L. Ed. 219).

All that plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the termination of the contract rate, less the credits which she admitted. *Richards v. Bippus* (18 App. D. C. 293).

3. Occasional loans on real estate

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money. *Zirkle v. Daly* (1932, 54 F. 2d 455, 60 App. D.C. 344).

4. Usury

"When the promise to pay a sum above the legal interest depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious." *Whelpley v. Ross* (25 App. D. C. 207).

Illegality of the transaction does not affect the obligation to pay a tax, and though the accruals represented legally uncollectible usury, there was at all times a reasonable expectation that they would be paid, and this fact is enough to constitute them income to the same extent as if the several amounts were actually paid. *Barker v. Magruder* (1938, 95 F. 2d 122, 68 App. D. C. 211).

Usury law protects the maker in spite of knowledge. The same financial pressure which forced him to submit to usury in the first place may force him to renew. To permit a mere renewal or extension of the contract to purge the usury would defeat the purpose of the statute.

Bowen v. Mount Vernon Sav. Bank (1939, 105 F. 2d 796, 70 App. D. C. 273).

§ 28-2702. Rate of interest—Express contracts.

The parties to a bond, bill, promissory note, or other instrument of writing for the payment of money at any future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding eight per centum per annum. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1179; Apr. 19, 1920, 41 Stat. 568, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, changed rate of interest from ten to eight per centum.

CROSS REFERENCE

Interest and charges permitted under Money Lenders Law, see § 26-601 et seq.

NOTES TO DECISIONS

Additional loan as usury 1
Bonus or commission as usury 2
Incomplete transaction 3

1. Additional loan as usury

Usury sustained based on additional loan payable to intermediary. *Quinn v. National Mtg. & Inv. Co.* (1932, 57 F. 2d 410, 61 App. D. C. 44).

2. Bonus as usury

A commission or bonus paid to same person who is entitled to interest is to be considered as additional "interest" for purpose of usury law. *Industrial Bank Washington, Inc., et al. v. Page* (1957, 249 F. 2d 938, 102 U. S. App. D.C. 33).

Where bank was offering to make loan at six percent with one percent commission and consent to such contract was obtained when borrower signed note and in writing approved settlement sheet containing item of the one percent commission, the contract was within the eight percent provision of the usury statute, precluding borrower from recovering the amount of interest. *Id.*

"Bonus" being a sum paid to the creditor for the continued use of the money, clearly counts as interest for the purpose of the usury law; and a bonus, which, when added to the nominal interest on a 2-year extension exceeded 8 percent, was usurious. *Bowen v. Mount Vernon Sav. Bank* (1939, 105 F. 2d 796, 70 App. D. C. 273).

3. Incomplete transaction

Where transaction contemplated, with usurious rates, never took place, claim of usury could not be sustained. *Rosslyn Steel & Cement Co. v. Etchison* (1932, 57 F. 2d 409, 61 App. D. C. 43).

§ 28-2703. Usury—Definition.

If any person or corporation shall contract in the District, verbally, to pay a greater rate of interest than six per centum per annum, or shall contract, in writing, to pay a greater rate than eight per centum per annum, the creditor shall forfeit the whole of the interest so contracted to be received: *Provided*, That nothing in this chapter contained shall be held to repeal or affect sections 26-601 to 26-611. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1180; June 30, 1902, 32 Stat. 542, ch. 1329; Apr. 19, 1920, 41 Stat. 568, ch. 153.)

AMENDMENTS

1920—Act Apr. 19, 1920, changed the provisos to refer to sections 26-601 to 26-611 rather than the act of Mar. 2, 1889, relating to pawnbrokers, and raised the rate for written contracts to eight per centum.

1902—Act June 30, 1902, reduced the interest rate on written contracts from ten to six per centum and provided for forfeiture of the entire interest instead of only the unlawful excess, and added a proviso stating that this chapter did not repeal or affect act Mar. 2, 1889, relating to pawnbrokers.

NOTES TO DECISIONS

In general	1
Bonus as usury	2
Burden of proof	3
Commissions	4
Construction	5
Defense	6
Forfeiture	7
Holder in due course	8
Judgment	9
Knowledge of holder	10
Laws applicable to contract	11
Liability of agent	12
Limitations	13
Occasional loans on real estate	14
Prepayment charge	15
Purchase at discount	16
Set-off	17
Sufficiency of pleading	18

1. In general

Money exacted by the lender from the borrower for the use of money in excess of the legal rate allowed by this section is usury under whatever name or pretense the exaction, extension, or forbearance may be designated. *Von Rosen v. Dean* (1930, 41 F. 2d 982, 59 App. D.C. 359).

It is the agreement and not necessarily its performance which renders debit usurious. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

2. Bonus as usury

Where face amount of promissory note was \$2,133 payable three years after date with interest at six percent per annum, but only \$1,933 was advanced to maker of note, with \$200 constituting a bonus, such note was usurious under usury statute. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Note or obligation is affected with usury if principal makes the loan, knowing that his agent has exacted a bonus or commission, though for his own sole benefit, which, with the interest payable to the principal, would amount to more than the rate permitted by law. *Richards v. Bippus* (18 App. D. C. 293).

3. Burden of proof

Under usury statute burden is upon borrower to show that contract was usurious. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 249 F. 2d 938, 102 U.S. App. D.C. 33).

In action on promissory note defendant had burden of proving alleged usury but defendant was not required to prove usury where usury was established by plaintiff's evidence. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Burden of proof is upon the borrower to show that the lender knew or was chargeable with the knowledge that his agent exacted a commission in obtaining loan for borrower in excess of the legal rate of interest. Such knowledge may be implied as well as actual. *Searl v. Earll* (D. C. Mun. App. 1948, 62 A. 2d 374).

4. Commissions

A commission or bonus paid to same person who is entitled to interest is to be considered as additional "interest" for purpose of usury law. *Industrial Bank of Washington, Inc., et al. v. Page* (1957, 249 F. 2d 938, 102 U.S. App. D.C. 33).

Where bank was offering to make loan at six percent with one percent commission and consent to such contract was obtained when borrower signed note and in writing approved settlement sheet containing item of the one percent commission, the contract was within the eight percent provision of the usury statute, precluding borrower from recovering the amount of interest. *Id.*

The usury statute may be violated by deducting a commission in advance as well as by any other means by which money in excess of legal rate is exacted. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Where a lender's agent with the lenders' knowledge and approval, takes the borrower's separate promissory note payable to himself for his compensation for obtaining the loan for the borrower, the agent cannot recover on the note when the interest on the principal loan plus the agent's commission exceeds the legal rate. *Searl v. Earll* (D.C. Mun. App. 1948, 62 A. 2d 374).

This section may be violated by deducting a commission in advance as well as by any other means by which money

in excess of the legal rate is exacted. *Hartman v. Lubar* (D.C. Mun. App. 1946, 49 A. 2d 553).

5. Construction

The Loan Shark Law, § 26-601 et seq., the usury law, this section and § 28-2704 et seq., and the statute regarding financial institutions, § 47-1701 et seq. are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman v. Lubar* (1943, 133 F. 2d 44, 77 U.S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U.S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U.S. 808, 88 L. Ed. 488).

6. Defense

Usury can be invoked as a defense but not as an affirmative cause of action; that is, usury may be used as a shield but not as a sword. *Royall v. Yudelevit et al.* (1953, 161 F. Supp. 217, reversed on other grounds 268 F. 2d 577).

Where there is a single consideration for one or more promises and any part of the transaction is illegal, the promises are wholly unenforceable. *Searl v. Earll* (D.C. Mun. App. 1948, 62 A. 2d 374).

7. Forfeiture

Under this section providing as to a usurious contract that creditor shall forfeit the whole of the interest, forfeiture applies not only to the usurious excess, but also to the lawful interest included in the contract rate, and this section forfeits all of the interest contracted for, if unpaid, or permits recovery, if paid by action within one year after payment. *Searl et ano. v. Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

8. Holder in due course

In suit between makers of promissory notes aggregating \$10,200, secured by deeds of trust on realty, and endorsee of such notes, involving issue as to whether the loan transaction was usurious, evidence sustained finding that the endorsee was not, as he claimed, a holder in due course for value without notice, but that he had actually and knowingly lent money to makers and had used payee as an intermediary to avoid the usury statute. *Meredith et al. v. Cabell et al.* (1954, 211 F. 2d 810, 94 U.S. App. D.C. 73).

9. Judgment

In suit between makers of promissory notes aggregating \$10,200, secured by deeds of trust on realty, and endorsee of such notes who was in fact the actual lender, involving issue as to whether the loan transaction was usurious, evidence sustained finding that the endorsee had advanced to the makers, in return for the notes, only the sum of \$7,510, of which \$5,476.10 had been repaid, and warranted judgment that, unless unpaid balance be paid within 30 days, trustees designated in deeds of trust might sell property to satisfy amount found to be due. *Meredith et al. v. Cabell et al.* (1954, 211 F. 2d 810, 94 U.S. App. D.C. 73).

10. Knowledge of holder

One who acquires promissory notes with knowledge of usury in their inception is not a bona fide holder for value. *Mollohan v. Masters* (45 App. D. C. 414, certiorari denied 37 S. Ct. 245, 242 U.S. 652, 61 L. Ed. 546).

11. Laws applicable to contract

In absence of evidence to contrary it would be presumed that a promissory note which was dated at Washington, D. C., the place of payment being blank, was made in District of Columbia and was payable at place of making and was therefore subject to District of Columbia usury law. *Holcombe v. O'Sullivan* (D.C. Mun. App. 1953, 93 A. 2d 96).

Usurious contract examined and held to be subject to laws of District of Columbia, although expressly declared to be made pursuant to laws of Virginia. *Washington Nat. Bldg. & Loan Assn. v. Pifer* (31 App. D. C. 434, 14 Ann. Cas. 734). See, also, *Croissant v. Empire State Realty Co.* (29 App. D. C. 538).

Where agreement made in Maryland between defendant and certain individuals provided that the individuals should organize a corporation to acquire land in District of Columbia, the corporation to erect buildings thereon and execute to individuals a \$19,000 mortgage

thereon payable in one year, to be assigned to defendant upon payment of \$15,000 to the corporation, and mortgage note was delivered in District of Columbia, where defendant paid the \$15,000 and corporation paid the note in full one year later, as between the corporation and defendant the contract was made in District of Columbia, the laws of which permitted corporation to recover money usuriously exacted. *Plitt v. Seven Corners Realty* (App. D. C. 1945, 149 F. 2d 832).

12. Liability of agent

An agent was personally liable for unlawful interest which he turned over to his principal with knowledge that the principal was not entitled thereto. *Searl et ano. v. Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

In suit to recover the unpaid balance on a note given by defendants to plaintiff as commission for securing a loan from plaintiff's wife with counterclaim for usury, plaintiff was subject to separate liability and to a suit individually without joinder of his wife as principal. *Id.*

13. Limitations

In suit to recover the unpaid balance of a note with defense of usury, where concealment by plaintiff from defendants of the fact that the lender was his wife constituted fraud, bar of limitations against assertion of the defense of usury did not begin to run against the defendants until the fraud was discovered. *Searl et ano. v. Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

14. Occasional loans on real estate

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle v. Daly* (1932, 54 F. 2d 455, 60 App. D. C. 344).

15. Prepayment charge

Even if premium charged by lender for privilege of permitting borrower to prepay entire amount of outstanding balance on note secured by deed of trust on realty could be considered as interest, transaction was not usurious where total amount of interest paid plus the premium was less than lawful maximum interest computed to date the loan was paid. *Atlantic Life Ins. Co. of Richmond, Va. v. Wolf* (D. C. Mun. App. 1947, 54 A. 2d 641).

Where neither note nor deed of trust on realty securing the note contained any provision permitting repayment by borrower before specified date of maturity, or vested any right or option of acceleration in borrower, the charge of premium to permit borrower to prepay entire amount of outstanding balance on note could not be considered as "interest", as regards usury. *Id.*

16. Purchase at discount

It is not usurious to purchase a note at a discount. *Elliott v. Schlein* (D.C. Mun. App. 1954, 104 A. 2d 418).

Where discounted notes were taken by creditor in payment of debt and not as security therefor, there was no mortgage so as to render the transaction usurious though the parties agreed that if proceeds realized exceeded amount of debt, debtors should be reimbursed accordingly and that in case of deficiency they would make it up. *Krevait v. Turover* (D. C. Mun. App. 1944, 39 A. 2d 207).

Where defendants owed plaintiffs money which they could not pay, it was not usury for defendant to give and plaintiff to receive in payment of the debt notes at a discount of 3 percent of their face value multiplied by the number of years required for the maturity of the notes. *Id.*

It is not usurious to purchase a note at a discount or to accept in payment of a debt a note at less than its face value. *Id.*

A purchase of negotiable paper in market overt "at a heavy discount below the face value" does not show usury. *Metropolitan Loan & Trust Co. v. Schafer* (44 App. D. C. 356).

17. Set-off

Usurious interest cannot be set off against the principal debt. *Presbrey v. Thomas* (1 App. D. C. 171).

When usurious interest has been paid or taken, the sole and exclusive remedy for the borrower is by a suit within 12 months to recover the amount of the usury; and the usurious interest could not be made the subject of set-off or counterclaim, when after the lapse of 12 months suit is instituted for the recovery of the principal

claim. *Lawrence v. Middle States Loan Bldg. & Constr. Co.* (7 App. D. C. 161).

"A defense of usury good against one obligation will not constitute a valid offset against a distinct and independent obligation, though between the same parties." *Metropolitan Loan & Trust Co. v. Schafer* (44 App. D. C. 356).

"If suit is brought on the principal debt after payment of usurious interest, such usury may be made a valid set-off against the principal debt. Usury upon obligations paid and canceled can not be used as a set-off against a subsequent obligation even between the same parties, either in law or in equity." *Id.*

18. Sufficiency of pleading

In suit to recover the unpaid balance on a note, counterclaim was a sufficient pleading of the defense of usury as a vindication of the defendant's legal right or the remedying of a legal wrong. *Searl et ano. v. Earll* (1955, 221 F. 2d 24, 95 U.S. App. D.C. 151).

§ 28-2704. Action to recover usury paid—Limitation.

If any person or corporation in the District shall directly or indirectly take or receive any greater amount of interest than is herein declared to be lawful, whether in advance or not, the person or corporation paying the same shall be entitled to sue for and recover the amount of the unlawful interest so paid from the person or corporation receiving the same, provided said suit be begun within one year from the date of such payment. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1181.)

NOTES TO DECISIONS

Admissibility of evidence	1
Cancellation	2
Commissions	3
Construction	4
Defenses	5
Inferences	6
Interest forfeited	7
Joint action	8
Laches	9
Pleading	10
Purchase at discount	11
Questions for jury	12
Repayment of loan	13
Running of period	14
Sufficiency of evidence	15

1. Admissibility of evidence

Where there was evidence that indorsee finance company for which trustee brought replevin suit to recover chattels named in chattel trust deed securing a note was in the business of lending money rather than solely that of discounting notes in the sense of buying from a creditor an existing obligation at less than face value, proffered evidence consisting of court trials of five municipal court cases in which finance company sued to recover on notes assigned to it was material to defendant's defense that finance company was in business of lending money at rate of interest greater than 6 percent, without required license and should have been admitted. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

2. Cancellation

A suit for cancellation of note and deed of trust on ground of usury, regarded as suit for declaratory judgment that complete defense existed to the obligation on the note, was not barred by this section or three-year general statute, § 12-201. *Hill v. Hawes*, (1944, 144 F. 2d 511, 79 U. S. App. D. C. 168).

This section applies to recovery of any payments made on usurious obligation in excess of amount necessary to extinguish the note, though cancellation of usurious obligation was not barred. *Id.*

3. Commissions

Commissions deducted in advance by the lender constitute usury. *Von Rosen v. Dean* (1930, 41 F. 2d 982, 59 App. D. C. 359).

4. Construction

The time limitation in this section permitting recovery of all interest paid on a usurious transaction provided suit is begun within one year from date of such payment, is not a general statute of limitations but is a limitation

imposed by statute which created right and is limitation of right itself. *Earll v. Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

5. Defenses

There are no limitations on claim of usury as a defense in a suit based on usurious obligations. *Hill v. Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

Although plaintiff's action to recover unpaid balance on note given by defendants to plaintiff as commission for obtaining a loan was brought more than one year after last payment, usury would defeat recovery pro tanto on the note, but affirmative relief by way of recovery of payments made was barred by this section. *Earll v. Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

6. Inferences

Where defendant had subpoenas duces tecum served upon officers of indorsee finance company for which trustee was maintaining replevin suit to compel them to produce at trial all records regarding the company for purpose of showing that company was in business of lending money at rate of interest greater than 6 percent without required license, and officers failed to produce the records, jury could infer from failure to produce subpoenaed records that contents thereof would have been unfavorable to trustee's case. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

7. Interest forfeited

Whole of the interest contracted to be paid by the terms of the trust is forfeited as usury when the trust deed for amount in addition to the loan was payable to an intermediary who professed to sell the same to the actual lender. *Quinn v. National Mtg. & Inv. Co.* (1932, 57 F. 2d 410, 61 App. D. C. 44).

This section authorizing recovery of all "unlawful interest" paid on a loan, does not limit recovery to the amount above the lawful rate of interest, but authorizes recovery of the whole of the interest paid. *Cockrell v. First Federal Savings & Loan Ass'n* (1943, 33 A. 2d 621).

8. Joint action

Action for recovery of usury brought by joint makers of note within one year after last payment on debt by one of the makers was not barred, even as to maker who had made no payment on debt for more than one year. *Knott v. Jackson* (1943, 31 A. 2d 662).

Where makers related by marriage or blood executed a joint and several note secured by joint deed of trust on two properties, and proceeds of note were used by them under an apparent joint agreement, the three joint makers could maintain joint action and obtain joint judgment for usury admittedly paid, even though they could not show exactly what amount each had individually paid. *Id.*

9. Laches

An action to cancel usurious obligation was not barred by laches, in view of this section allowing recovery of usurious payments made within one year before suit, regardless of date of the note, since refusal of cancellation would merely result in circuity of action. *Hill v. Hawes* (1944, 144 F. 2d 511, 79 U. S. App. D. C. 168).

10. Pleading

Where borrowers sought to recover usurious interest more than one year after last payment, lender's agent did not waive defense of one year time limitation by failing to plead it in view of fact that time limitation was imposed by this section which created the right and unlike statute of limitations it did not have to be pleaded in defense. *Earll v. Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

Where both the original and amended complaints were based on a claim for usury paid on account of a loan to plaintiff and it was apparent that defendants were not misled by an amendment setting up different dates and amounts, the amendment did not set up a "new cause of action" barred by limitations. *Cockrell v. First Federal Savings & Loan Ass'n* (1943, 33 A. 2d 621).

11. Purchase at discount

Evidence did not sustain finding that lender was purchaser of note secured by trust deed and was not in fact the lender of the amount loaned thereon but established

that the pretense of buying the note from the vendor was nothing more than an attempt to cover up the usurious loan, and hence the borrower was entitled to recover usurious interest paid. *Elliott v. Schlein* (D. C. Mun. App. 1954, 104 A. 2d 418).

12. Questions for jury

In action by joint makers of note for recovery of usury, question whether \$50 payment made by lender to his attorney on account of expenses and fees in connection with the loan was proper charge against the borrowers was properly submitted to jury. *Knott v. Jackson* (1943, 31 A. 2d 662).

Where joint makers of note instituted joint action for recovery of usury but lender contended that one maker, upon making payment more than one year before institution of action, was released from all obligation under note and that as a consequence her claim was barred by one-year limitation of this section, question whether such maker was released from further personal liability at time she made the payment was properly submitted to jury. *Id.*

13. Repayment of loan

One-year limitation runs, not from the time that usurious interest may have been deducted, but from the time the last payment was made. "Until that time the full amount of the deduction had not been paid by her. There could be no usurious interest collected until the appellee had paid the full amount she received, together with legal interest." *Brown v. Slocum* (30 App. D. C. 576).

Section 28-2703 et seq. relating to usury do not destroy the obligation to repay the principal on account of the usury, but requires a forfeiture of all interest contracted for, if unpaid, or permits its recovery, if paid, by action begun within one year after payment. *Cockrell v. First Federal Savings & Loan Ass'n* (1943, 33 A. 2d 621).

An action to recover usurious interest paid can only be maintained after last payment on debt has been made. *Knott v. Jackson* (1943, 31 A. 2d 662).

A loan transaction which would be free from usury if loan were paid at agreed maturity date is not rendered usurious by borrower's voluntary repayment of loan before maturity, even though, by reason of such repayment, amount of interest received by lender exceeds lawful interest computed to day the loan is paid, provided that total interest received by lender does not exceed lawful interest computed to maturity date stipulated in loan contract. *Atlantic Life Ins. Co. of Richmond, Va. v. Wolf* (D. C. Mun. App. 1947, 54 A. 2d 641).

14. Running of period

In action to recover unpaid balance on note given by defendants to plaintiff as commission for obtaining a loan which was made by plaintiff's wife to defendants through straw party, one year time limitation would not be extended in absence of evidence of fraud on part of plaintiff in concealing name of actual lender. *Earll v. Searl* (D.C. Mun. App. 1954, 101 A. 2d 248).

15. Sufficiency of evidence

In replevin by trustee of indorsee finance company to recover chattels named in trust deed securing a note, evidence that loan was usurious, in that an amount in excess of legal rate was deducted in advance and that plaintiff knew the amount deducted in advance, was sufficient to make defense of illegality available to defendant. *Hartman v. Lubar* (D. C. Mun. App. 1946, 49 A. 2d 553).

§ 28-2705. Unlawful interest to be credited on principal debt—Bona fide indorsee of negotiable paper.

In any action brought upon any contract for the payment of money with interest at a rate forbidden by law, as aforesaid, any payments of interest that may have been made on account of said contract shall be deemed and taken to be payments made on account of the principal debt, and judgment shall be rendered for no more than the balance found due after deducting and properly crediting the interest so paid; but no bona fide indorsee of negotiable paper purchased before due shall be affected by any

usury exacted by any former holder of said paper unless he had notice of the usury before his purchase. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1182; June 30, 1902, 32 Stat. 542, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted "in excess of the lawful interest," following "said contract."

NOTES TO DECISIONS

Innocent holders for value 1
Maker of new notes 2

1. Innocent holders for value

No relief to borrowers of money at usurious rates against innocent holders for value. *Whipp v. Glueck* (1932, 58 F. 2d 523, 61 App. D. C. 118).

2. Maker of new notes

Quaere, whether maker of new notes to take the place of former usurious notes to which he was a party can take advantage of this section and plead usury as a defense to all except the principal sum due. *King v. Curtin* (31 App. D. C. 23).

§ 28-2706. Parties may be made to testify.

Whenever in any action to recover a debt the defendant shall claim that payments of unlawful interest on said debt have been made to said plaintiff or those under whom he claims, which the defendant is entitled to have credited on the principal of the debt, the plaintiff or the party who received said unlawful interest may be examined as a witness to prove the payment of the same, and shall not be excused from testifying in relation thereto, nor shall a creditor who is made defendant to a bill in equity exhibited against him for discovery as to payments of unlawful interest made to him be excused from answering as to the same. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1183.)

§ 28-2707. Interest on judgments for liquidated debt.

In an action in the United States District Court for the District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1184, June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

Assessment by court 1
Compensation of special auditor 2
Interest before judgment 3
Interest not demanded 4
Liquidated debt 5
Reforming the verdict 6
Termination of contract 7

1. Assessment by cou.

"We do not mean by this to rule that, in a case where no question is made by either the pleadings or evidence as to the payment of interest, the court would not be authorized, under the provisions of said section 1184 (this section), to direct the assessment of interest. In such a situation the finding of the jury would, under the stat-

ute, automatically carry interest." *Metzger v. Metzger* (35 App. D. C. 389).

2. Compensation of special auditor

It is the prevailing view that costs do not bear interest unless so provided by statute, and this section does not apply to special auditor upon decree of compensation. *Davis v. Fidelity & Deposit Co.* (1934, 73 F. 2d 118, 63 App. D. C. 395).

3. Interest before judgment

Where demurrage charges by railroad against consignee were substantially in excess of those ordinarily made for such charges and embodied penalty assessments designed to expedite release of railroad cars during period of car shortage, and railroad would be more than fully compensated by less even than demurrage charges themselves, and there was no finding that interest was necessary to fully compensate the railroad, District Court erred in allowing interest prior to date of judgment for demurrage charges. *National Trucking & Storage Co., Inc. v. Pennsylvania Railroad Co.* (1956, 228 F. 2d 23, 97 U.S. App. D.C. 52).

In action to recover for board, including room, pre-trial stipulation that sum of \$50 per month for two people was a fair and reasonable sum did not turn the action for breach of contract into an action to recover "liquidated debt", and therefore plaintiff was not entitled to interest before judgment. *Shima v. Brown* (1943, 133 F. 2d 48, 77 U. S. App. D. C. 115, certiorari denied 63 S. Ct. 982, 318 U. S. 787, 87 L. Ed. 1154).

In action to recover for board, including room, where court erred in adding interest to jury's verdict from time action was filed, case was remanded with directions to enter judgment for damages assessed by jury with interest from time of entry of judgment until paid. *Id.*

4. Interest not demanded

This section and § 28-2708 do not charge a surety of government contractor with interest on claims of materialmen when there was no request or demand made. *London & Lancashire Indem. Co. v. Smoot* (1923, 287, F. 952, 52 App. D.C. 378).

5. Liquidated debt

Accommodation endorser's counterclaim against maker of note upon which endorser had incurred liability was for a liquidated amount and interest was payable by law and usage, and consequently under the District of Columbia statutes the interest should have been awarded from the date the obligation became due. *Rosden v. Leuthold* (1960, 274 F. 2d 747, 107 U.S. App. D.C. 89).

Section 28-2708, permitting interest when jury determines that it is necessary to fully compensate the plaintiff, is not applicable where action is to recover liquidated indebtedness, and in such case this section is applicable. *Blustein v. Eugene Sobel Co., Inc.* (1959, 263 F. 2d 478, 105 U.S. App. D.C. 32).

In action for damages for breach of warranty in contract for purchase by plaintiff of capital stock of corporation engaged in wholesale jewelry business that corporation's books of account included accurate and complete record of all liabilities of corporation for income taxes, jury was properly directed to include interest on amount which plaintiff had paid for corporation's deficiency income taxes, penalty and interest from date tax was due, since indebtedness of defendant to plaintiff became a "liquidated debt" within meaning of this section providing for interest on judgments for a "liquidated debt," when settlement was entered into and payment was made by plaintiff in accordance with settlement. *Id.*

6. Reforming the verdict

Where in a suit on a promissory note for \$2,500 (with interest at 6 per centum) the defendant files a plea of the general issue and the statute of limitations, and the jury returns a verdict for the plaintiff "in the sum of \$2,500 and costs," the court, on appeal (in the absence of a bill of exceptions containing the evidence introduced), will reverse the action of the trial justice in reforming the verdict so as to include interest. *Metzger v. Metzger* (35 App. D. C. 389).

7. Termination of contract

All that the plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the

termination of the contract rate, less the credits which she had admitted. *Richards v. Bippus* (18 App. D. C. 293).

§ 28-2708. Interest on judgments for damages in actions in contract or tort.

In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only; but nothing herein shall forbid the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1185.)

NOTES TO DECISIONS

In general 1
Interest before judgment 2
Liquidated debt 3
Special auditor 4
Trustee 5

1. In general

Under the statutory provision in this jurisdiction, vesting as it does a broad measure of discretion in the jury or trial court, the court should not lightly disturb the finding of the trial judge in allowing interest as an element of damage in action for breach of contract. *Flanagan v. Charles H. Thompkins Co.* (1950, 182 F. 2d 92, 86 U. S. App. D. C. 307).

Neither an abuse of discretion by the trial court nor lack of compliance by it with the statutory standard govern the allowance of interest though uncertainties exist as to amounts due. The long delay of the special master in making his report is also an argument against awarding interest where these arguments are offset by other compensatory factors. *Dyker Bldg. Co., to Use of Parreco v. U.S.* (1950, 182 F. 2d 85, 86 U.S. App. D.C. 297).

2. Interest before judgment

Where demurrage charges by railroad against consignee were substantially in excess of those ordinarily made for such charges and embodied penalty assessments designed to expedite release of railroad cars during period of car shortage, and railroad would be more than fully compensated by less even than demurrage charges themselves, and there was no finding that interest was necessary to fully compensate the railroad, District Court erred in allowing interest prior to date of judgment for demurrage charges. *National Trucking & Storage Co., Inc. v. Pennsylvania Railroad Co.* (1956, 228 F. 2d 23, 97 U.S. App. D.C. 52).

3. Liquidated debt

Accommodation endorser's counterclaim against maker of note upon which endorser had incurred liability was for a liquidated amount and interest was payable by law and usage, and consequently under the District of Columbia statutes the interest should have been awarded from the date the obligation became due. *Rosden v. Leuthold* (1960, 274 F. 2d 747, 107 U.S. App. D.C. 89).

This section is not applicable where action is to recover liquidated indebtedness, and in such case section 28-2707 dealing with interest on judgments for liquidated debt is applicable. *Blustein v. Eugene Sobel Co., Inc.* (1959, 263 F. 2d 478, 105 U.S. App. D.C. 32).

4. Special auditor

Special auditor cannot recover interest upon decree of compensation, as this section provides an action to recover damages for breach of contract. *Davis v. Fidelity & Deposit Co.* (1934, 73 F. 2d 118, 63 App. D. C. 395).

5. Trustee

A trustee who purchases a second trust deed note at discount and thereafter purchases at his own foreclosure sale, attempting to enforce his personal lien, is nevertheless acting as trustee and beneficiary is entitled to an accounting of all profits on the sale as well as of interest and principal payments to trustee; trustee is entitled to reimbursement for reasonable and lawful expenses in-

curred and to interest on unpaid loan to trust. *Earll v. Picken* (1940, 113 F. 2d 150, 72 App. D. C. 91).

§ 28-2709. Interest on judgment in suits on contracts made elsewhere.

In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in any State or Territory of the United States where such contract rate of interest is lawful, the judgment for the plaintiff shall include such contract interest to the date of the judgment and interest thereafter at the rate of six per centum per annum until paid. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1186.)

Chapter 28.—COMPUTATION OF TIME

Sec.

28-2801. Calendar established.

28-2802. Leap year.

28-2803. Leap year—Extra day and preceding day to be accounted one day.

28-2804. Daylight-saving time—Authority of Board of Commissioners.

§ 28-2801. Calendar established.

The supputation, according to which the year of our Lord beginneth on the twenty-fifth day of March, shall not be made use of from and after the last day of December one thousand seven hundred and fifty-one; and the first day of January next following the said last day of December shall be reckoned, taken, deemed and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-two; and the first day of January, which shall happen next after the said first day of January one thousand seven hundred and fifty-two, shall be reckoned, deemed, taken and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-three; and so on, from time to time, the first day of January in every year, which shall happen in time to come, shall be reckoned, taken, deemed and accounted to be the first day of the year; and that each new year shall accordingly commence, and begin to be reckoned, from the first day of every such month of January next preceding the twenty-fifth day of March, on which such year would, according to the Julian calendar, have begun or commenced: and that from and after the said first day of January one thousand seven hundred and fifty-two, the several days of each month shall go on, and be reckoned and numbered in the same order; and the feast of Easter, and other moveable feasts thereon depending, shall be ascertained according to the same method, as they were under the Julian calendar until the second day of September in the said year one thousand seven hundred and fifty-two inclusive; and that the natural day next immediately following the said second day of September, shall be called, reckoned and accounted to be the fourteenth day of September, omitting for that time only the eleven intermediate nominal days of the common calendar; and that the several natural days, which shall follow and succeed next after the said fourteenth day of September, shall be respectively called, reckoned and numbered forwards in numerical order from the said fourteenth day of September, according to the order and succession of days used in the Julian calendar; and that all acts, deeds, writings, notes and other instruments of what nature or kind soever, whether

ecclesiastical or civil, public or private, which shall be made, executed or signed, upon or after the said first day of January one thousand seven hundred and fifty-two, shall bear date according to the said new method of supputation. (24 Geo. II, ch. 23, § 1, 1751; Kilty's Rep., p. 252; Alex. Brit. Stat., p. 768.)

§ 28-2802. Leap year.

For the continuing and preserving the calendar or method of reckoning, and computing the days of the year in the same regular course, as near as may be, in all times coming; the several years of our Lord, one thousand eight hundred, one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth years of our Lord, which shall happen in time to come, except only every fourth hundredth year of our Lord, whereof the year of our Lord two thousand shall be the first, shall not be esteemed or taken to be bissextile or leap years, but shall be taken to be common years, consisting of three hundred and sixty-five days, and no more; and that the years of our Lord two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundred year of our Lord, from the said year of our Lord two thousand inclusive, and also all other years of our Lord, which by the Julian calendar are esteemed to be bissextile or leap years, shall for the future, and in all times to come, be esteemed and taken to be bissextile or leap years, consisting of three hundred and sixty-six days, in the same sort and manner as was used under the Julian calendar. (24 Geo. II, ch. 23, § 2, 1751; Alex. Brit. Stat., p. 770.)

§ 28-2803. Leap year—Extra day and preceding day to be accounted one day.

The day increasing in the leap-year shall be accounted for one year, so that because of that day none shall be prejudiced that is impleaded, but it shall be taken and reckoned of the same month wherein it groweth; and that day, and the day next going before, shall be accounted for one day. (21 Henry III, 1236; Kilty's Rep., p. 208; Alex. Brit. Stat., p. 36; Comp. Stat., D. C., p. 212, § 94.)

§ 28-2804. Daylight-saving time—Authority of Board of Commissioners.

The Board of Commissioners of the District of Columbia is authorized to advance the standard time applicable to the District one hour for the period commencing not earlier than the last Sunday of April of each year and ending not later than the last Sunday of October of each year. Any such time established by the Commissioners under the authority of this section shall, during the period of the year for which it is applicable, be the standard time for the District of Columbia. (April 28, 1953, 67 Stat. 23, ch. 30; July 2, 1956, 70 Stat. 482, ch. 491.)

AMENDMENT

1956—Act July 2, 1956, substituted "October" for "September."

Chapter 29.—STOCK TRANSFERS

Sec.

28-2901. How title to certificates and shares may be transferred.

28-2902. Powers of those lacking full legal capacity and of fiduciaries not enlarged.

Sec.

28-2903. Corporation not forbidden to treat registered holder as owner.

28-2904. Title derived from certificate extinguishes title derived from a separate document.

28-2905. Who may deliver a certificate.

28-2906. Endorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity, or lack of consideration or authority.

28-2907. Rescission of transfer.

28-2908. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.

28-2909. Delivery of unindorsed certificate imposes obligation to endorse.

28-2910. Ineffectual attempt to transfer amounts to a promise to transfer.

28-2911. Warranties on sale of certificate.

28-2912. No warranty implied from accepting payment of a debt.

28-2913. No attachment or levy upon shares unless certificates surrendered or transfer enjoined.

28-2914. Creditor's remedies to reach certificate.

28-2915. There shall be no lien or restriction unless indicated on certificate.

28-2916. Alteration of certificate does not divest title to shares.

28-2917. Lost or destroyed certificate.

28-2918. Rule for cases not provided for by this chapter.

28-2919. Interpretation shall give effect to purpose of uniformity.

28-2920. Definition of endorsement.

28-2921. Definition of person appearing to be the owner of certificate.

28-2922. Other definitions.

28-2923. Chapter does not apply to existing certificates.

§ 28-2901. How title to certificates and shares may be transferred.

Title to a certificate and to the shares represented thereby can be transferred only—

(a) by delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) by delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specific person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or bylaws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. (Dec. 23, 1944, 58 Stat. 927, ch. 729, § 1.)

EFFECTIVE DATE

Section 25 of act Dec. 23, 1944, provided: "This Act [this chapter] shall take effect on the 1st day of January, 1945."

REPEALS

Section 24 of act Dec. 23, 1944, provided: "All Acts or parts of Acts inconsistent with this Act [this chapter] are hereby repealed."

SHORT TITLE

Section 26 of act Dec. 23, 1944, provided: "This Act [this chapter] may be cited as the 'Uniform Stock Transfer Act'."

§ 28-2902. Powers of those lacking full legal capacity and of fiduciaries not enlarged.

Nothing in this chapter shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor, or administrator, or other fiduciary, to make a valid endorsement, assignment, or power of attorney. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 2.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2903. Corporation not forbidden to treat registered holder as owner.

Nothing in this chapter shall be construed as forbidding a corporation—

(a) to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) to hold liable for calls and assessments a person registered on its books as the owner of shares. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 3.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2904. Title derived from certificate extinguishes title derived from a separate document.

The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the endorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 4.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2905. Who may deliver a certificate.

The delivery of a certificate to transfer title in accordance with the provisions of section 28-2901 is effectual, except as provided in section 28-2907, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 5.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2906. Endorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity, or lack of consideration or authority.

The endorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section 28-2907, though the endorser or transferor—

(a) was induced by fraud, duress, or mistake, to make the endorsement or delivery; or

(b) has revoked the delivery of the certificate or the authority given by the endorsement or delivery of the certificate; or

(c) has died or become legally incapacitated after the endorsement, whether before or after the delivery of the certificate; or

(d) has received no consideration. (Dec. 23, 1944, 58 Stat. 928, ch. 729, § 6.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2907. Rescission of transfer.

If the endorsement or delivery of a certificate—

(a) was procured by fraud or duress; or

(b) was made under such mistake as to make the endorsement or delivery inequitable; or

If the delivery of a certificate was made—

(c) without authority from the owner; or

(d) after the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless—

(1) the certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful; or

(2) the injured person has elected to waive the injury or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 7.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2908. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.

Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 8.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2909. Delivery of unindorsed certificate imposes obligation to endorse.

The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the endorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary endorsement. The transfer shall take effect as of the time when the endorsement is actually made. This obligation may be specifically enforced. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 9.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2910. Ineffectual attempt to transfer amounts to a promise to transfer.

An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 10.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2911. Warranties on sale of certificate.

A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears warrants—

- (a) that the certificate is genuine;
- (b) that he has a legal right to transfer it; and
- (c) that he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. (Dec. 23, 1944, 58 Stat. 929, ch. 729, § 11.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2912. No warranty implied from accepting payment of a debt.

A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 12.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2913. No attachment or levy upon shares unless certificates surrendered or transfer enjoined.

No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 13.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2914. Creditor's remedies to reach certificate.

A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 14.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2915. There shall be no lien or restriction unless indicated on certificate.

There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any bylaws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 15.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2916. Alteration of certificate does not divest title to shares.

The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 16.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2917. Lost or destroyed certificate.

Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate. (Dec. 23, 1944, 58 Stat. 930, ch. 729, § 17.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2918. Rule for cases not provided for by this chapter.

In any case not provided for by this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators, and trustees, and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 18.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2919. Interpretation shall give effect to purpose of uniformity.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 19.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2920. Definition of endorsement.

A certificate is endorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is endorsed though it has not been delivered. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 20.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2921. Definition of person appearing to be the owner of certificate.

The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he endorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also endorses the certificate to another specified person. Subsequent special endorsements may be made with like effect. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 21.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2922. Other definitions.

(1) In this chapter, unless the context or subject matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of the United States, or of the District of Columbia, or of another State whose laws are consistent with this chapter.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership of two or more persons having a joint or common interest.

"To purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of the United States, or of the District of Columbia, or of another State whose laws are consistent with this chapter.

"State" includes State, Territory, district, and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 22.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.

§ 28-2923. Chapter does not apply to existing certificates.

The provisions of this chapter apply only to certificates issued after January 1, 1945. (Dec. 23, 1944, 58 Stat. 931, ch. 729, § 23.)

EFFECTIVE DATE

Section effective Jan. 1, 1945, see note under § 28-2901.



29

30

31

TITLE 29.—CORPORATIONS

Chap.	Sec.
1. General Provisions.....	29-101
2. Business Corporations (1901).....	29-201
3. Boards of Trade.....	29-301
4. Institutions of Learning.....	29-401
5. Religious Societies.....	29-501
6. Charitable, Educational, and Religious As- sociations.....	29-601
7. Dissolution.....	29-701
8. Cooperative Associations.....	29-801
9. Business Corporations (1954).....	29-901

Chapter 1.—GENERAL PROVISIONS

Sec.
29-101. Reorganization of corporations existing or doing business prior to January 1, 1902—Procedure.
29-102. Notice of application for, alteration to, or exten- sion of charter or special privileges.
29-103. Change of name—Procedure—Effect—Notice— Recording.
29-104. Capital stock to be subscribed and 10 percent paid before certificate is recorded.
29-105. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fra- ternal orders.

§ 29-101. Reorganization of corporations existing or doing business prior to January 1, 1902— Procedure.

Any corporation existing or doing business in the District of Columbia prior to January 1, 1902, may come under and avail itself of the provisions of this chapter by giving to its stockholders, members, or associates notice as prescribed in section 29-231 and pursuing the same procedure and complying with the same requirements as are prescribed in sections 26-302, 29-103, 29-201 to 29-240, and 44-101 to 44-103 in respect to increase or diminution of capital stock; and upon filing its certificate of reorganization in such case, such company shall be entitled to the privileges and provisions and be subject to the liabilities of the class of corporations to which it belongs, as provided in and by this chapter. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 766.)

REFERENCES IN TEXT

In the original "this chapter", referred to in the text in two instances, refers to chapter 18 of act Mar. 3, 1901, ch. 854, which includes sections 574-797. For distribution of sections 574-797 in the Code, see Tables.

§ 29-102. Notice of application for, alteration to, or extension of charter or special privileges.

Whoever, not being a Senator or Representative in Congress, intends to present to Congress a bill for an act of incorporation, or for an alteration or extension of the charter of a corporation in the District of Columbia, or of any special privileges in said District, shall give notice of such intention by publishing a copy of the bill at least once a week for four successive weeks, in a newspaper published in the District of Columbia, the last of said publica-

tions to be made at least fourteen days prior to the presentation of such bill. Such newspaper shall be designated by the person proposing the bill and approved by the commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 767.)

§ 29-103. Change of name—Procedure—Effect—No- tice—Recording.

Any corporation organized under the laws of the District of Columbia may change its name in the manner following:

The board of directors shall pass a resolution declaring that such change is advisable and calling a meeting of the stockholders to take action thereon. Such a meeting shall be called upon such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally to each stockholder as his address is contained in the records of such corporation, a notice deposited in the United States mail, postage prepaid, at least ten days prior to such meeting to be considered sufficient notice under this section. If two-thirds in interest of each class of stockholders having voting powers and of other persons having like powers shall vote in favor of such a change, a certificate thereof shall be signed by the president and secretary, under the corporate seal, and acknowledged as in the case of deeds of real estate, and such certificate shall be filed in the office of the recorder of deeds of the District of Columbia, and upon the filing of the same the certificate of incorporation shall be deemed to be amended and the name changed accordingly; and the filing of said certificate in conformity with this section shall have the same force and effect as to all future proceedings as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

A certified copy of such certificate shall be taken and accepted as evidence in all courts and places of all matters legally stated therein; and the recorder of deeds shall keep an index in his office showing the new name and the change from the old name, and the old name showing the change to the new name; and no fees shall be required by the recorder of deeds for filing and recording any such certificate, except that ordinarily required for deeds of real estate of like length.

A corporation under its new name shall have the same rights, powers, and privileges, and shall be subject to the same duties, obligations, and liabilities as before, and may sue and be sued by its new name, but no action brought against it or by it under its former name shall be abated on that account, and on motion of either party the new name may be substituted therefor in the action.

Upon the filing of said certificate for record a copy thereof shall be inserted, by the corporation

whose name has been changed as hereinabove provided, once each week for four consecutive weeks, in two daily papers published in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639a, as added Mar. 1, 1921, 41 Stat. 1194, ch. 94.)

CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, see §§ 29-238 to 29-240.

§ 29-104. Capital stock to be subscribed and 10 percent paid before certificate is recorded.

The recorder of deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than ten per cent. of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552 pt.; Feb. 4, 1905, 33 Stat. 689, ch. 299.)

CODIFICATION

Section comprises part of paragraph added to section 552 of act Mar. 3, 1901, by act Feb. 4, 1905. Such paragraph, including the part set out as this section, is also set out as one of the paragraphs of section 45-708.

CROSS REFERENCE

Payment in money or in property at its actual value, see § 29-209.

§ 29-105. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

Except as otherwise provided in sections 26-101, 29-213, and 35-103, any insurance company, building association or company, banking company, savings institution, or other company or association advertising for or receiving premiums, deposits, or dues for membership, incorporated under the laws of any other State, Territory, or foreign government, and transacting business within the District of Columbia, shall publish in at least two daily papers printed in the District of Columbia semiannually, during the months of March and September of each year, a full statement, under oath, showing their capital stock and the amount paid in on account of the same, assets, liabilities, debts, deposits, dividends and dues, as well as their current expenses during six months ending January and July preceding.

Any such company, association, or institution failing to publish statements as required by this section shall forfeit its right to do business in said District, and thereupon it shall be the duty of said Commissioners to revoke its license or permit to do business in said District: *Provided*, That fraternal beneficiary associations or societies doing business on the lodge plan and paying death benefits be exempted from the provisions of this section. (July 29, 1892, 27 Stat. 325, ch. 321, §§ 1, 2.)

Chapter 2.—BUSINESS CORPORATIONS (1901)

Sec.

- 29-201. Formation—Certificate — Exception — Dealing in real estate.
- 29-202. Contents of certificate.
- 29-203. Formation—Signers of certificate incorporated—Name—Powers—Mortgages or liens on property to be approved by stockholders.

Sec.

- 29-204. Trustees—Qualifications—Election.
- 29-205. Election of trustees—Notice—Procedure.
- 29-206. Corporation not dissolved by failure to hold election of trustees at time designated in by-laws.
- 29-207. Officers—Bond.
- 29-208. By-laws.
- 29-209. Authority to do business—Calls—Forfeiture—Notice.
- 29-210. Stock to be personal property—Manner of transfer to be prescribed by by-laws—No transfer until previous call is paid.
- 29-211. Liability of stockholders.
- 29-212. Certificate of capital stock paid in—Recording.
- 29-213. Annual report of stock and debts—Verification—Publication.
- 29-214. Failure to publish annual report—Mandamus by creditor—Expenses of action.
- 29-215. Liability of officers for false report.
- 29-216. Purchase of stock of other corporations unlawful.
- 29-217. Loans to stockholders—Liability of officers.
- 29-218. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.
- 29-219. Trustees objecting to such dividends and filing certificate exempt from personal liability.
- 29-220. Executors, administrators, guardians, and trustees not personally liable.
- 29-221. Executor, administrator, guardian, or trustee shall represent and vote.
- 29-222. Pledges of stock—Pledgee not liable as stockholder—Right to vote.
- 29-223. Stock book to be kept by treasurer or secretary.
- 29-224. Stock books open for inspection.
- 29-225. Effect of stock book record—Company—Creditors—Subsequent purchasers.
- 29-226. Stock books presumptive evidence of facts stated therein.
- 29-227. Failure to make entries in or to allow inspection of books—Misdemeanor—Penalty.
- 29-228. Liability to United States for neglect to keep books open.
- 29-229. Increase or diminution of stock—Extending of business.
- 29-230. Diminution of capital stock when debts exceed proposed capital.
- 29-231. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business—Notice to stockholders.
- 29-232. Representatives of two-thirds of stock to be present.
- 29-233. Certificate by chairman—Contents—Verification.
- 29-234. Certificate to be filed—Effect.
- 29-235. Two-thirds vote required.
- 29-236. Copy of certificate to be evidence.
- 29-237. Fire insurance companies formed prior to January 1, 1902, may become perpetual.
- 29-238. Amendment of charter—Procedure—Purposes.
- 29-239. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications—Statement thereof on stock.
- 29-240. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

DISTRICT OF COLUMBIA BUSINESS CORPORATION ACT

Formation of corporations under the provisions of the District of Columbia Business Corporation Act 180 days after June 8, 1954, and prohibition against incorporation, after such date, under any other act or statute then in force, see Effective Date note set out under § 29-901.

§ 29-201. Formation—Certificate—Exception—Dealing in real estate.

Any three or more persons who desire to form a company for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or

discount, railroads, and such other enterprise or business as may be otherwise specially provided for in this code, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the recorder of deeds, a certificate in writing: *Provided*, That nothing herein contained shall be held to authorize the organization of corporations to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real-estate agents or brokers. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 605; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out the words "corporations to buy, sell, or deal with real property" following the words "banks of circulation or discount," and added the proviso.

CROSS REFERENCES

Banking corporations and financial institutions, see title 26.

Building and homestead associations to be incorporated under this chapter, see § 26-401.

Insurance corporations, see title 35.

Merger of street railway; new company to be formed under this chapter, see § 43-503.

Public utilities, see title 43.

Railroads and other carriers, see title 44.

NOTES TO DECISIONS

In general 1
Capacity to sue and be sued 2
Emergency Fleet Corporation 3
Extension of business 4
Nature of business 5
Principal place of business 6

1. In general

Insofar as the general incorporation statutes passed by Congress for the District are concerned, these provide for the incorporation of both business corporations and benevolent corporations. *White v. Central Dispensary & Emergency Hosp.* (1938, 99 F. 2d 355, 69 App. D.C. 122, 119 A. L. R. 1002).

2. Capacity to sue and be sued

Defendant corporation is in general capable of suing and being sued, regardless of whether part or all of its stock is owned by the United States. *Ingram Day Lbr. Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Miss. 1920, 267 F. 283).

3. Emergency fleet corporation

In form the Emergency Fleet Corporation is a private corporation, but its services are of a public nature and it has never done any business, or conducted any operation, except on behalf of the United States. *United States Shipping Bd. Emergency Fleet Corp. v. Western Union Tel. Co.* (1928, 48 S. Ct. 198, 275 U.S. 415, 72 L. Ed. 345).

Fleet Corporation was entitled to the Government rate, not because it was an instrumentality of the Government, but because it was a department of the United States within the meaning of the Post Roads Act and, in respect to messages sent, on the Government's business, no distinction could properly be made between those of the Shipping Board and those of the Fleet Corporation. *Id.*

When shipbuilding company sued the United States Shipping Board Emergency Fleet Corporation upon an alleged contract for the building of ships, which, it was alleged, it was not allowed to build, it was a suit arising under the Constitution and laws of the United States and motion to remand should be denied. *Union Timber Products Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Wash. 1918, 252 F. 320).

"The board (Shipping Board), if in its judgment such action is necessary to carry out the purposes of this act, may form under the laws of the District one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States." *Southern Bridge Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Ala. 1920, 266 F. 747).

Business of the Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers not essentially different from those possessed by private corporations and no provision can be found either in acts of Congress or in charter of the company giving to the corporation or its stockholders any rights, privileges, or obligations different from those possessed by any other corporation under laws of the District with respect to its business. *In re Eastern Shore Shipbuilding Corp.* (C.C.A. 2, 1921, 274 F. 893).

Object and purpose of the corporation was to purchase, construct, equip, lease, maintain, and operate vessels in the commerce of the United States and for other lawful purposes. *Buffalo Union Furnace Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. N.Y. 1922, 283 F. 673).

Fleet Corporation acted in two capacities; notwithstanding the ownership of its stock by the United States, it was a private corporation; as such it was a distinct entity; it might make contracts and transact the business for which it was organized; it might sue and be sued, and then it was subject to the statute of limitations. *Harwood v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Conn. 1928, 26 F. 2d 116).

4. Extension of business

The 1901 code, §§ 633 and 635 (§§ 29-229, 29-231), providing for the extension of the business of the corporation, cannot be so construed as to permit a combination of two radically different classes of business. *Dancy v. Clark* (24 App. D. C. 487).

5. Nature of business

This section does not authorize or allow the combination of all classes of industrial business by one corporation. "On the contrary, the tenor of the enactment is decidedly adverse to any such theory." *Dancy v. Clark* (24 App. D. C. 487).

The statute allows formation of corporation for only "one business, one enterprise, and not a combination of all the classes of business provided for in the statute." *Id.*

"No domestic corporation is authorized to hold real estate except as an incident to its business. It clearly is not authorized to hold it for the purpose of selling or dealing in it." *Groo v. Norman* (42 App. D. C. 387).

A foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations. Nevertheless "want of capacity in a domestic or foreign corporation to own and dispose of real estate can only be asserted by the State," and until so questioned good title may be conveyed. *Hight v. Richmond Park Imp. Co.* (47 App. D.C. 518). See, also, *Groo v. Norman* (42 App. D.C. 387).

The proviso "neither declares contracts made in violation of its terms void as against public policy nor does it expressly apply this restriction to foreign corporations doing business in this District." *Hight v. Richmond Park Imp. Co.* (47 App. D. C. 518).

6. Principal place of business

The proviso of the statute that no corporation may be organized thereunder unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-202. Contents of certificate.

In such certificate shall be stated—

First. The corporate name of the company and the object for which it is formed.

Second. The term of its existence, which may be perpetual.

Third. The amount of the capital stock of the company and the number of shares of which said stock shall consist.

Fourth. The number of trustees who shall manage the concerns of the company for the first year and their names.

Fifth. The name of the place in the District in which the operations of the company are to be carried on. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 606.)

CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, see §§ 29-238 to 29-240.

NOTES TO DECISIONS

1. Principal place of business

The proviso of the statute that no corporation may be organized thereunder unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-203. Formation—Signers of certificate incorporated—Name—Powers—Mortgages or liens on property to be approved by stockholders.

When the certificate shall have been filed, in accordance with the provisions of section 29-202, the persons who shall have signed and acknowledged the same and their successors shall be a body politic and corporate in fact and in name, by the names stated in such certificate, and by that name have succession and be capable of suing and being sued in any court of law or equity in the District; and they and their successors may have a common seal and make and alter the same at pleasure, and they shall by their corporate name be capable in law of purchasing, holding, and conveying any real or personal estate whatever which may be necessary to enable the company to carry on its operations named in such certificates, but shall not mortgage such estate or give any lien thereon, except in pursuance of a vote of the stockholders of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 607.)

CROSS REFERENCES

Conveyances of real estate, formal requisites, see § 45-302.

Fire insurance companies, perpetual existence, see § 29-237.

Increase or diminution of stock, extension of business, see §§ 29-229 to 29-237.

Indorsement of negotiable instrument as passing title through corporation or officers lacked capacity, see § 28-123.

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-1601 et seq.

Restraint from doing business upon second conviction of operating a bucket-shop, see § 22-1510.

NOTES TO DECISIONS

In general 1
Emergency Fleet Corporation 2

1. In general

This section does not put District corporations upon a different footing from those formed under the laws of the States. *Sloan Shipyards Corp. v. United States Shipping Board* (1922, 42 S. Ct. 386, 258 U.S. 549, 66 L. Ed. 762).

2. Emergency Fleet Corporation

The Emergency Fleet Corporation was in general capable of suing and being sued, regardless of whether part or all of its stock was owned by the United States. *Ingram Day Lbr. Co. v. United States Shipping Bd. Emergency Fleet Corp.* (D.C. Miss. 1920, 267 F. 283).

Business of the Emergency Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers were not essentially different from those possessed by private corporations. *In re Eastern Shore Shipbuilding Corp.* (C.C.A. 2, 1921, 274 F. 893).

§ 29-204. Trustees—Qualifications—Election.

The stock, property, and concerns of such company shall be managed by not less than three trustees, who shall be stockholders, and shall, except for the first year, be annually elected by the stockholders, at such time and place as shall be determined by the by-laws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 608; July 13, 1959, 73 Stat. 181, Pub. L. 86-83; Apr. 22, 1960, 74 Stat. 78, Pub. L. 86-436.)

AMENDMENTS

1960—Act Apr. 22, 1960, substituted “who shall be stockholders, and shall” for “who shall, respectively, be stockholders, and a majority citizens of the District, and shall.”

1959—Act July 13, 1959, struck out the words “nor more than fifteen” following “three.”

NOTES TO DECISIONS

Corporate acts 1
Emergency Fleet Corporation 2
Exchange of stock 3
Liability for debts 4
Stockholders 5

1. Corporate acts

A corporation can only act through its agents, directors, or trustees and its intention can only be learned by the language of its recorded acts and the plain terms of a resolution of the board of directors cannot be altered by an affidavit purporting to show its intention. *Fox v. Johnson* (1940, 31 F. Supp. 64).

2. Emergency Fleet Corporation

Although most of the stock was owned by the United States, the business of the fleet corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers were not essentially different from those possessed by private corporations. *In re Eastern Shore Shipbuilding Corp.* (C.C. A. 2, 1921, 274 F. 893).

3. Exchange of stock

When insurance company sold a building to realty company, for whose stock the insurance company's stockholders were allowed to exchange their stock, and as terms would not cause substantial loss to the stockholders, their stock was not illegal or void under this section which gives trustees power to manage the affairs of the corporation. *Tryson v. Southern Realty Corp.* (1921, 274 F. 135, 61 App. D.C. 55).

4. Liability for debts

Under the act of Congress (16 Stat. 98, ch. 80), under which certain corporations were organized in the District of Columbia, providing for personal liability of trustees for debts in excess of capital stock, an action at law could not be sustained by one creditor among many for the liability thus created, or for any part of it, but the remedy is in equity and this excess constitutes a fund for the benefit of all the creditors, so far as the condition of the company renders a resort to it necessary for the payment of their debts. *Hornor v. Henning* (1876, 93 U.S. 228, 93 Otto 228, 23 L. Ed. 879).

Under the act of May 5, 1870 (16 Stat. 98), providing for the organization of associations and the liability of trustees for indebtedness exceeding the capital stock, and the act of June 17, 1870 (16 Stat. 153), authorizing the establishment of savings banks under the former act, the excess of debts for which the trustees were liable consti-

tuted a trust fund for the benefit of all creditors, and an action at law could not be maintained by one creditor for any part of it, but the remedy was in equity. *Id.*

5. Stockholders

"Plainly the requirement of this section is that the trustees shall at all times be stockholders, as well for the first year as for all subsequent years." *Dancy v. Clark* (24 App. D. C. 487).

§ 29-205. Election of trustees—Notice—Procedure.

Public notice of the time and place of holding such election shall be published not less than thirty days previous thereto in some newspaper printed and published in the District, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All the elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 609.)

§ 29-206. Corporation not dissolved by failure to hold election of trustees at time designated in by-laws.

In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided by the by-laws, and all acts of trustees shall be valid and binding as against said company until their successors shall be elected. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 610.)

§ 29-207. Officers—Bond.

There shall be a president of the company, who shall be designated from the trustees; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as the company by its by-laws may require. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 611.)

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-1601 et seq.

§ 29-208. By-laws.

The trustees shall have power to make such prudential by-laws as they deem proper for the management and disposal of the stock and business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 612.)

§ 29-209. Authority to do business—Calls—Forfeiture—Notice.

No company incorporated under this chapter and sections 26-302 and 44-101 to 44-103 shall be authorized to transact any business until ten per

centum of the capital stock shall have been actually paid in, either in money or in property at its actual value; and it shall be lawful for the trustees to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published for six successive weeks in a newspaper in the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 613.)

CROSS REFERENCES

Initial ten per centum payment in cash, see § 29-104.
Sale of securities, U.S. Code, title 15, ch. 2a.

§ 29-210. Stock to be personal property—Manner of transfer to be prescribed by by-laws—No transfer until previous call is paid.

The stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 614.)

NOTES TO DECISIONS

1. Suit for subscription

Subscribers to stock must be sued severally to recover unpaid subscriptions. *Peoples Nat. Bank v. Saville* (25 App. D.C. 139, appeal dismissed 26 S. Ct. 760, 201 U.S. 641, 50 L. Ed. 901).

§ 29-211. Liability of stockholders.

All the stockholders of every company incorporated under this chapter and sections 26-302 and 44-101 to 44-103 shall be severally individually liable to the creditors of the company in which they are stockholders for the unpaid amount due upon the shares of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded, as prescribed in section 29-212. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 615.)

NOTES TO DECISIONS

In general 1
Contract of subscription 2
Sale of stock rescinded 3
Statute of limitations 4
Suit for subscription 5
Transfer of stock 6
Trust funds 7

1. In general

Under this section, the stockholders are individually liable to the creditors for the unpaid amount due upon the shares of stock held by them respectively for the debts and contracts of the company until the amount of capital stock fixed by such company shall have been paid in. *Capitol Dress Mfg. Co. v. Moran* (1936, 84 F. 2d 253, 65 App. D.C. 400).

2. Contract of subscription

A contract of subscription may be shown without a formal subscription in writing. *National Exp. Co. v. Morris* (15 App. D. C. 262).

To recover on a subscription to the capital stock, the corporation plaintiff must establish, by legal and competent proof, the existence of a contract of subscription to the stock. *Id.*

3. Sale of stock rescinded

Person who purchased stock from corporation under an option to rescind the agreement at the expiration of a year is not precluded from doing so because no power has been given to the corporation to purchase its own stock. *Royal Glue Co. v. Lange* (40 App. D. C. 9).

4. Statute of limitations

Statute of limitations begins to run from the time that call is made for payment of unpaid subscription. *Glenn v. Sothoron* (4 App. D. C. 125).

5. Suit for subscription

Subscribers to stock must be sued severally to recover unpaid subscriptions. *Peoples Nat. Bank v. Saville* (25 App. D.C. 139, appeal dismissed 26 S. Ct. 760, 201 U.S. 641, 50 L. Ed. 901).

6. Transfer of stock

The mere transfer of the stock into the name of the defendant is not sufficient to impose the liability of a stockholder, unless he consents thereto, or subsequently exercises the rights of a stockholder. *National Exp. Co. v. Morris* (15 App. D. C. 262).

7. Trust fund

Capital stock of a corporation is a trust fund for the benefit of the creditors, and which cannot be withdrawn without their consent, but the corporation may when solvent hold the property as an individual, free from the touch of a creditor who has acquired no lien, and may dispose of stock to bona fide purchasers for a valuable consideration. *Gilbert v. Washington Ben. Endowment Assn.* (10 App. D.C. 316, appeal dismissed 19 S. Ct. 877, 173 U.S. 701, 43 L. Ed 1185).

§ 29-212. Certificate of capital stock paid in—Recording.

The president and a majority of the trustees, within thirty days after the payment of the last instalment of the capital stock so fixed and limited, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall within the said thirty days record the same in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 616.)

CROSS REFERENCE

Limitation on recorder to record certificate see § 29-104.

§ 29-213. Annual report of stock and debts—Verification—Publication.

Every such company shall annually, except insurance companies, within twenty days from the first of January, make a report, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of the company, and filed in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 617.)

NOTES TO DECISIONS

1. Construction

Laws similar to this requiring insurance companies to publish annually a report of their assets and liabilities and making trustees liable for existing corporate debts for failure to fulfill requirements were construed as being penal in their nature and were to be strictly construed. *Jackson v. Clifford* (5 App. D. C. 312).

§ 29-214. Failure to publish annual report—Mandamus by creditor—Expenses of action.

If any company fails to comply with the provisions of section 29-213, any creditor of the corporation or other person interested may by petition for mandamus against the corporation and its proper officers compel such publication to be made, and in such case the court shall require the corporation or the officers at fault to pay all the expenses of the proceeding, including counsel fees. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 618; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, amended section generally. Prior to such amendment, section read as follows: "If any company fails to comply with the provisions of the preceding section, all the trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made."

§ 29-215. Liability of officers for false report.

If any certificate or report made or public notice given by the officers of any company in pursuance of the provisions of this chapter and sections 26-302 and 44-101 to 44-103 shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all debts of the company contracted while they are stockholders or officers thereof. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 619.)

§ 29-216. Purchase of stock of other corporations unlawful.

It shall not be lawful for any corporation, except a charitable, educational, or religious corporation incorporated under the laws of the District of Columbia or under any Act of Congress, to use its funds to purchase stock in any other corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 620; Mar. 14, 1952, 66 Stat. 24, ch. 103, § 1.)

AMENDMENT

1952—Act Mar. 14, 1952, substituted "corporation" for "company" following "lawful for any" and added the exception.

CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, see §§ 29-238 to 29-240.

NOTES TO DECISIONS

Bank stock illegally held 1
Transfer in liquidation 2

1. Bank stock illegally held

This being statement of general policy applicable to all District corporations, claim against insolvent trust company for assessment on shares purchased from another bank was rejected. *Dunn v. O'Connor* (1937, 89 F. 2d 830, 67 App. D.C. 76).

2. Transfer in liquidation

As appellant had no corporate power to purchase stocks and bonds of the Charles Town Company, a contract to purchase, unless permissible under the Utilities Act, would have been unenforceable because ultra vires. *Washington Gas Light Co. v. Dann* (1934, 70 F. 2d 746, 63 App. D.C. 142).

A bank receiving assets of another bank in liquidation is liable for taxes as a transferee notwithstanding this section. *Gould v. Com. Int. Rev.* (21 B. T. A. 824).

§ 29-217. Loans to stockholders—Liability of officers.

No loan of money shall be made by any company upon the security, in whole or in part, of its own

stock; and if any such loan shall be made, the trustee or officer authorizing the same shall be responsible to the corporation therefor: *Provided*, That nothing herein contained shall be held to release the borrower in such a case from liability to the corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 621; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, amended section generally. Prior to such amendment, section read as follows: "No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made to a stockholder, the officers who shall make it or who shall assent thereto shall be jointly and severally liable, to the extent of such loan and interest, for all debts of the company contracted while they are stockholders or officers thereof."

§ 29-218. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.

If the trustees of any company shall declare and pay any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing and for all that shall be thereafter contracted while they shall respectively remain in office. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 622.)

NOTES TO DECISIONS

1. Evidence

In order for a corporate creditor to impose personal liability on three trustees of corporation on any theory of transfer of funds in an attempt to hinder or defraud creditors, distribution of corporate assets to themselves in violation of statute, or breach of fiduciary obligation to account to creditors, it was necessary for contractor to prove assets in question ultimately were received by such trustees, or disposed of by them in contravention of contractor's rights as a creditor. *Askew v. Randolph Carney Co., Inc., et al.* (D. C. Mun. App. 1957, 128 A. 2d 788).

§ 29-219. Trustees objecting to such dividends and filing certificate exempt from personal liability.

If any of the trustees shall object to declaring such dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in section 29-218. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 623.)

§ 29-220. Executors, administrators, guardians, and trustees not personally liable.

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 624.)

§ 29-221. Executor, administrator, guardian, or trustee shall represent and vote.

Every such executor, administrator, guardian, or trustee shall represent the stock in his hands at all

meetings of the company, and may vote accordingly as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 625.)

§ 29-222. Pledges of stock—Pledgee not liable as stockholder—Right to vote.

No person holding stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 626.)

§ 29-223. Stock book to be kept by treasurer or secretary.

It shall be the duty of the trustees of every corporation formed under this chapter and sections 26-302 and 44-101 to 44-103 to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of stock held by them respectively, the time when they became owners of such shares, and the amount of stock actually paid in. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 627.)

NOTES TO DECISIONS

1. In general

This section does not apply to corporations not formed under this chapter. *Morgan v. Howard* (1924, 293 F. 650, 54 App. D.C. 3).

§ 29-224. Stock books open for inspection.

Such book shall, during the usual business hours of the day, on every business day, be open for inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company in the District where its business operations shall be located, and any stockholder, creditor, or representative shall have a right to make extracts from such books. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 628.)

NOTES TO DECISIONS

1. Purpose of inspection

Under common law, stockholder can inspect books only when his interests are directly involved, and "it is apparent that in equity and good faith he should be permitted to inform himself as to how the affairs of the corporation are being conducted. * * * Where that right has not been enlarged by statute, it may be exercised only in good faith, and for some just, useful, or reasonable purpose." *Morgan v. Howard* (1924, 293 F. 650, 54 App. D.C. 3).

§ 29-225. Effect of stock book record—Company—Creditors—Subsequent purchasers.

A person in whose name shares of stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell, pledge, or otherwise dispose of any of his shares of stock to another and deliver to him the certificate for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not

only as between the parties themselves, but also as against the creditors of and subsequent purchasers from the former, subject to the provisions of section 29-210. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 629.)

NOTES TO DECISIONS

In general 1
Certificate indorsed in blank 2
Pledged certificate 3
Title of assignee 4

1. In general

The requirement of transfer on the corporate books is intended for the convenience and security of the corporation alone. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U.S. 391, 57 L. Ed. 1241).

2. Certificate indorsed in blank

Stock broker, holding certificate, indorsed in blank, for a limited purpose, may convey good title to innocent purchaser. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U.S. 391, 57 L. Ed. 1241).

While certificates of stock indorsed in blank "do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them as that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser." *Id.*

3. Pledged certificate

When stock certificate with written transfer and power of attorney in blank is signed by the person to whom certificate was issued, and is pledged by one in possession to secure preexisting debts, the pledgee is not chargeable with notice of equities which exist between original owner and pledgor. *National Safe Deposit, Sav. & Trust Co. v. Gray* (12 App. D. C. 276).

4. Title of assignee

Although corporation may require that transfer of stock be registered on the corporate books, the assignee upon delivery with transfer and power of attorney to transfer on the books, duly executed, takes the entire equitable, if not the legal title thereto. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D.C. 459, affirmed 33 S. Ct. 818, 229 U.S. 391, 57 L. Ed. 1241).

§ 29-226. Stock books presumptive evidence of facts stated therein.

Such books shall be presumptive evidence of the fact therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 630.)

§ 29-227. Failure to make entries in or to allow inspection of books—Misdemeanor—Penalty.

Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of fifty dollars for any such neglect or refusal, and all damages resulting therefrom. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 631.)

§ 29-228. Liability to United States for neglect to keep books open.

Every company that shall neglect to keep such book open for inspection, as provided in section 29-224, shall forfeit to the United States the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the United States District Court for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 632; June 25, 1936, 49 Stat.

1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 29-229. Increase or diminution of stock—Extending of business.

Any company which may be formed under this chapter and sections 26-302 and 44-101 to 44-103 may increase or diminish its capital stock, by complying with the provisions of this chapter, and sections 26-302 and 44-101 to 44-103, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other business authorized hereby, subject to the provisions and liabilities of this chapter and sections 26-302 and 44-101 to 44-103. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 633.)

CROSS REFERENCE

Sale of securities, see U.S. Code, title 15, ch. 2a.

§ 29-230. Diminution of capital stock when debts exceed proposed capital.

Before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 634.)

§ 29-231. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business—Notice to stockholders.

Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees or directors to publish a notice, signed by a majority of them, in a newspaper in the District, at least three successive weeks, and to deposit a notice thereof in the post office addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting and the time and place when and where such meeting shall be held. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 635.)

NOTES TO DECISIONS

Change of business 1
Extension of business 2

1. Change of business

"Provision is made for a change of business; but even if we assume that this change might be made to a radically different class of business, as for example, from that of mining to that of agriculture, yet the very word 'change' implies the abandonment of the one by the adoption of the other, not the combination of both." *Dancy v. Clark* (24 App. D. C. 487).

2. Extension of business

"Extension of business is the taking in of something cognate." *Dancy v. Clark* (24 App. D. C. 487).

"A company organized for the making of cotton goods might well be extended to the manufacture of woolen goods, possibly even to the manufacture of iron or steel, for it is all manufacture." *Id.*

§ 29-232. Representatives of two-thirds of stock to be present.

If, at any time and place specified in the notice provided for in section 29-231, stockholders shall appear by proxy or in person representing not less than two-thirds of all the shares of stock of the corporation, they shall organize and proceed to a vote of those present or by proxy. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 636.)

§ 29-233. Certificate by chairman—Contents—Verification.

If, on canvassing the votes, it shall appear that a sufficient number of votes are in favor of increasing or diminishing the amount of capital, or extending or changing the business of the company, a certificate of the proceedings, showing a compliance with the provisions of this chapter and sections 26-302 and 44-101 to 44-103, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 637.)

§ 29-234. Certificate to be filed—Effect.

Such certificate shall be acknowledged by the chairman, and filed as required by section 29-202, and when so filed the capital stock of such corporation shall be increased or diminished to the amount specified in the certificate, and the business extended or changed accordingly; and the company shall be entitled to the privileges and provisions and be subject the liabilities of this chapter and sections 26-302 and 44-101 to 44-103. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 638.)

CODIFICATION

Act Mar. 3, 1901, refers to § 29-202. However, for necessity for filing certificate, see § 29-201.

§ 29-235. Two-thirds vote required.

A vote of at least two-third of all the shares of the stock of a company shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 639.)

§ 29-236. Copy of certificate to be evidence.

A copy of any certificate of incorporation filed in pursuance of this chapter and sections 26-302 and 44-101 to 44-103, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 640.)

§ 29-237. Fire insurance companies formed prior to January 1, 1902, may become perpetual.

Any company formed prior to January 1, 1902, agreeably by law, for the purpose of carrying on fire insurance, may become perpetual by filing, in the office of the recorder of deeds, a certificate to that

effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641.)

NOTES TO DECISIONS

1. Powers and duties

Filing of the certificate under this section merely extended indefinitely the life of the company, without affecting the scope of its powers and duties. *Morgan v. Howard* (1924, 293 F. 650, 54 App. D.C. 3).

§ 29-238. Amendment of charter—Procedure—Purposes.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter and sections 26-302 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and sections 26-302 and 44-101 to 44-103 pursuant to sections 29-101, 29-102, may, by pursuing the same procedure and complying with the same requirements as are prescribed in this chapter and sections 26-302 and 44-101 to 44-103 in respect to the increase or diminution of capital stock, amend its charter so as to accomplish any one or more of the following objects: The addition to or diminution of the corporate purposes and powers, or the substitution of other purposes and powers in whole or in part for those set forth in the charter; the changing of the corporate business; the changing of the location of the place in the District of Columbia in which the operations of the corporation are to be carried on; and the making of any other amendment or amendments, not otherwise provided for under this chapter and sections 26-302 and 44-101 to 44-103, of the charter that may be desired, provided such amendment or amendments shall contain only such provisions as it would be lawful or proper to insert in an original certificate of incorporation made at the time of making such amendment or amendments. (Mar. 3, 1901, ch. 854, § 639b, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

CROSS REFERENCE

Proceedings for increase or diminution of capital stock, see §§ 29-229 to 29-236.

§ 29-239. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications—Statement thereof on stock.

In addition to its common stock every corporation heretofore or hereafter organized or existing under this chapter and sections 26-302 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and sections 26-302 and 44-101 to 44-103 pursuant to sections 29-101, 29-102, may create one or more classes of preferred stock, with such preferences, restrictions, and qualifications not inconsistent with law as shall be expressed in its charter. Such preferred stock shall have such voting powers as are provided in such charter, or it may have no voting power if such charter so provides. Each such corporation may have one or more classes of common stock, with or without voting powers, and with such rights, restrictions, and qualifications as shall be expressed in its charter. The term "charter" is hereby defined to include a charter granted by Special Act, certificate of incorporation, certificate of

organization, or certificate of reorganization, either as originally passed or filed or as amended, unless such construction would be inconsistent with the context. Preferred stock of any class may be made subject to redemption at such times and prices as may be determined in such charter. In the case of stock which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount and terms of such preference shall be stated in the charter. All certificates for stock which has no voting powers or is restricted or limited as to its voting powers, or which is preferred or limited as to its dividends, or as to its share of the assets upon dissolution, shall have a statement of such restriction, limitation, or preference plainly stated thereon. (Mar. 3, 1901, ch. 854, § 639c, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

CROSS REFERENCE

Sale of securities, see U.S. Code, title 15, ch. 2a.

§ 29-240. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter and sections 26-302 and 44-101 to 44-103, or which has availed or may hereafter avail itself of the provisions of this chapter and sections 26-302 and 44-101 to 44-103 pursuant to sections 29-101, 29-102, may, pursuant to a meeting of its stockholders, held upon notice given in accordance with the provisions of section 29-231, sell, lease, or exchange all of its property and assets as an entirety, including its good will, and franchises howsoever granted and/or acquired, to or with any other such corporation or any other corporation organized or existing under the laws of any state of the United States which is duly authorized by its charter or otherwise to acquire and hold such or similar property, or to or with any natural person. An agreement containing the terms and conditions of the proposed sale, lease, or exchange shall, after approval thereof by a majority of the trustees or directors of such vendor, lessor, or grantor corporation, be submitted to said stockholders at said meeting for their approval; and if approved by the affirmative vote of two-thirds of all the stock outstanding (or, if two or more classes of stock have been issued, of two-thirds of each class, including stock of any class to which the charter denies the right to vote), such agreement shall be executed and its terms and conditions performed. Any stockholder who, at such meeting, voted against the agreement submitted or who shall in writing file his protest at least five days before the holding of such meeting, may within twenty days after such meeting (but not afterwards) make upon such vendor, lessor, or grantor corporation a written demand for payment for his stock; and he shall thereupon be entitled to receive an amount equal to the fair value thereof, unaffected by such sale, lease, or exchange of said corporate property and assets. If such dissenting stockholder and said vendor, lessor, or grantor corporation of which he is a stockholder shall fail to agree upon the fair value of said stock (or if, having agreed, such corpo-

ration shall fail to pay or tender the amount thereof), such stockholder shall be entitled to file, within thirty days after such written demand (but not afterwards), against said vendor, lessor, or grantor corporation, in the United States District Court for the District of Columbia, a petition for an accounting and for the ascertainment of the fair value of his shares without regard to any depreciation or appreciation thereof in consequence of such sale, lease, or exchange; and on the coming in of the answer to said petition, which shall be filed within such reasonable period as the court may fix, the court shall pass an order referring the matter to a commissioner or commissioners agreed upon by the parties, and if the parties do not so agree, then to the auditor of said court, for the purpose of ascertaining such fair value, and such order may prescribe the time and manner of producing evidence; and the award of said commissioner or commissioners (or that of a majority of them) or of said auditor, when confirmed by decree of said court, shall be final and conclusive on all parties, and said vendor, lessor, or grantor corporation shall pay such stockholder the fair value of his shares ascertained as aforesaid, and on receiving such payment or on a tender thereof, said stockholder shall transfer his stock to the said vendor, lessor, or grantor corporation for cancellation, and until said award is paid or tendered, said stockholder shall have a lien for the payment of such award on the proceeds of such sale, lease, or exchange, prior to any distribution by said vendor, lessor, or grantor corporation and said payment and lien may be collected and enforced in the same manner as other decrees and liens are by law enforceable in said United States District Court for the District of Columbia. If the amount awarded said stockholder exceeds the amount offered by the corporation prior to the filing of said suit, costs shall be awarded to said stockholder; otherwise, costs shall be awarded to the corporation. Each party shall have the right of appeal as in other cases in the United States District Court for the District of Columbia. The proceeding by a dissenting stockholder hereunder shall not prevent or delay the execution and performance of any agreement so approved by the affirmative vote of two-thirds of each class of stock: *Provided, however,* That the right granted to a dissenting stockholder hereunder to demand payment for his shares shall cease, if at any time prior to the entry of any decree herein provided for, the defendant corporation shall make it appear to said United States District Court for the District of Columbia that the agreement of sale, lease, or exchange has been rescinded by appropriate corporate action, so that the shares of such dissenting shareholder remain unaffected thereby. Upon the performance of any agreement of sale hereunder of all of the property and assets as an entirety of a corporation (including its good will and franchises), all property, assets, rights, privileges, franchises, and powers of said selling corporation shall be vested in the purchasing corporation or person and shall thereafter be as effectually the property of the purchasing corporation or person as they were of the selling corporation subject to the provisions of this section, and such purchasing corpora-

tion or person shall thereupon immediately file in the office of the recorder of deeds of the District of Columbia proper evidence of such sale, and thereupon said selling corporation shall be dissolved and cease, subject, however, to the provisions of sections 29-715 to 29-718. Nothing contained herein shall affect the provisions of sections 28-1701 to 28-1705, or any of the provisions of chapters 1-10 of title 43, or any amendment or supplement thereof, or of any other law regulating public-utility corporations in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639d, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

REFERENCES IN TEXT

Chapters 1-10 of title 43 relate to public utilities.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

1. Stockholder's suit

Under statute authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares, dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting stockholder's shares was less than \$3,000. *Davis v. Universal Corporation* (D. C. Mun. App. 1957, 133 A. 2d 479).

The Municipal Court is a statutory court of limited jurisdiction, and its jurisdiction is not to be extended by inference or implication unless necessary to carry out the plain intention of Congress. *Id.*

Chapter 3.—BOARDS OF TRADE

Sec.

- 29-301. Incorporation.
- 29-302. Power to hold real or personal estate.
- 29-303. Officers.
- 29-304. Election of officers—Failure to hold.
- 29-305. Tenure of office.
- 29-306. By-laws.
- 29-307. Fines—Imposition—Collection.
- 29-308. What business to be carried on.

§ 29-301. Incorporation.

Any number of persons, not less than twenty, residing in the District, may associate themselves together as a board of trade, and assemble at any time and place upon which a majority of the members so associating may agree, and elect a president and one or more vice-presidents, as they may see fit, and adopt a name, constitution, and by-laws, such as they may agree upon. Such persons shall thereupon become a body corporate and politic in fact and in name, by the name and style or title which they may have adopted, and by that name shall have succession, shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all the courts of law and equity; and they and their successors shall have a common seal, and may alter

and change the same at their discretion. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, §§ 701, 702.)

CROSS REFERENCES

Powers, see § 29-308.

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-1601 et seq.

§ 29-302. Power to hold real or personal estate.

Such corporation, by the name and style which shall be adopted, shall be capable in law of purchasing, holding, and conveying any estate, real or personal, for the use of the corporation, not exceeding in quantity one city lot and building in the District. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 703.)

CROSS REFERENCE

Conveyances of real estate, formal requisites, see § 45-302.

§ 29-303. Officers.

The president, vice-president, secretary, and treasurer shall be ex officio members of the board of directors, and, together with the directors elected, shall manage the business of the corporation. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 704.)

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-1601 et seq.

§ 29-304. Election of officers—Failure to hold.

All officers shall be elected by a plurality of votes given at any election, and a general election of officers shall be held at least once in each year; but in case of any accidental failure or neglect to hold such general election the corporation shall not thereby lapse or terminate, but shall continue and exist, and the old officers shall hold over until the next general election of officers provided for in the constitution adopted. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 705.)

§ 29-305. Tenure of office.

The officers shall hold their offices for the time which shall be prescribed in the constitution adopted by the corporation and until others shall be elected and qualified as prescribed by such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 706.)

§ 29-306. By-laws.

Such corporation shall have the right to admit as members such persons as they may see fit, and expel any members as they may see fit; and in all cases a majority of the members present at any stated meetings shall have the right to pass, and also the right to repeal, any by-law of the corporation; and in all cases the constitution and by-laws adopted by the corporation shall be binding upon and control the same until altered, changed, or abrogated in the manner that may be prescribed in such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 707.)

§ 29-307. Fines—Imposition—Collection.

Such corporation may inflict fines upon any of its members, and collect the same, for breach of the provisions of the constitution or by-laws; but no fine shall in any case exceed twenty-five dollars. Such fines may be collected by action of debt, brought in the name of the corporation, before the municipal court, against the person upon whom the fine shall

have been imposed. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 708; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

CHANGE OF NAME

The name and jurisdiction of the justice of the peace court was changed to the municipal court to conform to act Feb. 17, 1909.

§ 29-308. What business to be carried on.

Such corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management and conduct of boards of trade or chambers of commerce and is provided for in sections 29-301 to 29-307. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 709.)

Chapter 4.—INSTITUTIONS OF LEARNING

Sec.

- 29-401. Organization — Certificate — Contents — Recording.
- 29-402. Incorporation—Signers—Body politic and corporate—Powers.
- 29-403. Corporate powers.
- 29-404. Property to be held for purposes of education.
- 29-405. Application of funds.
- 29-406. Donations, devises, or bequests for particular purposes may be accepted.
- 29-407. Quantity of land which may be held.
- 29-408. Excess holdings of lands to revert on failure of corporation to dispose of same.
- 29-409. Officers.
- 29-410. Treasurer—Bond required.
- 29-411. Annual statement—Content.
- 29-412. Process against corporation.
- 29-413. Quo warranto.
- 29-414. Incorporation fee.
- 29-415. License to confer degrees—Issuance by Board of Education—Evidence required.
- 29-416. Application for license—Recordation—Use of public school personnel authorized.
- 29-417. Revocation of license—Hearing before Board of Education—Review.
- 29-418. Title of institution not to imply official connection with government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.
- 29-419. Penalties.

§ 29-401. Organization — Certificate — Contents — Recording.

Any five or more persons desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, a certificate in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated:

First. The name or title by which the institution shall be known in law;

Second. The number of trustees, directors, or managers, and their names;

Third. The particular branch of literature and science, or either of them, proposed to be taught; and,

Fourth. If the institution is to be of the rank of a college or university, the number and designation of the professorships to be established. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 574.)

CROSS REFERENCES

Gallaudet College, see § 31-1025 et seq.
Medical and dental colleges, see § 31-901 et seq.
Religious schools, see § 29-512.

NOTES TO DECISIONS

1. Definitions

Institutions of learning within the meaning of this section are organizations of a permanent nature where instruction is given only in the higher branches of education, and which owe their origin to private or public munificence, and are established not for private gain but for the public good. *Chicago Business College v. Payne* (20 App. D. C. 606).

§ 29-402. Incorporation—Signers—Body politic and corporate—Powers.

Upon filing such certificate, the persons signing and acknowledging the same and their successors and associates shall be a body politic and corporate, by the name and style stated in the certificate, and by that name and style shall have perpetual succession, with power to sue and be sued, plead and be impleaded; to acquire, hold, and convey property in all lawful ways; to have and use a common seal, and to alter and change the same at pleasure; to make and alter, from time to time, such by-laws not inconsistent with the Constitution of the United States or the laws in force in the District as they may deem necessary for the government of the institution, and to confer upon such persons as may be considered worthy such academical or honorary degrees as are usually conferred by similar institutions. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 575.)

CROSS REFERENCES

Abandonment or readjustment of streets and highways to provide land, see § 7-113.

Conveyances of real estate, formal requisites, see § 45-302.

Other provisions as to conferring of degrees, see § 29-415.

Quo warranto proceedings questioning right to corporate rights and franchises, see § 29-413.

§ 29-403. Corporate powers.

Such corporation shall be competent in law and equity to take to themselves, in their corporate name, real, personal, or mixed property by gift, grant, bargain and sale, conveyance, will, devise, or bequest of any person whomsoever, and to grant, bargain, sell, convey, demise, let, place out at interest, or otherwise dispose of the same for the use of the institution, in such manner as shall seem most beneficial thereto. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 576.)

NOTES TO DECISIONS

Power to confer degrees 1

Tax exemption 2

1. Power to confer degrees

There is nothing in these sections which says that the corporation thus formed shall have the power to confer degrees, or admit its members to degrees, or to issue to its members a certificate pertaining to degrees. *National Assn. of Certified Public Accountants v. United States* (1923, 292 F. 668, 53 App. D.C. 391).

2. Tax exemption

A corporation organized under these sections is entitled to exemption from real and personal property tax under statute exempting property that is used for educational purposes. *District of Columbia v. Mt. Vernon Seminary* (1939, 100 F. 2d 116, 69 App. D.C. 251).

§ 29-404. Property to be held for purposes of education.

Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of themselves or of any contributor to the endowment thereof. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 577.)

NOTES TO DECISIONS**1. Use of property and income**

All of the property of the plaintiff is used for educational purposes, and though the receipts show a net profit to the institution, yet none of this has gone to the incorporators nor to any contributor to its endowment. *District of Columbia v. Mt. Vernon Seminary* (1939, 100 F. 2d 116, 69 App. D.C. 251).

§ 29-405. Application of funds.

The trustees, directors, or managers of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in erecting or completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps, charts, globes, and philosophical, chemical, and other apparatus necessary to the success of said institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 578.)

§ 29-406. Donations, devises, or bequests for particular purposes may be accepted.

In case any donation, devise, or bequest shall be made for particular purposes, in accordance with the designs of the institution, and the corporation shall accept the same, such donation, devise, or bequest shall be applied in conformity with the express condition of the donor or devisor. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 579.)

§ 29-407. Quantity of land which may be held.

No such corporation shall hold more land at any one time than necessary for the purposes of education, as set forth in its articles of association, unless it shall have received the same by gift, grant, or devise, and in such case the corporation shall be required to sell or dispose of the same within fifteen years from the time the title thereto is acquired. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 580.)

§ 29-408. Excess holdings of lands to revert on failure of corporation to dispose of same.

On failure to so dispose of the land, so much of the same over and above the amount necessary to be used as provided in section 29-407 shall revert to the original donor, grantor, devisor, or their heirs. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 581.)

§ 29-409. Officers.

Such corporation shall have the power to appoint a president or principal for the institution and such professors or servants as may be necessary, and to displace any of them, as the interests of the institution require; to fill vacancies which may happen by death, resignation, or otherwise among such officers or servants, and to prescribe and direct the course of studies to be pursued in the institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 582.)

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-1601 et seq.

§ 29-410. Treasurer—Bond required.

Such corporation may require the treasurer of the institution and all other agents thereof, before entering upon the duties of their appointment, to give bond for the security of the corporation in such sums and with such security as may be deemed sufficient by the corporation. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 583.)

§ 29-411. Annual statement—Content.

It shall be the duty of the trustees of any institution, or a majority of them, to file, on or before the first Monday in January in each year, in the office of the recorder of deeds, who shall index the same, a statement of the trustees and officers of the institution, with an inventory of its property and liabilities and students, and such other information as will exhibit its condition or operation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 584.)

§ 29-412. Process against corporation.

All process against any such corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the president, secretary, or treasurer, or at the office of the corporation at least sixty days before the return day thereof. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 585.)

§ 29-413. Quo warranto.

In case any such corporation shall at any time violate or fail to comply with any of the preceding provisions, upon complaint being made to the United States District Court for the District of Columbia, a writ of quo warranto shall issue, and the United States attorney shall prosecute, in behalf of the people, for a forfeiture of all rights and privileges secured by this chapter to such corporation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 586; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, § 32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U.S. Code, title 28, § 501.

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Quo warranto proceedings generally, see § 16-1601 et seq.

§ 29-414. Incorporation fee.

The fee payable to the recorder of deeds for filing the certificate of incorporation under this chapter shall be \$25. (Mar. 3, 1901, ch. 854, § 586a, as added Mar. 2, 1929, 45 Stat. 1503, ch. 523.)

§ 29-415. License to confer degrees—Issuance by Board of Education—Evidence required.

No institution heretofore or hereafter incorporated under the provisions of this chapter shall have the

power to confer any degree in the District of Columbia or elsewhere, nor shall any institution incorporated outside of the District of Columbia or any person or persons individually or as a partnership or association or otherwise, undertaking to confer any degree, operate in the District of Columbia, unless under and by virtue of a license from the Board of Education of the District of Columbia, which before granting any such license may require satisfactory evidence—

1. That in the case of an individual or any unincorporated group of individuals he, or a majority of them, or in the case of an incorporated institution, a majority of the trustees, directors, or managers of said institution are persons of good repute and qualified to conduct an institution of learning.

2. That any such degree shall be awarded only after such quantity and quality of work shall have been completed as are usually required by reputable institutions awarding the same degree: *Provided*, That if more than one-half the requirements for any degree are earned by correspondence, or extramural study, such fact shall be conspicuously noted upon the diploma conferred: *Provided further*, That no diploma shall be issued conferring a degree in medicine or any healing art, or in dentistry, for study pursued or work done by correspondence.

3. That applicants for said degree possess the usual high-school qualifications at the time of their candidacy therefor.

4. That considering the number and character of the courses offered, the faculty is of reasonable number and properly qualified, and that the institution is possessed of suitable classroom, laboratory, and library equipment. (Mar. 3, 1901, ch. 854, § 586b, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523.)

CROSS REFERENCES

Commissioners authority to regulate, modify, or eliminate license requirements and promulgate regulations, see § 47-2344, 47-2345.

Medical and dental colleges, see § 31-901 et seq.

§ 29-416. Application for license—Recordation—Use of public school personnel authorized.

Application for the license referred to in section 29-415 shall be in writing upon forms prepared under the direction of the Board of Education, and shall be filed with the secretary of the said board, whose duty it shall be, in case the institution so licensed is incorporated under the laws of the District of Columbia, to forward a copy of said license to the recorder of deeds for the District of Columbia, who shall indorse upon the certificate of incorporation the fact that said license has been issued. The Board of Education is hereby authorized to employ the personnel of the public-school system of the District of Columbia, so far as the same may be necessary, for the proper performance of its duties under sections 29-414 to 29-419, and it shall be the duty of all public officers and bureaus of the federal government concerned with educational matters to render such advice and assistance to the Board of Education as it may from time to time consider necessary or desirable for the better performance of its duties under sections 29-414 to 29-419. (Mar. 3, 1901, ch. 854, § 586c, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523.)

§ 29-417. Revocation of license—Hearing before Board of Education—Review.

A license once issued may be revoked by said Board of Education for noncompliance on the part of any individual or individuals, associations, or incorporated institution so licensed with the provisions of section 29-415. Upon the revocation of any such license it shall be the duty of the secretary of the Board of Education, in the case of an institution incorporated under the laws of the District of Columbia, to forward a copy of the revocation to the recorder of deeds for the District of Columbia, who shall cause a notation to be placed upon the certificate of incorporation to the effect that its authority to confer degrees has been revoked: *Provided, however*, That thirty days' notice shall first have been given to such individual or individuals, association, or to the trustees, directors, or managers of said institutions, with full opportunity to be heard by said Board of Education at either a public or non-public session thereof, as may be desired by such individual or individuals, association, or the institution threatened with revocation of its license, and the evidence upon which said board shall act in the revocation of such license shall be committed to writing under the direction of the board, and upon application therefor a copy thereof furnished to such individual or individuals, association, or the institution whose license has been revoked: *And provided further*, That any party aggrieved by the action of said board in refusing to license or in revoking a license previously granted may have the action of the said Board of Education reviewed by the United States District Court for the District of Columbia at an equity term thereof. (Mar. 3, 1901, ch. 854, § 586d, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 29-418. Title of institution not to imply official connection with Government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.

No institution incorporated under the provisions of this chapter shall use as its title, in whole or in part, the words United States, federal, American, national, or civil service, or any other words which might reasonably imply an official connection with the government of the United States, or any of its departments, bureaus, or agencies, or of the government of the District of Columbia, nor shall any such institutions advertise or claim the power to issue degrees under the authority of Congress or otherwise than under the authority of the license granted to them by the Board of Education as hereinbefore provided. The prohibition in this section contained shall be deemed to include and is hereby declared

applicable to any individual or individuals, association, or incorporation outside of the District of Columbia which shall undertake to do business in the District of Columbia or to confer degrees or certificates therein, and any such individual or individuals, association, or incorporation violating the provisions of this section shall be subject to the penalty hereinafter in section 29-419: *Provided*, That no institution, incorporated prior to April 16, 1934, under the provisions of this chapter, and carrying on its work exclusively in any foreign country with the consent and approval of the government thereof, shall if otherwise entitled to be licensed by the Board of Education, be denied the same solely because of the inclusion in its name and as descriptive of its origin of any of the specific words the use of which is by this section forbidden to incorporations under the provisions of this chapter. (Mar. 3, 1901, ch. 854, § 586e, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523, and amended Apr. 16, 1934, 48 Stat. 592, ch. 143.)

AMENDMENT

1934—Act Apr. 16, 1934, added the proviso. The act purported to amend § 29-415.

§ 29-419. Penalties.

Any person or persons who shall, directly or indirectly, participate in, aid, or assist in the conferring of any degree by any unlicensed individual or individuals, association, or institution, or by any individual or individuals, association, or institution whose license has been revoked, or shall advertise or claim any authority to confer any such degree, except in pursuance of provisions of sections 29-414 to 29-419, or who shall violate the provisions of section 29-418 shall be deemed guilty of a misdemeanor, and upon conviction thereof in the United States District Court for the District of Columbia shall be punished by a fine of not more than \$2,000, or imprisonment for not more than two years, or both. (Mar. 3, 1901, ch. 854, § 586f, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Chapter 5.—RELIGIOUS SOCIETIES

Sec.

- 29-501. Land to be acquired.
- 29-502. Trustees.
- 29-503. Certificate—Verification—Recording.
- 29-504. Trustees or directors—Tenure of office—Vacancies—Rules and regulations—Removal.
- 29-505. Successors of trustees or directors to file certificate.
- 29-506. Failure to elect trustees or directors not to work dissolution.
- 29-507. Corporate powers.
- 29-508. Title vested in trustees or directors.
- 29-509. Conveyances of property—Powers of trustees or directors.
- 29-510. Mortgages.
- 29-511. Upon dissolution property to revert to donors.
- 29-512. Religious schools.

Sec.

- 29-513. Conveyances to religious congregations—Not void for want of trustees.
- 29-514. Procedure for appointment of trustees to receive conveyances.
- 29-515. Suits by trustees.
- 29-516. Limitations on use of land.

§ 29-501. Land to be acquired.

It shall be lawful for the members of any society or congregation in the District, formed for the purpose of religious worship, to receive by gift, devise, or purchase a quantity of land not exceeding an acre, and to erect thereon such houses and buildings and to make such other use of the land and such other improvements thereon as may be deemed necessary for the purposes named, and for the comfort and convenience of the society or congregation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 587.)

NOTES TO DECISIONS

- Purpose abandoned 1
- Secular corporation 2

1. Purpose abandoned

When for practically 20 years, there has been nothing in the nature of a religious society or collective body doing or sustaining the work which it may have been the purpose of the donor to organize, a purely voluntary association, unincorporated and unorganized, cannot be said to have an existence after definitely abandoning the purpose of its creation and ceasing to exercise its functions. *Rose Campbell Mission v. Richardson* (1935, 73 F. 2d 661, 64 App. D.C. 21).

2. Secular corporation

Appropriation for Providence Hospital, a secular corporation created by act of Congress, is not unconstitutional as a law respecting the establishment of religion, regardless of the religious opinion of the members of the corporation. *Bradfield v. Roberts* (1900, 20 S. Ct. 121, 175 U.S. 291, 44 L. Ed. 168).

§ 29-502. Trustees.

Such society or congregation may assume a name, and any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation by the name so assumed, may be elected or appointed according to the rules or discipline governing the church or denomination to which said society or congregation may belong. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 588.)

* CODIFICATION

Act June 26, 1922, 42 Stat. 665, ch. 241, added the words "or directors," following the word "trustees" in the eight sections immediately following, but failed to add them in this section, which says that they "shall" be styled trustees.

CROSS REFERENCES

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-1601 et seq.
Religious schools, see § 29-512.

NOTES TO DECISIONS

1. Society disbanded

When for 17 years the society was disbanded and all its activities at an end, the property reverts to the original donor or his heirs. *Rose Campbell Mission v. Richardson* (1935, 73 F. 2d 661, 64 App. D.C. 21).

§ 29-503. Certificate—Verification—Recording.

The persons elected or appointed as trustees or directors shall immediately thereafter make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and length of time for which

they were elected or appointed, which shall be verified by the affidavit of one of the persons making the same, and shall be filed and recorded in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 589; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

§ 29-504. Trustees or directors—Tenure of office—Vacancies—Rules and regulations—Removal.

The trustees or directors shall hold office during the period stated in their certificates, and vacancies in the office of trustee may be filled by election or appointment as above provided, and rules and regulations may be adopted in relation to the management of the estate and the duties of trustees or directors, or for their removal from office, in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws in force in the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 590; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees" wherever it appears.

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-1601 et seq.

§ 29-505. Successors of trustees or directors to file certificate.

At the expiration of the term of service of any of the trustees or directors one or more successors may be elected or appointed, and a certificate of their appointment or election shall be made, verified, filed, and recorded as provided hereinbefore. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 591; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

§ 29-506. Failure to elect trustees or directors not to work dissolution.

A failure to elect or appoint trustees or directors at the proper time shall not work a dissolution of the society or congregation; but the trustees or directors last elected or appointed shall be considered as in office until another election or appointment shall take place. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 592; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees" wherever it appears.

§ 29-507. Corporate powers.

Such trustees or directors and their successors shall have perpetual succession and existence, and shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whatsoever, in and by the name and style assumed as hereinbefore provided. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 593; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

NOTES TO DECISIONS

1. Action by trustees

Under this chapter relating to incorporation of religious societies, action by trustees of church to recover church property could be brought in name of trustees and was not required to be brought in corporate name of church. *Stevenson v. Reed* (D. C. Mun. App. 1953, 96 A. 2d 268).

§ 29-508. Title vested in trustees or directors.

The title to land authorized to be purchased and to buildings and improvements thereon shall be vested in the trustees or directors by their assumed name and their successors forever, and the same shall be held for the uses and purposes named and no other. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 594; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

§ 29-509. Conveyances of property—Powers of trustees or directors.

The trustees or directors shall have power, under the direction of the society or congregation, or the authority by whom they were elected or appointed, to sell and execute deeds and conveyances of the property authorized to be held by the society or congregation; and such deeds or conveyances shall have the same effect as like deeds or conveyances made by natural persons; but no deed or conveyance shall be made so as to defeat or destroy the interest or effect of any grant, donation, or bequest and all grants, donations, and bequests shall be appropriated and used as directed by the person making the same. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 595; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

CROSS REFERENCE

Conveyances of real estate, see formal requisites, § 45-302.

§ 29-510. Mortgages.

The trustees or directors shall have power under the direction of the society or congregation, or the authority by whom they were elected or appointed, to execute mortgages, or deeds of trust in the nature of mortgages, upon the estate and property which any society or congregation are authorized to hold or to lease the same for a term not exceeding ten years; and such mortgages, deeds, and conveyances shall have the same effect and be enforced by the same remedies and proceedings as like mortgages, deeds, leases, and conveyances made by natural persons. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 596; June 26, 1922, 42 Stat. 665, ch. 241.)

AMENDMENT

1922—Act June 26, 1922, inserted the words "or directors" after the word "trustees."

§ 29-511. Upon dissolution property to revert to donors.

Upon the dissolution of any society or congregation the estate and property of such society or congregation shall revert back to the persons, their heirs, and

assigns who may have given or contributed to the purchase of or payment for the same, according to their respective rights. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 597.)

NOTES TO DECISIONS

1. Application

Whether the dissolution is the result of an agreement on the part of the former members or is accomplished by abandonment and nonuser, the statute applies and in either case the property reverts. *Rose Campbell Mission v. Richardson* (1935, 73 F. 2d 661, 64 App. D.C. 21).

§ 29-512. Religious schools.

The provisions of sections 29-501 to 29-511 are intended to extend to members of societies formed to establish and maintain private schools for religious purposes, but shall not be construed as conferring privileges or any benefits to such societies under the school laws of the District. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 598.)

§ 29-513. Conveyances to religious congregations—Not void for want of trustees.

Where any conveyance or devise of real estate is made for the use and benefit of any religious congregation as a place of public worship, such conveyance or devise shall not be void or frustrated by reason of the want of trustees to take and hold the same in trust, but trustees may be appointed as provided in section 29-514. (R. S., D. C., § 453.)

§ 29-514. Procedure for appointment of trustees to receive conveyances.

When such conveyance or devise is made whether by the intervention of trustees or not the United States District Court for the District of Columbia shall, on application of the United States attorney, on behalf of the authorities of any such congregation, have power to appoint trustees, originally, when there are none, or to substitute others, from time to time, in cases of death, refusal, or neglect to act, removal from the District, or other inability to execute the trust beneficially and conveniently; and the legal title shall thereupon become exclusively vested in the whole number of the trustees and their successors. (R.S., D.C., § 454; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Other provisions concerning rights and duties of surviving trustees, see § 18-606.

§ 29-515. Suits by trustees.

A majority of the acting trustees for any such congregation may sue and be sued in their own names, in relation to the title, possession, or enjoyment of such property, without abatement by the death of any of the trustees, or substitution of others; and the action or suit may be prosecuted to its final termination in the names of the trustees by or against whom the same was instituted, and all other proceedings

had in relation thereto, in like manner as if such death or substitution had not occurred. (R. S., D. C., § 455.)

NOTES TO DECISIONS

1. In general

Under statute relating to incorporation of religious societies, action by trustees of church to recover church property could be brought in name of trustees and was not required to be brought in corporate name of church. *Stevenson v. Reed* (D. C. Mun. App. 1953, 96 A. 2d 268).

§ 29-516. Limitations on use of land.

Land authorized to be conveyed and held subsequent to June 17, 1844, and prior to May 5, 1870, for the uses of any religious congregation, in quantity not exceeding fifty acres, if in the District outside of the cities of Washington and Georgetown, nor exceeding three acres, if in either of said cities, shall not be held by the trustees of such congregation for any other use than as a place of public worship, religious or other instruction, burial-ground, or residence of their minister. (R. S., D. C., § 456.)

Chapter 6.—CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS

Sec.

29-601. Formation—Certificate—Contents.

29-602. Formation—Signers incorporated—Powers—Taxation of property.

29-603. Trustees, directors, and managers.

29-604. Reincorporation—Extension of time of corporate existence—Change of name.

29-605. Property—Power to lease, mortgage, sell—Proceeds.

29-606. Name of corporation.

§ 29-601. Formation—Certificate—Contents.

Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—

First. The name or title by which such society shall be known in law.

Second. The term for which it is organized, which may be perpetual.

Third. The particular business and objects of the society.

Fourth. The number of its trustees, directors, or managers for the first year of its existence. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 599.)

CROSS REFERENCES

Eleemosynary, curative, correctional, and penal institutions, see title 32.

Gallaudet College, see § 31-1025 et seq.

Medical and dental colleges, see § 31-901 et seq.

Religious schools, see § 29-512.

NOTES TO DECISIONS

Abandonment of purpose 2
Decisions under prior laws 1
De facto corporations 3
Health association 4
Hospital 5
Object of organization 6
Power to confer degree 7
Proof of corporate existence 8

1. Decisions under prior laws

When a Federal right, as the right to incorporate a fraternal organization under act May 5, 1870, 16 Stat. 98, ch. 80, was held by a State court to have been lost by subsequent conduct, that of itself involves no Federal question, and the Supreme Court may not examine the decision unless the State court in substance is denying the right. *Creswill v. Grand Lodge K. of P.* (1912, 32 S. Ct. 822, 225 U.S. 246, 56 L. Ed. 1074).

Where a lodge or fraternal organization was organized in Georgia in 1864, and incorporated under act May 5, 1870, 16 Stat. 98, ch. 80, complying with the statute in all respects, membership in which was limited to white males, it was estopped by laches from contesting the incorporation in the District of Columbia of an organization similar in name, organized by Negroes in Mississippi in 1880, in Georgia in 1886, and application made in the District of Columbia in 1889. *Id.*

White fraternal order incorporated under State law was not entitled to injunction against Negro order, organized under this act, in view of laches and acquiescence. *Ancient Egyptian Arabic Order v. Michaux* (1929, 49 S. Ct. 485, 279 U.S. 737, 73 L. Ed. 931).

The South Carolina subordinate lodge of a grand lodge organized under act May 1870, 16 Stat. 98, ch. 80, in the District of Columbia could not be held to account for a judgment against the Georgia division of the same lodge. *Washington v. King* (1931, 157 S.E. 613, 159 S. Car. 431).

2. Abandonment of purpose

A purely voluntary religious association, unincorporated and unorganized, cannot be said to have an existence after definitely abandoning the purpose of its creation and ceasing to exercise its functions. *Rose Campbell Mission v. Richardson* (1935, 73 F. 2d 661, 64 App. D.C. 21).

3. De facto corporations

To establish a corporation as de facto is all that is necessary to enable it to maintain an action against any one, other than the State, who has contracted with the corporation, or done it a wrong. *Baltimore & P. R. Co. v. Fifth Baptist Church* (1890, 11 S. Ct. 185, 137 U.S. 568, 34 L. Ed. 784).

4. Health association

Group health association is a "relief association, not conducted for profit." *Jordan v. Group Health Assn.* (1940, 107 F. 2d 329, 71 App. D.C. 38).

Group health is in fact and in function a consumer cooperative, the functions of such an organization are not identical with those of insurance or indemnity companies and the latter are concerned primarily, if not exclusively, with risk and the consequences of its descent. *Id.*

A group of individuals might incorporate themselves for their own mutual benefit and such corporation, not for profit but for the mutual benefit of its members, is not engaged in practice of medicine when they contracted with members of medical profession. *Group Health Assn. v. Moor* (1938, 24 F. Supp. 445).

5. Hospital

Even if it be a fact that the appellee is incorporated as a charitable corporation and even if judicial notice could be taken that it is so incorporated, this would not conclude the question whether or not it is a charity. *White v. Central Dispensary & Emergency Hosp.* (1938, 99 F. 2d 355, 69 App. D.C. 122, 119 A.L.R. 1002).

6. Object of organization

Object for which a corporation is organized is to be determined from what is stated in its certificate of incorporation and its constitution and bylaws. *Vanderbilt v. Com. Int. Rev.* (C.C.A. 1, 93 F. 2d 360).

A corporation cannot deny its purposes as those set forth in its charter. *Better Business Bureau of Washington, D. C. v. District Unemployment Compensation Board* (D.C. Mun. App. 1943, 34 A. 2d 614).

7. Power to confer degrees

Claiming the right to confer degrees a right in the articles of incorporation does not confer such power. "It might have taken less than the section gave but not more." *National Assn. of Certified Public Accountants v. United States* (1923, 292 F. 668, 53 App. D.C. 391).

Corporation organized under this section has no power to confer degrees. *Id.*

8. Proof of corporate existence

To prove the existence of a corporation under act May 5, 1870, 16 Stat. 99, ch. 80, § 2, a recorder's copy of the certificate of incorporation, acknowledgment, and affidavit was sufficient, together with a record of an action in which the corporation recovered judgment against the defendant without objection of capacity to sue. *Baltimore & P.R. Co. v. Fifth Baptist Church* (1890, 11 S. Ct. 185, 137 U.S. 568, 34 L. Ed. 784).

§ 29-602. Formation—Signers incorporated—Powers—Taxation of property.

Upon filing their certificates the persons who shall have signed and acknowledged the same and their associates and successors shall be a body politic and corporate, by the name stated in such certificate; and by that name they and their successors may have and use a common seal, and may alter and change the same at pleasure, and may make by-laws and elect officers and agents, and may take, receive, hold, and convey real and personal estate necessary for the purposes of the society as stated in their certificate, and other real and personal property the income from which shall be applied to the purposes of such society: *Provided, however,* That this section shall not be construed to exempt any property from taxation in addition to that specifically exempted by law. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 600; Apr. 20, 1932, 47 Stat. 87, ch. 121.)

AMENDMENT

1932—Act Apr. 20, 1932, substituted "income from which shall be applied to the purposes of such society" for "clear annual income from which shall not exceed in value \$25,000."

CROSS REFERENCES

Abandonment or readjustment of streets and highways to provide lands, see § 7-113.

Conveyances of real estate, formal requisites, see § 45-302.

Quo warranto proceedings questioning rights to corporate rights and franchises, see § 16-1601 et seq.

NOTES TO DECISIONS

Group Health Association 1
Real estate, tax exemption 2
Social Security, tax exemption 3
Tax exemption
Real estate 2
Social security 3

1. Group Health Association

Appellee Group Health Association, organized as non-profit cooperation, was not an insurance company. *Jordan v. Group Health Assn.* (1940, 107 F. 2d 329, 71 App. D.C. 38).

2. Tax exemption—Real estate

In order to qualify under statute exempting real estate belonging to educational institutions from taxation in District of Columbia, institution must render service which relieves District of Columbia of burden it otherwise might assume. *Washington Chapter of American Institute of Banking v. District of Columbia* (1953, 203 F. 2d 68, 92 U.S. App. D.C. 139).

3. — Social security

In ascertaining whether a corporation organized under § 29-601 relating to benevolent, charitable, educational, and similar corporations was exempt from District of Columbia Unemployment Compensation Act, § 46-301, said section must be considered but said section cannot be conclusive in face of specific objects selected by corporation for inclusion in its charter. *Better Business Bureau of Washington, D. C. v. District Unemployment Compensation Board* (D.C. Mun. App. 1943, 34 A. 2d 614).

A corporation, whose object in part, as indicated by its charter, was for the mutual welfare, protection, and improvement of business methods among merchants and for

protecting the interests of certain classes of businesses to enable them to profitably conduct their business, was not exempt as organized exclusively for "educational or scientific purposes" from District of Columbia Unemployment Compensation Act, § 46-301, notwithstanding corporation's purposes were to be accomplished by educational methods. *Id.*

§ 29-603. Trustees, directors and managers.

Such incorporated society may elect its trustees, directors, or managers at such time and place and in such manner as may be specified in its bylaws, who shall have the control and management of the affairs and funds of the society, and a majority of whom shall be a quorum for the transaction of business, unless a less number be specified as a quorum in the bylaws; and whenever any vacancy shall happen in such board of trustees, directors, or managers the vacancies shall be filled in such manner as shall be provided by the bylaws of the society. The bylaws of a society incorporated under the provisions of this chapter may provide that stockholders, if the same be a stock corporation, or members or delegates, if the same be not a stock corporation, may vote by proxy or by mail. The bylaws may restrict such method of voting to the election of trustees, directors, or managers, or to other matters specified in the bylaws, and may prescribe the form or forms of proxy or of mail ballot to be used and the procedure to be followed in the casting and recording of such votes. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 601; June 10, 1930, 46 Stat. 538, ch. 439; Nov. 30, 1945, 59 Stat. 588, ch. 497; Aug. 7, 1946, 60 Stat. 882, ch. 781.)

AMENDMENTS

1946—Act Aug. 7, 1946, authorized bylaws to provide for voting by proxy or by mail, to restrict such method of voting and to prescribe the form of ballot.

1945—Act Nov. 30, 1935, inserted in the first sentence "unless a less number be specified as a quorum in the bylaws" and deleted therefrom the proviso reading "Provided, That any society formed only for religious or missionary purposes may provide in its by-laws for a less number than a majority of its trustees to constitute a quorum."

1930—Act June 10, 1930, added to the first sentence the proviso reading "Provided, That any society formed only for religious or missionary purposes may provide in its by-laws for a less number than a majority of its trustees to constitute a quorum".

CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, see § 16-1601 et seq.

NOTES TO DECISIONS

1. Suit by United States

The United States, as *parens patriae*, has authority to bring action on behalf of unknown beneficiaries of Foundation organized as charitable corporation under District of Columbia law to cancel its trustees' transfers of shares of building corporation's stock owned by Foundation and require return of such shares to Foundation by transferees. *United States v. Mount Vernon Mortgage Corp.* (1955, 128 F. Supp. 629, affirmed 236 F. 2d 724, 98 U.S. App. D.C. 429, certiorari denied 77 S. Ct. 386, 352 U.S. 988, 1 L. Ed. 2d 367).

§ 29-604. Reincorporation—Extension of time of corporate existence—Change of name.

Any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation incorporated under the provisions of this chapter, including societies formed for mutual improvement, may reincorporate or may continue

the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of continuance of corporate existence, or may change its name by the written consent of two-thirds of its trustees or directors or other governing board, which consent in the case of a stock corporation shall be accompanied by the written consent of the owners of two-thirds of the capital stock of the corporation. A certificate that such consent or consents have been duly given, containing the original name and the new name of the corporation, if the same has been changed, and the term of corporate existence as continued shall be subscribed and acknowledged by the president or vice-president and by the secretary or assistant secretary of such corporation, and shall be filed with such consent or consents in the office of the recorder of deeds, to be recorded by him. Upon the filing of such certificate all the rights, powers, property, and effects of such existing corporation subject to existing liabilities shall vest in and belong to the corporation so reincorporated, continued, or renamed. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 602; Mar. 3, 1905, 33 Stat. 1012, ch. 1445.)

AMENDMENT

1905—Act Mar. 3, 1905, amended section to read as set out in the text. Prior to the amendment the section read as follows: "The trustees, directors, or stockholders of any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation, including societies formed for mutual improvement, may, by conforming to the requirements herein, reincorporate themselves, or continue their existing corporate powers under this chapter, or may change their name, stating in their certificate the original name of such corporation as well as their new name assumed; and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued."

NOTES TO DECISIONS

1. Consolidation with another organization

Bill praying for appointment of receiver for church corporation was dismissed for lack of equity where the acts complained of, such as the sale of the church property, consolidation with another organization, and change of name, were done by the duly elected trustees of the corporation. *Schooley v. Dimmick* (1926, 13 F. 2d 956, 56 App. D.C. 350).

§ 29-605. Property—Power to lease, mortgage, sell—Proceeds.

Any property of the corporation may be leased, encumbered by mortgage or deed of trust in the nature of a mortgage, or sold and conveyed absolutely, when authorized by a vote of the majority of the shares of stock, if the same be a stock corporation, or by a vote of the majority of the directors, managers, or trustees, if the same be not a stock corporation, at a meeting called for the purpose, the proceedings of which meeting shall be duly entered in the records of the corporation, and the proceeds arising therefrom shall be applied or invested for the use and benefit of such corporation. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 603.)

CROSS REFERENCE

Conveyances of real estate, formal requisites, see § 45-302.

§ 29-606. Name of corporation.

The provisions of this chapter shall not extend or apply to any corporation, association, or individual who shall in the certificate filed with the recorder of deeds use or specify a name or style the same as that of any other incorporated body in the District. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 604; June 30, 1902, 32 Stat. 533, ch. 1329.)

REFERENCES IN TEXT

In the original "this chapter" refers to chapter 18 of act Mar. 3, 1901, ch. 854, which includes sections 574—797. For distribution of sections 574—797 in the Code, see Tables.

AMENDMENT

1902—Act June 30, 1902, struck out the syllable "sub" before chapter, and inserted after the word "any," the word "corporation."

Chapter 7.—DISSOLUTION

Sec.

- 29-701. Dissolution—Voluntary—Application to District Court.
- 29-702. Contents of application.
- 29-703. Order to appear—Notice.
- 29-704. Reference to take testimony.
- 29-705. Decree of dissolution.
- 29-706. Receiver—Bond required.
- 29-707. Receiver to be vested with corporate property.
- 29-708. Receiver to collect assets—Notice of appointment of receiver—Presentation of claims.
- 29-709. Transactions and judgments confessed after petition filed—Void.
- 29-710. Receiver—Arbitration of controversies—Executive contracts—Insurance.
- 29-711. Surplus assets—Distribution to creditors.
- 29-712. Surplus assets—Dividends to stockholders.
- 29-713. Receiver—Under court's direction—Compensation.
- 29-714. Dissolution before capital stock paid in or investments made.
- 29-715. Trustees for creditors and stockholders.
- 29-716. Actions not to abate—Judgments.
- 29-717. Proceedings in corporate name for use of others.
- 29-718. Suits after dissolution—Process.
- 29-719. Involuntary dissolution—Suit of the United States—Petition—Order to show cause.
- 29-720. Answer of corporation—Verification.
- 29-721. Pleading.
- 29-722. Trial—Decree of forfeiture—Appointment of receiver.
- 29-723. Ex parte proceeding after default in pleading.
- 29-724. Final decree—Power to withhold pending remedy of grievance.
- 29-725. Injunction against assuming corporate franchise or transacting business not authorized by charter.
- 29-726. Involuntary dissolution at the suit of creditors.
- 29-727. Injunction against transferring assets—Receiver.
- 29-728. Parties defendant in creditor's suit.
- 29-729. Account and distribution.

§ 29-701. Dissolution—Voluntary—Application to District Court.

When a majority of the trustees, directors, or other officers having the management of the concerns of any corporation in the District, or stockholders representing not less than one-third of the capital stock of any such corporation, discover that the property and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands against it or offer a reasonable security to those who deal with it, or they shall deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such directors, trustees, or other officers are authorized by a majority of the stockholders to apply for a decree,

as hereinafter provided, or when the objects of the corporation have wholly failed or are entirely abandoned or are impracticable, they may apply to the United States District Court for the District of Columbia by petition for the dissolution of said corporation. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 768; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCES

Dissolution by sale of all assets, see § 29-240.

Involuntary dissolution, see § 29-719 et seq.

NOTES TO DECISIONS

1. Cessation of business

"A corporation does not cease to exist through the discontinuance of its business, merely, though ceasing to maintain its active organization, or by becoming hopelessly insolvent." *Fields v. United States* (27 App. D. C. 433, dismissed 27 S. Ct. 543, 205 U.S. 292, 51 L. Ed. 807). See also, *Brown v. Delafield & Baxter Cement Co.* (1 App. D. C. 232).

§ 29-702. Contents of application.

Such application shall contain a statement of the reasons upon which it is founded, and there shall be annexed thereto—

First. A full, just, and true inventory of all the estate, real and personal, of the corporation, and of all the books, vouchers, and securities relating thereto.

Second. A full, just, and true account of the capital stock of the corporation, specifying the names of the stockholders, their residences, when known, the number of shares belonging to each, the amounts paid in upon said shares, respectively, and the amounts still due thereon.

Third. A statement of all the incumbrances on the property of the corporation and of all the engagements entered into by it which have not been fully satisfied or canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, the sum owing to each creditor and the nature and consideration of the indebtedness, and such application shall be verified by affidavit. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 769.)

NOTES TO DECISIONS

1. Voluntary liquidation

A voluntary liquidation and dissolution of a solvent company together with appointment of receivers and reference to the auditor as provided by law was not ultra vires, illegal or void. *Tryson v. Southern Realty Corp.* (1921, 274 F. 135, 51 App. D.C. 55).

§ 29-703. Order to appear—Notice.

On the filing of such application, accounts, inventories, and affidavit, an order shall be passed requiring all persons interested in said corporation to appear in said court and show cause by a day named, if any they have, why it should not be dissolved, and a notice of said order shall be published in some newspaper of general circulation weekly for three

successive weeks, the first insertion to be not less than one month before the day fixed for showing cause as aforesaid. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 770.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-704. Reference to take testimony.

Whether answer be made or not, the cause shall be referred to the auditor, who shall take testimony in relation to the allegations of the petition, and report to the court, with all convenient speed, with a statement of the property and effects, debts, credits, and engagements of the corporation and all other matters relative to the issues in said cause. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 771.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-705. Decree of dissolution.

If it appear to the court that the corporation is insolvent, or that a dissolution thereof would be beneficial to the stockholders and not injurious to the public interests, or that the objects of the corporation have wholly failed or been abandoned or are impracticable, a decree shall be entered dissolving the corporation and appointing one or more receivers of its estate and effects; and the corporation shall thereupon be dissolved and cease to exist. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 772.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-706. Receiver—Bond required.

A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver, and any receiver so appointed shall give bond in such penalty, and with such surety or sureties, as may be approved by the court, conditioned for the due discharge of his duties as receiver. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 773.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-707. Receiver to be vested with corporate property.

Upon his giving surety as aforesaid the receiver shall be vested with all the estate, real or personal, of the corporation, for the benefit of its creditors and stockholders. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 774.)

NOTES TO DECISIONS

1. Stockholders union with receiver

As insurance company was solvent, and no stockholder, as far as the record shows, personally united with the receivers in their attack upon the sale, the court refused to set it aside. *Tryson v. Southern Realty Corp.* (1921, 274 F. 135, 51 App. D.C. 55).

§ 29-708. Receiver to collect assets—Notice of appointment of receiver—Presentation of claims.

The said receiver shall proceed to collect and take into his possession all the assets and effects of the corporation, including any sums due and unpaid upon the subscriptions to the capital stock of the corporation, and shall have authority to institute all needful actions for that object. He shall give public notice of his appointment and require all creditors of the corporation to present their claims to him. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 775.)

§ 29-709. Transactions and judgments confessed after petition filed—Void.

All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, of said corporation, including choses in action of every description, made after the filing of the petition for dissolution, in payment of or as security for any existing or prior debt, or for any other consideration, and all judgments confessed by said corporation after that time, shall be void as against the receiver appointed on said petition and as against the creditors of the corporation. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 776.)

§ 29-710. Receiver—Arbitration of controversies—Executory contracts—Insurance.

The receiver may settle controversies that arise between him and the debtors or creditors of the corporation by arbitration. If there be any open and subsisting engagements or contracts of the corporation in the nature of insurance, or contingent engagements of any kind, the receiver may, with the consent of the party holding such engagements, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to the corporation, or so much thereof as shall be in the same proportion to the time which remains of any risk assumed by such engagements as the whole premium bears to the whole term of such risk; and upon such amount being paid by the receiver to the person holding such engagement it shall be deemed canceled and discharged as against the receiver. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 777.)

§ 29-711. Surplus assets—Distribution to creditors.

The receiver may retain out of the money in his hands the amounts necessary for the purpose of canceling and discharging any open and subsisting engagements and of satisfying any demands for which a suit may be pending against the corporation and the costs of the proceeding, and distribute the residue among the creditors of the corporation,

giving preference to debts which are liens on the property of the corporation, and shall make dividends from time to time among the creditors until their debts are paid in full. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 778.)

§ 29-712. Surplus assets—Dividends to stockholders.

No dividends shall be paid to stockholders until after the final dividend to the creditors, and if, after such final dividend is made, there remain any surplus in the receiver's hands, he shall distribute the same among the stockholders in proportion to the respective amounts paid in by them severally on their shares of stock. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 779.)

§ 29-713. Receiver—Under court's direction—Compensation.

The receiver shall be subject to the direction of the court as to making dividends and rendering his accounts and shall receive such commission as the court shall allow, not exceeding the rate allowed to executors and administrators, and reasonable counsel fees for services rendered to him. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 780.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-714. Dissolution before capital stock paid in or investments made.

When a majority of the directors, trustees, or other officers of a corporation become satisfied that the objects of the corporation can not be accomplished, and no instalment of the capital stock has been paid, and no investments have been made and no debts incurred which are unpaid, they may call a meeting of the stockholders, by a notice published in some newspaper of general circulation, and if a majority, in amount, of the stockholders present at such meeting, in person or by proxy, shall decide that the objects of the corporation can not be accomplished, the corporation shall thereupon be dissolved and cease. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 781.)

§ 29-715. Trustees for creditors and stockholders.

Upon the dissolution of a corporation by the expiration of its charter, or otherwise, unless other persons be appointed by the stockholders, directors, or trustees of the corporation, or by a decree of the United States District Court for the District of Columbia, the directors or trustees acting last before the dissolution, and their survivors, shall be the trustees for the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the same, to collect its assets and pay its outstanding debts, and divide among its stockholders the money or other property remaining, in proportion to the stock of each stockholder paid up; and in case of the refusal of said trustees or directors, or a majority of them, to act, the said court may, upon the application of any person interested, appoint

trustees in their place. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 782; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 29-716. Actions not to abate—Judgments.

No action pending in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether such dissolution occur by the expiration of its charter or otherwise, but all such actions may be prosecuted to final judgment in its corporate name; and on all judgments so obtained, whether before or after its dissolution, execution may be had and satisfaction enforced in such corporate name. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 783.)

CROSS REFERENCE

Abatement and revivor in general, see § 12-101 et seq.

NOTES TO DECISIONS

1. Suits against dissolved corporations

A foreign corporation doing business in the District which had been dissolved by its chartering state, could not be sued in the District after dissolution since local statutes preserve litigation only as to local corporations and the chartering state did not preserve such litigation. *Sedgwick v. Beasley* (1949, 173 F. 2d 918, 84 U.S. App. D.C. 325).

§ 29-717. Proceedings in corporate name for use of others.

A corporation may, after its dissolution, prosecute any action in and by its corporate name, for the use of the person or persons entitled to receive the proceeds of such action, upon any cause of action accrued, or which, but for such dissolution, would have accrued in favor of the corporation, in the same manner and with the like effect as if it had not been dissolved. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 784.)

§ 29-718. Suits after dissolution—Process.

Any such dissolved corporation may be sued by its corporate name for or upon any cause of action accrued or which, but for such dissolution, would have accrued against it in the same manner and with the like effect as if it were not dissolved; and process in such action may be served upon any one of the assignees, trustees, or receivers having the management of the assets of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 785.)

CROSS REFERENCE

Abatement and revivor in general, see § 12-101 et seq.

NOTES TO DECISIONS

Service of summons 1
Suit in corporate name 2
Suits against dissolved corporations 3

1. Service of summons

Question is whether summons was served upon an officer, agent, or employee of the corporation which may be raised by a motion to quash the service of summons in the case. *Bloedorn v. Washington Times Co.* (1937, 89 F. 2d 835, 67 App. D.C. 91).

2. Suit in corporate name

Action was properly brought against company in its corporate name even though it had been lawfully dissolved. *Lyman v. Knickerbocker Theatre Co.* (1925, 5 F. 2d 538, 55 App. D.C. 323).

3. Suits against dissolved corporations

A foreign corporation doing business in the District which had been dissolved by its chartering state, could not be sued in the District after dissolution since local statutes preserve litigation only as to local corporations and the chartering state did not preserve such litigation. *Sedgwick v. Beasley* (1949, 173 F. 2d 918, 84 U.S. App. D.C. 325).

§ 29-719. Involuntary dissolution—Suit of the United States—Petition—Order to show cause.

Whenever the United States attorney for the District of Columbia shall become satisfied that any corporation organized under the laws of said District has been guilty of such misuse, abuse, or nonuser of its corporate powers and franchises, or such violation of law as would authorize and make proper the forfeiture of its charter, corporate powers, and franchises, the said United States attorney shall file in the United States District Court for the District of Columbia a petition in the name of the United States setting forth, fully and in detail, the alleged abuse, misuse, or nonuser by reason whereof such forfeiture is sought, which petition shall be supported by affidavits of credible persons; and upon the filing of such petition the said court shall lay a rule requiring such defendant corporation to show cause, within such time as the court may deem proper, why a decree should not issue as prayed in said petition, a copy of which rule and petition shall be served on said corporation by a day therein limited. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 786; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, § 32(b) eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney of the United States and "district attorney." See U.S. Code, title 28, § 501.

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCES

Dissolution upon second conviction of operating a bucket-shop, see § 22-1510.

Voluntary dissolution, see §§ 29-701 to 29-714.

NOTES TO DECISIONS

Failure to pay license tax 1
Parties 2

1. Failure to pay license tax

"A charter of incorporation is not ipso facto abrogated or annulled by failure to pay a license tax, notwithstanding that the statute may provide that such failure shall work a forfeiture." *Ohio Bank v. Central Constr. Co.* (17 App. D. C. 524).

2. Parties

Statute providing in part that whenever District Attorney of District of Columbia should become satisfied that any corporation organized under laws of District had been guilty of such misuse of its powers as would make proper the forfeiture of its charter, district attorney should file petition in district court in name of United

States for rule to show cause why forfeiture should not be granted, requires that proceeding be initiated by United States District Attorney, and afforded no remedy to one who sought to revoke charter of bar association by reason of its alleged misuse. *United States ex rel. Robinson v. Bar Ass'n of District of Columbia* (1952, 197 F. 2d 408, 91 U.S. App. D.C. 3).

§ 29-720. Answer of corporation—Verification.

The said corporation, by the day named in said order, unless further time be granted by the court, shall file an answer to said petition, fully setting forth all the defenses upon which it intends to rely in resisting the application, which shall be verified by affidavit of some officer of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 787.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-721. Pleading.

The petitioners may thereupon plead to or traverse all or any of the material averments set forth in the answer, and the defendant shall join issue with or demur to said plea or traverse within five days thereafter. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 788.)

FEDERAL RULES OF CIVIL PROCEDURE

Generally, U.S. Code, title 28, Appendix.

§ 29-722. Trial—Decree of forfeiture—Appointment of receiver.

If issue or issues be joined on such proceedings, the same shall stand for trial at such time as the court shall direct and shall be tried by a jury if either party desire it; otherwise, they shall be heard and determined by the court. If, from the findings of the jury or upon consideration and determination of the case by the court, the court shall be of opinion that legal cause of forfeiture has been shown and the public interests require that said forfeiture shall be declared, a decree of forfeiture shall be entered and the charter of said corporation shall thereby be annulled and vacated and its corporate franchises and powers shall cease and be void; and the court shall thereupon appoint a receiver or receivers of the assets and estate of said corporation, who shall proceed to wind up the affairs of said corporation, for the benefit of its creditors and stockholders, under the direction of the court. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 789.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-723. Ex parte proceeding after default in pleading.

If any corporation upon which a petition and rule to show cause shall have been served as aforesaid, shall neglect to file an answer thereto at the time appointed by the court, the court shall proceed to

hear the application ex parte within five days thereafter, and if it shall be of opinion that good cause of forfeiture is shown it shall proceed to decree as provided in section 29-722. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 790.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-724. Final decree—Power to withhold pending remedy of grievance.

If the court, either upon a hearing ex parte or after answer, shall be of opinion that no cause of forfeiture is shown or that the public interests do not demand that such forfeiture be decreed, though legal cause therefor has been shown, it shall dismiss the petition. And if the court shall determine that legal cause of forfeiture has been shown, it may, in its discretion, before passing a final decree of forfeiture, pass orders requiring the said corporation, within a time to be therein fixed, to remedy the grievance complained of, and may suspend the passage of the final decree of forfeiture until the time so fixed, and may afterwards refuse to pass such decree if the grievance shall have been remedied by the time so fixed. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 791.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 29-725. Injunction against assuming corporate franchise or transacting business not authorized by charter.

The United States attorney may file a bill in the name of the United States in said United States District Court for the District of Columbia for the purpose of restraining by injunction any corporation organized under the laws of the District from assuming or exercising any franchise, liberty, or privilege or transacting any business not allowed by its charter or certificate of incorporation or not by law allowed to be assumed or exercised by said corporation, and said United States attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations; and in the same manner may file a bill to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law; and on the filing of any such bill the said United States District Court for the District of Columbia shall have power to issue an injunction as prayed and to exercise all the powers of a court of equity over the subject-matter of such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 793;

June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1902—Act June 30, 1902, inserted after the word "corporation" the second time it appears the words "and said district attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations."

CHANGE OF NAME

Act June 25, 1948, § 32 (b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1 eff. Sept. 1, 1948, substituted "United States Attorney" for "district attorney." See U.S. Code, title 28, § 501.

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCES

Quo warranto proceedings questioning rights to corporate rights as franchises, see § 16-1601 et seq.

Restraining doing business upon second conviction of operating a bucket-shop, see § 22-1510.

NOTES TO DECISIONS

1. Unauthorized degrees

This section declares that the district attorney may file a bill in the name of the United States in the Supreme Court of the District and it applies to corporations giving degrees when not authorized. *National Assn. of C. P. A. v. United States* (1923, 292 F. 668, 53 App. D.C. 391).

§ 29-726. Involuntary dissolution at the suit of creditors.

When any corporation in the District has remained insolvent for a year, or has neglected or refused for that period to pay and discharge its notes or other evidences of debt, or has, for that period, suspended its ordinary and lawful business, a bill may be filed by the United States attorney, as aforesaid, for the dissolution of said corporation, or, if he shall decline to do so, on the application of any judgment creditor of said corporation, the said judgment creditor, if an execution upon his judgment shall be returned unsatisfied, in whole or in part, may file such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 794; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "district attorney." See U.S. Code, title 28, § 501.

NOTES TO DECISIONS

District tax claims 1 Sufficiency of bill 2

1. District tax claims

District of Columbia Revenue Act provision giving priority to District for unpaid gross sales taxes against a taxpayer in bankruptcy before all claimants of whatsoever kind or nature and making penalties and interest a prior and preferred claim gives District a priority in whatever local insolvency proceedings are instituted where bankrupt person or corporation involved is not eligible to become a bankrupt under the Bankruptcy Act. *District of Columbia v. Greenbaum, trustee etc.* (1955, 223 F. 633, 96 U.S. App. D.C. 168).

2. Sufficiency of bill

A bill for a receivership of an insurance company, asking for a dissolution, may be sufficient to invoke the

court's general equity jurisdiction, though not for a statutory dissolution. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (1940, 111 F. 2d 497, 71 App. D.C. 276).

§ 29-727. Injunction against transferring assets—Receiver.

Upon prima facie proof of the facts necessary to sustain such suit the court may issue an injunction restraining the corporation, its trustees, directors, and officers from collecting or receiving any debt or demand and from paying out or transferring or delivering to any person any of its property or effects and from exercising any of its corporate rights and franchises during the pendency of the suit, unless by permission of the court. And at any stage of the proceeding the court may appoint a receiver to collect and preserve the property of the corporation and dispose of and manage the same, under the direction of the court, until final decree in the cause. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 795.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

NOTES TO DECISIONS

Collateral attack 1
Discretion of court 2

1. Collateral attack

Where a receiver for a life insurance company had been appointed, and a representative of policyholders subsequently instituted a second proceeding for a dissolution, and asking another receiver, on the ground that the court had exceeded its jurisdiction in appointing the first receiver, the second proceeding was an arbitrary exercise of discretion, as the assets had been liquidated, and only distribution remained to be made, and an unwarranted collateral attack. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (1940, 111 F. 2d 497, 71 App. D.C. 276).

2. Discretion of court

The provision for the appointment of a receiver in dissolution proceedings is not mandatory, and the appointment is at the court's discretion. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (1940, 111 F. 2d 497, 71 App. D.C. 276).

§ 29-728. Parties defendant in creditor's suit.

Where the action is brought by a creditor, the stockholders, directors, trustees, or other officers, or any of them who may be made liable by law for the payment of the complainant's debt, may be made parties defendant by the original or a supplemental bill, and their liability may be declared and enforced by the decree; but nothing herein shall prevent any creditor from enforcing such liability in a separate suit against such parties. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 796.)

FEDERAL RULES OF CIVIL PROCEDURE

Pleadings and motions, see Rule 7 et seq., U.S. Code, title 28, Appendix.

§ 29-729. Account and distribution.

In such suit, if the court shall be of opinion that the complainant is entitled to the relief prayed, and that such corporation ought to be dissolved, the court shall cause an account to be taken of the assets and debts of the corporation and shall decree an equal

distribution of the assets among the creditors, subject to existing liens; but if said corporation has no property to satisfy its creditors, or to the extent to which its property is insufficient therefor, the court may require the stockholders, who are parties defendant to the suit, to pay into court the amounts due and unpaid on the shares of stock held by them, and shall ascertain the amounts properly chargeable, in favor of creditors, to said stockholders and the trustees, directors, or other officers who are parties to the suit, and in the final decree for the dissolution shall adjudge and decree that said amounts shall be paid into court by the parties respectively liable therefor, to be applied to the payment of the debts of the corporation. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 797.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

Chapter 8.—COOPERATIVE ASSOCIATIONS

Sec.

- 29-801. Definitions.
- 29-802. Who may incorporate.
- 29-803. Purposes for which incorporated.
- 29-804. Powers of association.
- 29-805. Articles of incorporation—Contents.
- 29-806. Filing and recordation of articles—Fees—Effect of certificate.
- 29-807. Amendments of articles—Fee.
- 29-808. By-laws—Adoption, amendment, or repeal.
- 29-809. Contents of by-laws.
- 29-810. Meetings—Regular and special.
- 29-811. Notice of meetings.
- 29-812. Meetings by units of the membership.
- 29-813. Voting—One member, one vote.
- 29-814. Proxy voting prohibited.
- 29-815. Voting by mail.
- 29-816. Application of voting provisions to voting by mail.
- 29-817. Application of voting provisions to voting by delegates.
- 29-818. Directors.
- 29-819. Officers.
- 29-820. Removal of directors and officers.
- 29-821. Referendum on acts of directors.
- 29-822. Limitations upon the return on capital.
- 29-823. Eligibility and admission to membership.
- 29-824. Subscribers.
- 29-825. Share and membership certificates—Issuance and contents.
- 29-826. Transfer of shares and membership—Withdrawal.
- 29-827. Share and membership certificates—Recall.
- 29-828. Share and membership certificates—Attachment.
- 29-829. Liability of members.
- 29-830. Expulsion of members—Procedure—Purchase of holdings.
- 29-831. Allocation and distribution of net savings.
- 29-832. Bonding of officers and employees.
- 29-833. Books—Auditing.
- 29-834. Annual report of association.
- 29-835. Notice of delinquent reports—Mandamus.
- 29-836. Dissolution—Methods—Procedure.
- 29-837. Penalties—Unauthorized use of name "cooperative"—Existing cooperatives.
- 29-838. Promotion expenses—Limitations—Penalty.
- 29-839. Spreading false reports—Penalty.
- 29-840. Existing cooperative groups—Acceptance of act.
- 29-841. Foreign corporations and associations—Admission to do business.
- 29-842. Legality declared—Not in restraint of trade.
- 29-843. Laws not applicable.

Sec.

29-844. Taxation—Annual license fee.

29-845. Separability of provisions.

29-846. Reservation of right to amend or repeal.

29-847. Short title.

§ 29-801. Definitions.

In this chapter unless the subject-matter requires otherwise—

(1) "Association" means a group enterprise legally incorporated under this chapter, and shall be deemed to be a nonprofit corporation.

(2) "Member" means not only a member in a nonshare association but also a member in a share association.

(3) "Net savings" means the total income of an association minus the costs of operation.

(4) "Savings returns" means the amount returned to the patrons in proportion to their patronage or otherwise in accordance with the provisions of section 29-831 herein.

(5) "Cooperative basis" as applied to any incorporated or unincorporated group referred to in sections 29-804 (7), 29-813, 29-823, 29-837, 29-840, and 29-841 herein means—

(a) that each member has one vote and only one vote, except as may be altered in the articles or by-laws by provision for voting by member organizations;

(b) that the maximum rate at which any return is paid on share or membership capital is limited to not more than 8 per centum per annum;

(c) that the net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specifically permitted by statute, articles, or by-laws, or allocated or distributed to member patrons, or to all patrons, in proportion to their patronage; or retained by the enterprise, for the actual or potential expansion of its services or the reduction of its charges to the patrons, or for other purposes not inconsistent with its nonprofit character. (June 19, 1940, 54 Stat. 480, ch. 397, § 1.)

§ 29-802. Who may incorporate.

Any five or more natural persons or two or more associations may incorporate in the District of Columbia under this chapter. (June 19, 1940, 54 Stat. 481, ch. 397, § 2.)

§ 29-803. Purposes for which incorporated.

An association may be incorporated under this chapter to engage in any one or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type or types of property, commodities, goods, or services for the primary and mutual benefit of the patrons of the association (or their patrons, if any) as ultimate consumers. (June 19, 1940, 54 Stat. 481, ch. 397, § 3.)

§ 29-804. Powers of association.

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted by this chapter and also—

(1) To continue as a corporation for the time specified in its articles;

(2) To have a corporate seal and to alter the same at pleasure;

(3) To sue and be sued in its corporate name;

(4) To make by-laws for the government and regulation of its affairs;

(5) To acquire, own, hold, sell, lease, pledge, mortgage, or otherwise dispose of any property incident to its purposes and activities;

(6) To own and hold membership in and share capital of other associations and any other corporations, and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;

(7) To borrow money, contract debts, and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(8) To conduct its affairs within or without the District of Columbia;

(9) To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent with this chapter;

(10) To exercise all powers not inconsistent with this chapter which may be necessary, convenient, or expedient for the accomplishment of its purposes, and, to that end, the foregoing enumeration of powers shall not be deemed exclusive. (June 19, 1940, 54 Stat. 481, ch. 397, § 4.)

NOTES TO DECISIONS

Collateral attack 1
Powers 2

1. Collateral attack

A collateral attack upon the creation and existence of a cooperative, and alleged want of capacity to own and dispose of real estate can only be asserted by the state and not by parties to a private dispute. *Glennon v. Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

2. Powers

Cooperative associations are specifically authorized to acquire, own, hold, sell, lease, pledge, mortgage or otherwise dispose of any properties incident to their purposes and activities. *Glennon v. Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

§ 29-805. Articles of incorporation—Contents.

Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them if natural persons, and by the presidents and secretaries, if associations, before an officer authorized to take acknowledgments.

Within the limitations of this chapter the articles shall contain—

(1) A statement as to the purpose or purposes for which the association is formed;

(2) The name of the association which shall include the word "cooperative";

(3) The term of existence of the association which may be perpetual;

(4) The location and address of the principal office of the association;

(5) The names and addresses of the incorporators of the association;

(6) The names and addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) A statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) If organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value thereof which may be placed at any figure, and the rights, preferences, and restrictions of each type of share;

(9) The minimum number or value of shares which must be owned in order to qualify for membership; if organized without shares, a statement of whether the property rights of members shall be equal or unequal, and if unequal, the rule by which their rights shall be determined;

(10) The maximum amount or percentage of capital which may be owned or controlled by any member; including a statement of whether or not each member shall be limited to a single share, and whether such single shares shall be of various par values;

(11) The method by which any surplus, upon dissolution of the association, shall be distributed, in conformity with the requirements of section 29-836 herein for division of such surplus.

The articles may also contain any other provisions not inconsistent with law or with this chapter, for the conduct of the association's affairs. (June 19, 1940, 54 Stat. 481, ch. 397, § 5.)

§ 29-806. Filing and recordation of articles—Fees—Effect of certificate.

The articles shall be delivered to the recorder of deeds. If he finds that the articles conform to law, he shall file the same upon the payment of a fee of \$5, and he shall record the same, upon payment of a fee of \$1. Said fees shall be in lieu of any other fees or payments provided in section 45-708, or in any other section of the Code of Laws of the District of Columbia, to be paid for at the time of said filing; and the last paragraph of section 45-708 shall have no application to associations organized under this chapter. After such filing and recording, he shall issue a certificate of incorporation, whereupon the corporate existence shall begin. Such certificate shall be conclusive evidence of the fact that the corporation has been duly incorporated. This shall not preclude the institution of quo warranto proceedings under sections 16-601 to 16-611. The filing or recording of the articles or of amendments thereto, or of any other papers pursuant to this chapter is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but no person or incorporated or unincorporated group dealing with the association shall be charged with constructive notice of the contents of any such articles or papers by reason of such filing or recording. (June 19, 1940, 54 Stat. 482, ch. 397, § 6.)

§ 29-807. Amendments of articles—Fee.

Amendments to the articles may be proposed by a two-thirds vote of the board of directors, or by petition of 10 per centum of the association's members. Notice of the meeting to consider such amendment shall be sent by the Secretary at least thirty days in advance thereof to each member at his last-known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt said amendment and when verified by the

president and secretary, it shall be filed and recorded with the recorder of deeds within thirty days of its adoption, and a fee of \$1 shall be paid.

If the amendment is to alter the preferences of outstanding shares of any type, or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning such outstanding shares affected by the change shall also be required for the adoption of the amendment; if the amendment is to alter the rule by which members' property rights in a nonshare association are determined, a vote of two-thirds of the entire membership shall be required.

The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment. (June 19, 1940, 54 Stat. 483, ch. 397, § 7.)

§ 29-808. By-laws—Adoption, amendment, or repeal.

By-laws shall be adopted, amended, or repealed by at least a majority vote of the members voting. (June 19, 1940, 54 Stat. 483, ch. 397, § 8.)

§ 29-809. Contents of by-laws.

The by-laws may, within the limitations of this chapter provide for—

(1) The method and terms of admission to membership and the disposal of members' interests on cessation of membership for any reason;

(2) The time, place, and manner of calling and conducting meetings;

(3) The number or percentage of the members constituting a quorum;

(4) The number, qualifications, powers, duties, term of office, and manner, time, and vote for election, of directors and officers; and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) The compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) The method of distributing the net savings;

(7) The various discretionary provisions of this chapter as well as other provisions incident to the purposes and activities of the association. (June 19, 1940, 54 Stat. 483, ch. 397, § 9.)

§ 29-810. Meetings—Regular and special.

Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within thirty days after such demand. Regular or special meetings, including meetings by units as hereinafter provided, may be held within or without the District of Columbia as the articles may prescribe. (June 19, 1940, 54 Stat. 483, ch. 397, § 10.)

§ 29-811. Notice of meetings.

The secretary shall give notice of the time and place of meetings by sending a notice thereof to

each member at his last-known address not less than the number of days in advance of the meeting specified in the by-laws. In case of a special meeting, the notice shall specify the purpose for which such meeting is called. (June 19, 1940, 54 Stat. 483, ch. 397, § 11.)

§ 29-812. Meetings by units of the membership.

The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes there cast to the central meeting, or for a method of representation by the election of delegates to the central meeting, or for a combination of both such methods. (June 19, 1940, 54 Stat. 484, ch. 397, § 12.)

§ 29-813. Voting—One member, one vote.

Each member of an association shall have one and only one vote, except that where an association includes among its members any number of other associations or groups organized on a cooperative basis the voting rights of such member associations or groups may be as prescribed in the articles or by-laws.

No voting agreement or other device to evade the one-member-one-vote rule shall be enforceable at law or in equity. (June 19, 1940, 54 Stat. 484, ch. 397, § 13.)

§ 29-814. Proxy voting prohibited.

No member shall be permitted to vote by proxy. (June 19, 1940, 54 Stat. 484, ch. 397, § 14.)

§ 29-815. Voting by mail.

The articles or by-laws may provide for either or both of the following types of voting by mail:

(1) That the secretary shall send to the members a copy of any proposal scheduled to be offered at a meeting, together with the notice of said meeting, and that the mail votes cast by the members shall be counted together with those cast at the meeting if such mail votes are returned to the association within a specified number of days;

(2) That the secretary shall send to any member absent from a meeting an exact copy of the proposal acted upon at the meeting, and that the mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at said meeting.

The articles or by-laws may also determine whether and to what extent mail votes shall be counted in computing a quorum. (June 19, 1940, 54 Stat. 484, ch. 397, § 15.)

§ 29-816. Application of voting provisions to voting by mail.

If an association has provided for voting by mail, any provision of this chapter referring to votes cast by the members shall be construed to include the votes cast by mail. (June 19, 1940; 54 Stat. 484, ch. 397, § 16.)

§ 29-817. Application of voting provisions to voting by delegates.

If an association has provided for voting by delegates any provision of this chapter referring to votes cast by the members shall apply to votes cast by

delegates; but this shall not permit delegates to vote by mail. (June 19, 1940, 54 Stat. 484, ch. 397, § 17.)

§ 29-818. Directors.

An association shall be managed by a board of not less than five directors, who shall be elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association and shall hold office until their successors are elected, or until removed. Vacancies in the board of directors, otherwise than by removal or expiration of term, shall be filled in such manner as the by-laws may provide.

The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

An executive committee of the board of directors may be elected in such manner and with such powers and duties as the articles or by-laws may prescribe.

Meetings of directors and of the executive committee may be held within or without the District of Columbia. (June 19, 1940, 54 Stat. 484, ch. 397, § 18.)

§ 29-819. Officers.

The officers of an association shall include a president, one or more vice-presidents, a secretary and a treasurer, or a secretary-treasurer. The officers shall be elected annually by the directors unless the by-laws otherwise provide. The president and at least one vice-president must be directors, but no other officer need be a director. (June 19, 1940, 54 Stat. 485, ch. 397, § 19.)

§ 29-820. Removal of directors and officers.

A director or officer may be removed with or without cause, by a vote of two-thirds of the members voting at a regular or special meeting. The director or officer involved shall have an opportunity to be heard at said meeting. A vacancy caused by any such removal shall be filled by the vote provided in the by-laws for election of directors. (June 19, 1940, 54 Stat. 485, ch. 397, § 20.)

§ 29-821. Referendum on acts of directors.

The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 per centum of all the members or by vote of at least a majority of the directors: *Provided, however,* That the rights of third parties which have vested between the time of such action, and such referendum shall not be impaired thereby. (June 19, 1940, 54 Stat. 485, ch. 397, § 21.)

§ 29-822. Limitations upon the return on capital.

The return upon capital shall not exceed 6 per centum per annum upon the paid-up capital and shall be noncumulative.

Total return upon capital distributed for any single period shall not exceed 50 per centum of the net savings for that period. (June 19, 1940, 54 Stat. 485, ch. 397, § 22.)

§ 29-823. Eligibility and admission to membership.

Any natural person, association, incorporated, or unincorporated group organized on a cooperative basis, or any nonprofit group, shall be eligible for membership in an association if it has met the qualifications for eligibility, if any, stated in the articles or by-laws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership. (June 19, 1940, 54 Stat. 485, ch. 397, § 23.)

§ 29-824. Subscribers.

Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether, and the conditions under which, any voting rights or other rights of membership shall be granted to subscribers. (June 19, 1940, 54 Stat. 485, ch. 397, § 24.)

§ 29-825. Share and membership certificates—Issuance and contents.

No certificate for share or membership capital shall be issued until the par value thereof has been paid for in full. There shall be printed upon each certificate issued by an association a full or condensed statement of the requirements of sections 29-813, 29-814, and 29-826 herein. (June 19, 1940, 54 Stat. 485, ch. 397, § 25.)

§ 29-826. Transfer of shares and membership—Withdrawal.

If a member desires to withdraw from the association or dispose of any or all of his holdings therein, the directors shall have the power to purchase such holdings by paying him the par value of any or all of the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

If the association fails, within sixty days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when such purchase can be made without jeopardizing the solvency of the association. (June 19, 1940, 54 Stat. 485, ch. 397, § 26.)

§ 29-827. Share and membership certificates—Recall.

The by-laws may give the directors the power to use the reserve funds to recall, at par value, the holdings of any member in excess of the amount requisite for membership; and may also provide that if any member has failed to patronize the association during a period of time specified in the by-laws, the directors may use the reserve funds to recall all his holdings and thereupon he shall cease to be a mem-

ber of the association. When so recalled, such certificates of share or membership capital shall be either reissued or canceled. (June 19, 1940, 54 Stat. 485, ch. 397, § 27.)

§ 29-828. Share and membership certificates—Attachment.

The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed \$50, shall be exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to such liability, the directors of the association may either admit the purchaser thereof to membership, or may purchase from him such holdings at par value. (June 19, 1940, 54 Stat. 485, ch. 397, § 28.)

§ 29-829. Liability of members.

Members shall not be jointly or severally liable for any debts of the association, nor shall a subscriber be so liable except to the extent of the unpaid amount on the shares or membership certificate subscribed by him. No subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid up. (June 19, 1940, 54 Stat. 486, ch. 397, § 29.)

§ 29-830. Expulsion of members—Procedure—Purchase of holdings.

A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least ten days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient reserve funds. (June 19, 1940, 54 Stat. 486, ch. 397, § 30.)

§ 29-831. Allocation and distribution of net savings.

At least once a year the members and/or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) Not less than 10 per centum shall be placed in a reserve fund until such time as the fund shall equal at least 50 per centum of the paid-up capital; and such fund may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so, in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of section 29-836 herein;

(2) A return upon capital, within the limitations of section 29-822, may be paid upon share capital, or, if the by-laws so provide, upon the membership capital certificates of a nonshare association; but such return upon capital may be paid only out of the

surplus of the aggregate of the assets over the aggregate of the liabilities (including in the latter the amount of the capital stock) after deducting from such aggregate of the assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

(3) A portion of the remainder, as determined by the articles or by-laws, shall be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(4) The remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage: *Provided, That—*

(a) in the case of a member patron, his proportionate amount of savings returns shall be distributed to him unless he agrees that the association should credit the amount to his account toward the purchase of an additional share or shares, or additional membership capital;

(b) in the case of a subscriber patron, his proportionate amount of savings returns may, as the articles or by-laws provide, be distributed to him, or credited to his account until the amount of capital subscribed for has been fully paid;

(c) in the case of a nonmember patron, his proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon request and presentation of evidence of the amount of their patronage. Any savings return so allocated shall be credited to such patron toward payment of the minimum amount of share or membership capital necessary for membership. When a sum equal to this amount has accumulated at any time within a period of time specified in the by-laws, such patron shall be deemed and become a member of the association if he so agrees or requests, and complies with any provisions in the by-laws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him.

(d) if within any periods of time specified in the articles or by-laws, (1) any subscriber has not accumulated and paid in the amount of capital subscribed for; or (2) any nonmember patron has not accumulated in his individual account the sum necessary for membership; or (3) any nonmember patron has accumulated the sum necessary for membership but neither requests nor agrees to become a member, or fails to comply with the provisions of the by-laws, if any, for admission to membership, then the amounts so accumulated or paid in and any part of the general fund for nonmember patrons which has not been allocated to individual nonmember patrons shall go to the educational fund and thereafter no member or other patron shall have any rights in said paid-in capital or accumulated savings returns as such: *Provided further, That* nothing in this section shall prevent an association under this chapter which is engaged in rendering services from disposing of the net savings from the rendering of such services in such manner as to lower the fees charged for services or otherwise to further the common benefit of the members: *And*

provided further, That nothing in this section shall prevent an association from adopting a system whereby the payment of savings returns which would otherwise be distributed, shall be deferred for a fixed period of months or years; nor from adopting a system, whereby the savings returns distributed shall be partly in cash, partly in shares, such shares to be retired at a fixed future date, in the order of their serial number or date of issue. (June 19, 1940, 54 Stat. 486, ch. 397, § 31.)

§ 29-832. Bonding of officers and employees.

Every individual acting as officer or employee of an association and handling funds or securities amounting to \$1,000 or more, in any one year, shall be covered by an adequate bond as determined by the board of directors, and at the expense of the association; and the by-laws may also provide for the bonding of other employees or officers. (June 19, 1940, 54 Stat. 486, ch. 397, § 32.)

§ 29-833. Books—Auditing.

To record its business operation, every association shall keep a set of books, which shall be audited at the end of each fiscal year by an experienced book-keeper or accountant, who shall not be an officer or director. Where the annual business amounts to less than \$10,000, the audit may be performed by an auditing committee of three, who shall not be directors, officers, or employees. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with nonmembers, the balance sheet, and the income and expenses, shall be submitted to the annual meeting of the association. (June 19, 1940, 54 Stat. 488, ch. 397, § 33.)

§ 29-834. Annual report of association.

Every association shall annually, within sixty days of the close of its operations for that year, make a report of its condition, sworn to by the president and secretary, which report shall be filed with the recorder of deeds. The report shall state—

(a) The name and principal address of the association.

(b) The names, addresses, occupations, and date of expiration of the terms, of the officers and directors, and their compensation, if any.

(c) The amount and nature of its authorized, subscribed, and paid-in capital, the number of its shareholders, and the number admitted and withdrawn during the year, the par value of its shares and the rate at which any return upon capital has been paid. For nonshare associations the annual report shall state the total number of members, the number admitted or withdrawn during the year, and the amount of membership fees received.

(d) The receipts, expenditures, assets, and liabilities of the association.

A copy of this report shall be kept on file at the principal office of the association.

Any person who shall subscribe or make oath to such report containing a materially false statement, known to such person to be false, shall upon conviction of such offense be punished by a fine of not less than \$25 nor more than \$200, or by imprisonment of not less than thirty days nor more than one

year, or both such fine and imprisonment. (June 19, 1940, 54 Stat. 488, ch. 397, § 34.)

§ 29-835. Notice of delinquent reports—Mandamus.

If an association fails to make such report within the required period of sixty days, the recorder of deeds shall within sixty days from the expiration of said period send such association a registered letter directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within sixty days from the mailing of such notice, any member of the association or the United States attorney for the District of Columbia may by petition for mandamus against the association and its proper officers compel such filing to be made, and in such case the court shall require the association or the officers at fault to pay all the expenses of the proceeding including counsel fees. (June 19, 1940, 54 Stat. 488, ch. 397, § 35.)

§ 29-836. Dissolution—Methods—Procedure.

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. By a vote of a majority of the members voting three of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, and shall distribute them in the manner set forth in this section. A suit for involuntary dissolution of an association organized under this chapter may be instituted for the causes and prosecuted in the manner set forth in sections 29-719 to 29-724, 29-726 to 29-729: *Provided*, That any distribution of assets shall be in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order: (1) By paying its debts and expenses; (2) by returning to the members the par value of their shares or of their membership certificates, returning to the subscribers the amounts paid on their subscriptions, and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and (3) by distributing any surplus in either or both of the following ways as the articles may provide—

(a) Among those patrons who have been members or subscribers at any time during the past six years, on the basis of their patronage during that period;

(b) As a gift to any consumers' cooperative association or other nonprofit enterprise which may be designated in the Articles. (June 19, 1940, 54 Stat. 489, ch. 397, § 36.)

§ 29-837. Penalties—Unauthorized use of name "cooperative"—Existing cooperatives.

Only (1) associations organized under this chapter, (2) groups organized on a cooperative basis under any other law of the District of Columbia, and (3) foreign corporations operating on a cooperative basis and authorized to do business in the District of Columbia under this or any other law of the District of Columbia shall be entitled to use the term "cooperative," or any abbreviation or derivation thereof, as part of their business name, or to represent them-

selves, in their advertising or otherwise, as conducting business on a cooperative basis.

Any person, firm, or corporation violating the above provision shall upon conviction of such offense be punished by a fine of not less than \$25 nor more than \$200, with an additional fine of not more than \$200 for each month during which a violation occurs after the first month, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. The United States attorney for the District of Columbia, or any individual, or association, or group organized on a cooperative basis, may sue to enjoin an alleged violation of this section.

Should a court of competent jurisdiction decide that any person, firm, or corporation using the name "cooperative" prior to this chapter, and not organized on a cooperative basis, is entitled to continue in such use, any such business shall always place immediately after its name the words "does not comply with the cooperative association law of the District of Columbia" in the same kind of type, and in letters not less than two-thirds as large, as those used in the term "cooperative." (June 19, 1940, 54 Stat. 489, ch. 397, § 37; June 25, 1948, 62 Stat. 909, ch. 646, § 1.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for district attorney of the "United States." See U.S. Code, title 28, § 501.

§ 29-838. Promotion expenses—Limitations—Penalty.

An association shall not, directly or indirectly, use any of its funds, nor issue shares nor incur any indebtedness, for the payment of any compensation for the organization of the association except necessary legal fees; nor for the payment of any promotion expenses in excess of 5 per centum of the amount paid in for the shares or membership certificates involved in the promotion transaction. Any association's officer, director, or agent who gives, or any person, firm, corporation or association which receives such promotion commission in violation of this section shall, upon conviction of such offense, be punished by a fine of not less than \$25, nor more than \$200, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. (June 19, 1940, 54 Stat. 489, ch. 397, § 38.)

§ 29-839. Spreading false reports—Penalty.

Any person, firm, corporation, or association which maliciously and knowingly spreads false reports about the management or finances of any association shall, upon conviction of such offense, be punished by a fine of not less than \$25 and not more than \$200, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. (June 19, 1940, 54 Stat. 490, ch. 397, § 39.)

§ 29-840. Existing cooperative groups—Acceptance of act.

Any group incorporated under another law of the District of Columbia and operating on a cooperative basis or any unincorporated group operating on such a basis in the District of Columbia may elect by a vote of two-thirds of the members voting to secure

the benefits of and be bound by this chapter, and shall thereupon amend such of its articles and by-laws as are not in conformity with this chapter. A certified copy of the amended articles shall be filed and recorded with the recorder of deeds and a fee of \$5 shall be paid. (June 19, 1940, 54 Stat. 490, ch. 397, § 40.)

§ 29-841. Foreign corporations and associations—Admission to do business.

A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state wherein it is organized shall be entitled to do business in the District of Columbia as a foreign cooperative corporation or association. (June 19, 1940, 54 Stat. 490, ch. 397, § 41.)

§ 29-842. Legality declared—Not in restraint of trade.

No association, or method or act thereof which complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily. (June 19, 1940, 54 Stat. 490, ch. 397, § 42.)

§ 29-843. Laws not applicable.

No law of the District of Columbia conflicting or inconsistent with any part of this chapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed hereunder; nor shall any law of the District of Columbia inappropriate to the purposes of such associations be so construed; nor shall any of the provisions of sections 574 through 797, both inclusive, of the Act entitled "An Act to establish a Code of Law for the District of Columbia," approved March 3, 1901, be construed as applicable to associations formed hereunder, except as expressly stated in this chapter. (June 19, 1940, 54 Stat. 490, ch. 397, § 43.)

CODIFICATION

The above reference to the Code of Law for the District is to the 1901 Code, and covers the entire subject of corporations as printed in that Code, including Banks, Cemeteries, Insurance, and other specific purpose corporations.

The sections of the 1901 Code above referred to appear in this Code under the following section numbers:

26-101, 26-102, 26-301 to 26-336, 26-401 to 26-414 (Banking and Other Financial Institutions);

27-101 to 27-128 (Cemeteries and Crematories);

29-101 to 29-103, 29-201 to 29-237, 29-301 to 29-308, 29-401 to 29-419, 29-501 to 29-512, 29-601 to 29-606, 29-701 to 29-729 (Corporations);

35-101 to 35-108, 35-202 to 35-205, 35-901 to 35-917, 35-1001 to 35-1005, 35-1133, 35-1201, 35-1202 (Insurance);

44-101 to 44-103, 44-210 to 44-212 (Railroads and Other Carriers).

§ 29-844. Taxation—Annual license fee.

Associations formed hereunder, and foreign corporations and associations admitted under section 29-841 to do business in the District of Columbia and entitled to the benefits of section 29-837, shall pay an annual license fee of \$10. (June 19, 1940, 54 Stat. 490, ch. 397, § 44.)

§ 29-845. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance shall be held unconstitutional or otherwise invalid for any reason, the validity of the remainder of this chapter

and the application of such provision to other persons or circumstances shall not be affected thereby. (June 19, 1940, 54 Stat. 490, ch. 397, § 45.)

§ 29-846. Reservation of right to amend or repeal.

The Congress reserves the right to alter, amend, or repeal this chapter, or any charter or certificate of incorporation made thereunder. (June 19, 1940, 54 Stat. 491, ch. 397, § 46.)

§ 29-847. Short title.

This chapter may be cited as the "District of Columbia Cooperative Association Act." (June 19, 1940, 54 Stat. 491, ch. 397, § 47.)

Chapter 9.—BUSINESS CORPORATIONS (1954)

Sec.

29-901. Short title.

29-902. Definitions.

29-903. Purposes.

29-904. General powers.

29-904a. Power of corporation to acquire its own shares.

29-904b. Dealing in real estate as corporate purpose.

29-905. Defense of ultra vires.

29-906. Corporate name.

29-906a. Reserved name.

29-907. Registered office and registered agent.

29-907a. Change of registered office or registered agent.

29-907b. Registered agent as an agent for service.

29-908. Authorized shares.

29-908a. Issuance of shares of preferred or special classes in series.

29-908b. Subscriptions for shares.

29-908c. Consideration for shares.

29-908d. Payment for shares.

29-908e. Determination of amount of stated capital.

29-908f. Expenses of organization, reorganization, and financing.

29-908g. Certificates representing shares.

29-908h. Issuance of fractional shares or scrip.

29-908i. Liability of subscribers and shareholders.

29-908j. Shareholders' preemptive rights.

29-909. Bylaws.

29-910. Meetings of shareholders.

29-910a. Notice of shareholders' meetings.

29-911. Voting of shares.

29-912. Closing of transfer books and fixing record date.

29-913. Voting of shares by certain holders.

29-914. Voting trust.

29-915. Quorum of shareholders.

29-916. Board of directors.

29-916a. Number and election of directors.

29-916b. Classification of directors.

29-916c. Vacancies.

29-916d. Quorum of directors.

29-916e. Executive committee.

29-916f. Place of directors' meetings.

29-916g. Notice of directors' meetings.

29-917. Dividends.

29-917a. Dividends in partial liquidation.

29-918. Liability of directors in certain cases.

29-919. Officers.

29-919a. Removal of officers.

29-920. Books and records.

29-921. Incorporators.

29-921a. Articles of incorporation.

29-921b. Filing of articles of incorporation.

29-921c. Effect of issuance of certificate of incorporation.

29-921d. Requirement before commencing business.

29-921e. Organization meeting of directors.

29-921f. Right to amend articles of incorporation.

29-921g. Procedure to amend articles of incorporation before acceptance of subscriptions to shares.

29-921h. Procedure to amend articles of incorporation after acceptance of subscription to shares.

29-922. When entitled to vote by classes.

29-923. Articles of amendment.

29-923a. Filing of articles of amendment.

29-923b. Effect of certificate of amendment.

Sec.

- 29-924. Redemption and cancellation of shares.
- 29-924b. Cancellation of reacquired shares.
- 29-925. Reduction of stated capital in certain cases.
- 29-925a. Reduction of stated capital—Limits—Paid-in surplus.
- 29-926. Reduction of paid-in surplus.
- 29-927. Procedure for merger.
- 29-927a. Procedure for consolidation.
- 29-927b. Meetings of shareholders.
- 29-927c. Approval by shareholders.
- 29-927d. Articles of merger or consolidation.
- 29-927e. Effective date of merger or consolidation.
- 29-927f. Effect of merger or consolidation.
- 29-927g. Merger or consolidation of domestic and foreign corporations.
- 29-927h. Merger of parent corporation and wholly owned subsidiary.
- 29-927i. Rights of dissenting shareholders.
- 29-928. Sale, lease, exchange, or mortgage of assets in usual and regular course of business.
- 29-929. Sale, lease, exchange, or mortgage of assets other than in usual and regular course of business.
- 29-930. Voluntary dissolution of corporation by its incorporators.
- 29-930a. Dissolution by consent of shareholders.
- 29-930b. Dissolution by act of corporation.
- 29-930c. Filing of statement of intent to dissolve.
- 29-930d. Effect of statement of intent to dissolve.
- 29-930e. Proceedings after filing of statement of intent to dissolve.
- 29-930f. Revocation by consent of shareholders of voluntary dissolution proceedings.
- 29-930g. Revocation by act of corporation of voluntary dissolution proceedings.
- 29-930h. Filing of statement of revocation of voluntary dissolution proceedings.
- 29-930i. Effect of statement of revocation of voluntary dissolution proceedings.
- 29-930j. Articles of dissolution.
- 29-930k. Filing of articles of dissolution.
- 29-931. Involuntary dissolution.
- 29-931a. Venue and process.
- 29-931b. Jurisdiction of court to liquidate assets and business of corporation.
- 29-931c. Procedure in liquidation of corporation by court.
- 29-931d. Qualifications of receivers.
- 29-931e. Filing of claims in liquidation proceedings.
- 29-931f. Discontinuance of liquidation proceedings.
- 29-931g. Decree of involuntary dissolution.
- 29-931h. Filing of decree of dissolution.
- 29-931i. Survival of remedy after dissolution.
- 29-932. Annual report of domestic corporation.
- 29-933. Admission of foreign corporation.
- 29-933a. Powers of foreign corporation.
- 29-933b. Corporate name of foreign corporation.
- 29-933c. Change of name by foreign corporation.
- 29-933d. Application for certificate of authority.
- 29-933e. Filing of documents on application for certificate of authority.
- 29-933f. Effect of certificate of authority.
- 29-933g. Registered office and registered agent of foreign corporation.
- 29-933h. Change of registered office or registered agent of foreign corporation.
- 29-933i. Service of process on foreign corporation.
- 29-933j. Amendment to articles of incorporation of foreign corporation.
- 29-933k. Merger of foreign corporation authorized to transact business in the District.
- 29-933l. Amended certificate of authority.
- 29-933m. Annual report of foreign corporations.
- 29-934. Withdrawal of foreign corporation.
- 29-934a. Filing of application for withdrawal.
- 29-934b. Revocation of certificate of authority.
- 29-934c. Issuance of certificate of revocation.
- 29-934d. Effect of revocation or withdrawal upon actions and contracts.
- 29-934e. Application to foreign corporations transacting business on the effective date of this chapter.
- 29-934f. Transacting business without certificate of authority.
- 29-935. Commissioners—Duties and functions.

Sec.

- 29-936. Fees and license taxes, and charges.
- 29-937. Effect of failure to pay annual franchise tax or to file annual report.
- 29-938. Proclamation of revocation.
- 29-938a. Penalty for carrying on business after issuance of proclamation.
- 29-938b. Correction of error in proclamation.
- 29-938c. Reservation of name of proclaimed corporation.
- 29-938d. Reinstatement of proclaimed corporations.
- 29-939. Penalty for failure to file annual report on time.
- 29-940. Penalty for failure to maintain registered office or registered agent.
- 29-941. Effect of nonpayment of fees.
- 29-942. Penalties—Violation or failure a misdemeanor.
- 29-943. Rights and immunities of witnesses.
- 29-944. Monopolies and restraint of trade.
- 29-945. Waiver of notice.
- 29-946. Voting requirements of articles of incorporation.
- 29-947. Informal action by shareholders.
- 29-948. Appeal from Commissioners.
- 29-949. Certificates and certified copies of certain documents.
- 29-950. Unauthorized assumption of corporate powers.
- 29-951. Forms to be furnished by Commissioners.
- 29-952. Reincorporation or incorporation of existing corporations.
- 29-952a. Effect of filing articles of reincorporation or certificates of incorporation.
- 29-953. Transfer of duties of Recorder of Deeds.
- 29-954. Separability of provisions.
- 29-955. Right of repeal reserved.
- 29-956. Appropriation of funds.
- 29-957. Use of certified mail.
- 29-958. Civil actions and prosecutions.

§ 29-901. Short title.

This chapter shall be known and may be cited as the "District of Columbia Business Corporation Act". (June 8, 1954, 68 Stat. 179, ch. 269, § 1.)

EFFECTIVE DATE

Section 146 of act June 8, 1954, provided that "This Act [this chapter] shall take effect one hundred and eighty days after the date of its approval [June 8, 1954], and thereafter no corporation eligible to be formed under this Act [this chapter] shall be incorporated under any other Act or statute now in force in the District of Columbia."

TRANSFER OF FUNCTIONS

Transfer of functions by the Commissioners of the District of Columbia, see note under section 29-935.

§ 29-902. Definitions.

As used in and for the purposes of this chapter, unless the context otherwise requires—

(a) "Corporation" or "domestic corporation", except as used in section 29-953, means a corporation subject to the provisions of this chapter, except a foreign corporation.

(b) "Foreign corporation" means a corporation for profit organized under laws other than the laws of the District of Columbia and special Acts of Congress.

(c) "Articles of incorporation" include the original articles of incorporation and all amendments thereto, and include articles of merger or consolidation.

(d) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(e) "Incorporator" means one of the signers of the original articles of incorporation.

(f) "Shares" are the units into which the shareholders' right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

(g) "Shareholder" means one who is a holder of record of shares in a corporation.

(h) "Authorized shares" means the aggregate number of shares of all classes, whether with or without par value, which the corporation is authorized to issue.

(i) Shares of its own stock belonging to a corporation shall be deemed to be "issued" shares, but not "outstanding" shares.

(j) "Stated capital" means, at any particular time, the sum of (1) the par value of all shares then issued having a par value and (2) the consideration received by the corporation for all shares then issued without par value, except such part thereof as may have been allocated otherwise than to stated capital in a manner permitted by law, and (3) such amounts not included in clauses (1) or (2) of this paragraph as may have been transferred to the stated capital account of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus such formal reductions from said sum as may have been effected in a manner permitted by law.

(k) "Paid-in surplus" means all that part of the consideration received by the corporation for, or on account of, all shares issued which does not constitute stated capital, whether heretofore or hereafter created by (1) the receipt by the corporation, for, or on account of, the issuance of shares having a par value of consideration in excess of the par value of such shares or (2) the allocation of any part of the consideration received by the corporation for, or on account of, the issuance of shares in a manner permitted by law or (3) a reduction of stated capital under this chapter, minus such formal reductions of paid-in surplus as may have been effected in a manner permitted by law.

(l) "Net assets", for the purpose of determining the right of a corporation to purchase its own shares and of determining the right of a corporation to declare and pay dividends and the liabilities of directors therefor, shall not include shares of its own stock belonging to such corporation.

(m) "Registered office" means that office maintained by the corporation, the address of which is on file with the Commissioners.

(n) "Insolvent" means that the corporation is unable to pay its debts as they become due in the usual course of its business.

(o) "State" means any State, Territory, colony, dependency, or possession of the United States of America, or any foreign country.

(p) "Commissioners" means the Commissioners of the District of Columbia or the agent or agents designated by them to perform any function vested in the Commissioners by this chapter. It shall be the duty of the Recorder of Deeds and of any other officer or agency of the Government of the District of Columbia to perform any function delegated to such officer or agency by the Commissioners pursuant to this chapter.

(q) "District" means the District of Columbia.

(r) "The court", except where otherwise specified, means the United States District Court for the District of Columbia. (June 8, 1954, 68 Stat. 179, ch. 269, § 2; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 5.)

AMENDMENT

1954—Par. (p) amended by act Aug. 3, 1954, which added the second sentence relating to the duty of the Recorder of Deeds and other officers and agencies to perform delegated functions.

§ 29-903. Purposes.

Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations: *Provided*, That nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations: *Provided further*, That no corporation may be organized under this chapter unless the place where it conducts its principal business is located within the District of Columbia. (June 8, 1954, 68 Stat. 180, ch. 269, § 3.)

NOTES TO DECISIONS

In general 1
Organization 2
Place of business after organization 3
Retroactive effect 4

1. In general

In determining whether proviso of this section that no corporation may be organized unless the place where it conducts its principal business is located within District prohibits a corporation from conducting business in a city outside of District, court would examine this chapter as a whole. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

2. Organization

Under this section providing that "no corporation may be organized" under this chapter "unless the place where it conducts its principal business is located within the District of Columbia", the word "organized" has relation only to time of incorporation and hence such provision would not prohibit corporation operating professional baseball team from transferring its franchise from District to a city outside of District since the usual meaning of word "organized" when used in relation to corporate structures is in the sense of having been brought into being or created and the word as used in the chapter sounds in praesenti and means the creation of a corporation without reference to the future. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

3. Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

4. Retroactive effect

The proviso of this section that no corporation may be organized under this chapter unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city

outside the District. *Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 267 F. 2d 655, 105 U.S. App. D.C. 378).

The proviso of Business Corporation Act of District of Columbia that no corporation may be organized unless the place where it conducts its principal business is located within District of Columbia did not apply to corporation operating professional baseball team as reincorporated corporation which under old act had power to conduct its principal place of business outside District of Columbia, and though not exercised, the power available by amendment to certificate of corporation was preserved under the Act, and hence proviso would not preclude corporation from transferring its franchise to a city outside the District. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-904. General powers.

Each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(b) To sue and be sued, complain and defend, in its corporate name.

(c) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(d) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

(f) To lend money to, and otherwise assist, its employees, other than its officers and directors.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other corporations organized under the laws of the District of Columbia, of foreign corporations, and of associations, partnerships, or individuals.

(h) To make contracts and incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law; to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(i) To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned.

(j) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter within and without the District of Columbia and to exercise in any State, Territory, district, colony, or possession of the United States, or in any foreign country the powers granted by this chapter, subject to the laws of such State, Territory, District, colony, or possession of the United States, or such foreign country.

(k) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation.

(l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation.

(m) To make contributions to charitable organizations, and, in time of war, to transact any lawful business in aid of the United States.

(n) To cease its corporate activities and surrender its corporate franchise.

(o) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

(p) To indemnify any and all of its directors or officers or former directors or officers or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or officers or a director or officer of the corporation, or of such other corporation, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in such action suit, or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any bylaw, agreement, vote of stockholders, or otherwise. (June 8, 1954, 68 Stat. 180, ch. 269, § 4.)

NOTES TO DECISIONS

1. Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-904a. Power of corporation to acquire its own shares.

A corporation shall have power to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares: *Provided*, That it shall not purchase, either directly or indirectly, its own shares when its net assets are less than the sum of its stated capital, its paid-in surplus, any surplus arising from unrealized appreciation in value or revaluation of its assets and any surplus arising from surrender to the corporation of any of its shares, or when by so doing its net assets would be reduced below such sum. Notwithstanding the foregoing limitations, a corporation may purchase or otherwise acquire its own shares for the purpose of—

(a) eliminating fractional shares;

(b) collecting or compromising claims of the corporation or any indebtedness to the corporation;

(c) paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter;

(d) effecting the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price, but no redemption or purchase of redeemable shares shall be made which will reduce the remaining assets of the corporation below an amount sufficient to pay all debts and known liabilities of the corporation as they mature, except such debts and liabilities as have been otherwise adequately provided for, or which will reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon dissolution. (June 8, 1954, 68 Stat. 181, ch. 269, § 5.)

§ 29-904b. Dealing in real estate as corporate purpose.

A corporation having among its purposes, as set forth in its articles of incorporation, that of acquiring, owning, using, conveying, and otherwise disposing of and dealing in real property or any interest therein, shall have power and authority so to do without limitation. (June 8, 1954, 68 Stat. 182, ch. 269, § 6.)

§ 29-905. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted—

(a) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(b) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(c) in a proceeding by the Commissioners, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Commissioners to enjoin the corporation from the transaction of unauthorized business. (June 8, 1954, 68 Stat. 182, ch. 269, § 7; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 1.)

AMENDMENT

1957—Subsec. (a) amended by act Sept. 2, 1957, which deleted "authorized" from the words "if the authorized acts."

EFFECTIVE DATE OF 1957 AMENDMENT

Section 36 of act Sept. 2, 1957, provided that: "This Act [amending sections 29-905, 29-906a, 29-907a, 29-908a, 29-908g, 29-910a, 29-916g, 29-921b, 29-921f, 29-921g, 29-923a, 29-924, 29-924b, 29-925, 29-927d, 29-927h, 29-928 to 29-930, 29-930c, 29-930h, 29-930k, 29-933e, 29-933h, 29-933i, 29-934 to 29-934c, 29-936, 29-938, 29-941, and 29-952 to 29-953] shall take effect on the thirtieth day after its approval [Sept. 2, 1957]."

§ 29-906. Corporate name.

The corporate name—

(a) shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business in the District of Columbia, or that of any foreign corporation authorized to transact business in the District of Columbia, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter;

(d) shall not indicate, nor shall any statement be made, that the corporation is organized under an Act of Congress. (June 8, 1954, 68 Stat. 183, ch. 269, § 8.)

§ 29-906a. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by—

(1) any person intending to organize a corporation under this chapter or any Act for the organization of a corporation under the laws of the District of Columbia;

(2) any corporation organized under this chapter proposing to change its name;

(3) any corporation organized under any law other than this chapter proposing to reincorporate or incorporate under this chapter;

(4) any foreign corporation intending to make application for a certificate of authority to transact business in the District of Columbia;

(5) any foreign corporation authorized to transact business in the District of Columbia and intending to change its name;

(6) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in the District of Columbia.

(b) The reservation shall be made by filing with the Commissioners an application to reserve a specified corporate name, executed by the applicant. If the Commissioners find that the name is available for corporate use, they shall reserve the same for the exclusive use of the applicant for a period of sixty days.

(c) The right to the exclusive use of a specified corporate name so reserved may be transferred to

any other person or corporation by filing with the Commissioners a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. (June 8, 1954, 68 Stat. 183, ch. 269, § 9; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 2.)

AMENDMENT

1957—Subsec. (a)(3) amended by act Sept. 2, 1957, which inserted the words "or incorporate".

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-907. Registered office and registered agent.

Each corporation shall have and continuously maintain in the District of Columbia—

(a) a registered office which may be, but need not be, the same as its place of business;

(b) a registered agent, which agent may be either an individual resident in the District of Columbia whose business office is identical with such registered office, or a corporation authorized by the articles of incorporation to act as such agent and authorized to transact business in the District of Columbia having a business office identical with such registered office. (June 8, 1954, 68 Stat. 183, ch. 269, § 10.)

NOTES TO DECISIONS

After organization, place of business 2

Place of business 1, 2

After organization 2

1. Place of business

Under this section requiring a corporation to have and continuously maintain in district a registered office which may be but need not be the same as its place of business and a registered agent, Congress intended only that the registered office and registered agent remain in District and did not require that they be at place of business which would imply, so far as events after organization are concerned, that the place of business might be elsewhere than the District. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

2. — after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-907a. Change of registered office or registered agent.

(a) A corporation may change its registered office or change its registered agent, or both, by filing with the Commissioners a statement setting forth—

- (1) the name of the corporation;
- (2) the address, including street and number, if any, of its then registered office;
- (3) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the business office of its registered agent as changed, will be identical; and

(7) that such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the Commissioners. If the Commissioners find that such statement conforms to the provisions of this chapter, they shall:

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(d) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in triplicate, with the Commissioners, who shall forthwith mail one copy thereof to the corporation at its registered office and another copy thereof to the corporation at its principal office in the District as shown on the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs first. No fee or charge of any kind shall be imposed with respect to a filing under this subsection. (June 8, 1954, 68 Stat. 184, ch. 269, § 11; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 3; July 23, 1959, 73 Stat. 239, Pub. L. 86-106, § 1.)

AMENDMENTS

1959—Subsec. (d) added by act July 23, 1959.

1957—Subsec. (b) amended by act Sept. 2, 1957, which inserted "in duplicate" after "executed", struck out "file such statement" at the end of the subsection and added clauses (1)—(3).

EFFECTIVE DATE OF 1959 AMENDMENT

Section 18 of act July 23, 1959, provided that: "This Act [adding sections 29-957, 29-958, and amending sections 29-907a, 29-908a, 29-908g, 29-908i, 29-910a, 29-913, 29-915, 29-916c, 29-918, 29-920, 29-931b, 29-932, 29-933d, 29-933h, 29-933i, and 29-933m] shall take effect on the sixtieth day after the date of its enactment [July 23, 1959]."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-907b. Registered agent as an agent for service.

(a) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or

demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) In the event a corporation shall fail to appoint or maintain a registered agent, then the Commissioners are hereby irrevocably appointed as an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with them duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Commissioners shall be returnable in not less than thirty days.

(c) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. (June 8, 1954, 68 Stat. 184, ch. 269, § 12.)

§ 29-908. Authorized shares.

(a) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, voting powers, special or relative rights and such limitations, restrictions, or qualifications thereof as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting power of the shares of any class.

(b) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes—

(1) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(2) entitling the holders thereof to cumulative or noncumulative dividends;

(3) having preference over any other class or classes of shares as to the payment of dividends;

(4) having preference as to the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(5) convertible into shares of any other class: *Provided*, That shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the

shares without par value are to be converted. (June 8, 1954, 68 Stat. 185, ch. 269, § 13.)

§ 29-908a. Issuance of shares of preferred or special classes in series.

(a) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation: *Provided*, That all shares of the same class shall be identical except as to the following relative rights and preferences, in respect of any or all of which there may be variations between different series:

(1) The rate of dividend, the time of payment and the dates from which dividends on cumulative shares shall be accumulative, and the extent of other participation rights, if any.

(2) The price at and the terms and conditions on which shares may be redeemed.

(3) The amount payable upon shares in event of involuntary liquidation.

(4) The amount payable upon shares in event of voluntary liquidation.

(5) Sinking-fund provisions for the redemption or purchase of shares.

(6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

(7) Any right to vote with holders of shares of any other series or class and any right to vote as a class, either generally or as a condition to specified corporate action.

(b) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section, fix and determine the relative rights and preferences of the shares of any series so established: *Provided*, That such authority of the board of directors shall be subject to such further limitations, if any, as are stated in the articles of incorporation and shall always be subject to the limitation that the board of directors shall not create a sinking fund in respect of any series unless provision for a sinking fund at least as beneficial to all issued and outstanding shares of the same class shall either then exist or be at the same time created.

(c) In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

(d) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file with the Commissioners a statement setting forth—

- (1) the name of the corporation;
 - (2) a copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;
 - (3) the date of adoption of such resolution;
 - (4) that such resolution was duly adopted by the board of directors.
- (e) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all franchise taxes, fees, and charges have been paid as in this chapter prescribed—

- (1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
 - (2) file one of such duplicate originals in their office;
 - (3) return the other duplicate original to the corporation or its representative.
- (f) Upon the filing of such statement by the Commissioners, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective. (June 8, 1954, 68 Stat. 185, ch. 269, § 14; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 4; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 2.)

AMENDMENTS

1959—Subsec. (a) amended by act July 23, 1959, which added to clause (1) the matter starting with "the time of" and added clause (7).

1957—Subsec. (e) (3) added by act Sept. 2, 1957, § 4 (1).

Subsec. (f), formerly (g), so redesignated by act Sept. 2, 1957, § 4(3). Former subsec. (f), which read "The duplicate original shall be filed for record in the office of the Recorder of Deeds" was deleted by act Sept. 2, 1957 § 4(2).

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-908b. Subscriptions for shares.

(a) A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months unless otherwise provided by the terms of the subscription agreement, or unless all of the subscribers consent to the revocation of such subscription.

(b) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board

of directors for payment on subscriptions shall be uniform as to all shares of the same class. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of the shares, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. Such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with the postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. (June 8, 1954, 68 Stat. 186, ch. 269, § 15.)

§ 29-908c. Consideration for shares.

(a) Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

(b) Shares without par value may be issued for such consideration as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all outstanding shares entitled to vote thereon.

(c) Shares of a corporation issued and thereafter acquired by it may be disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors.

(d) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

(e) In the event of an exchange of issued shares having a par value for a different number of shares having the same aggregate par value, whether of the same or of a different class or classes, or in the event of a conversion of shares, or in the event of an exchange of shares with or without par value into the same or a different number of shares without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange shall be deemed to be (1) the consideration originally received for the shares so exchanged or converted; and (2) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and (3) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted. (June 8, 1954, 68 Stat. 187, ch. 269, § 16.)

§ 29-908d. Payment for shares.

(a) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued, which, in the case of shares having a par value, shall be not less than the par value thereof, shall have been received by the corporation, such shares shall be deemed to be full paid and non-assessable.

(b) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(c) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive. (June 8, 1954, 68 Stat. 187, ch. 269, § 17.)

§ 29-908e. Determination of stated capital.

(a) A corporation may determine that only a part of the consideration for which its shares may be issued, from time to time, shall be stated capital: *Provided*, That in the event of any such determination—

(1) if the shares issued shall consist wholly of shares having a par value, then the stated capital represented by such shares shall be not less than the aggregate par value of the shares so issued;

(2) if the shares issued shall consist wholly of shares without par value, all of which shares have a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be not less than the aggregate preferential amount payable upon such shares in the event of involuntary liquidation;

(3) if the shares issued consist wholly of shares without par value, and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be the total consideration received therefor less such part thereof as may be allocated to paid-in surplus;

(4) if the shares issued shall consist of several or all of the classes of shares enumerated in (1), (2), and (3) of this section, then the stated capital represented by such shares shall be not less than the aggregate par value of any shares so issued having a par value and the aggregate preferential amount payable upon any shares so issued without par value having a preferential right in the event of involuntary liquidation.

(b) In order to determine that only a part of the consideration for which shares without par value may be issued from time to time shall be stated capital, the board of directors shall adopt a resolution setting forth the part of such consideration allocated to stated capital and the part otherwise allocated, and expressing such allocation in dollars. If the board of directors shall not have determined (a) at the time of the issuance of any shares issued for cash, or (b) within sixty days after the issuance of any shares issued for labor or services actually

performed for the corporation or issued for property other than cash, that only a part of the consideration for shares so issued shall be stated capital, then the stated capital of the corporation represented by such shares shall be an amount equal to the aggregate par value of all such shares having a par value, plus the consideration received for all such shares without par value.

(c) The stated capital of the corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the paid-in or other surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares. (June 8, 1954, 68 Stat. 188, ch. 269, § 18.)

§ 29-908f. Expenses of organization, reorganization, and financing.

The reasonable charges and expenses of organization or reorganization of a corporation and reasonable compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not full paid and nonassessable. (June 8, 1954, 68 Stat. 188, ch. 269, § 19.)

§ 29-908g. Certificates representing shares.

(a) The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary and sealed with the seal of the corporation. Such seal may be a facsimile. Where such a certificate is countersigned by a transfer agent other than the corporation itself or an employee of the corporation, or by a transfer clerk and registered by a registrar, the signatures of the president or vice president and the secretary or assistant secretary upon such certificate may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue.

(b) Notwithstanding the provisions of section 28-2915, every certificate representing shares the transferability of which is restricted or limited shall state upon the face thereof that the transferability of such shares is restricted or limited and upon the face or back thereof shall either set forth a full or summary statement of any such restriction or limitation upon the transferability of such shares or shall state that the corporation will furnish to any shareholder upon request and without charge such full or summary statement.

(c) Subject to the provisions of subsection (b) of this section, every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back thereof, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class

authorized to be issued, and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(d) Each certificate representing shares shall also state—

(1) that the corporation is organized under the laws of the District of Columbia;

(2) the name of the person to whom issued;

(3) the number and class of shares which such certificate represents;

(4) the par value of each share represented by such certificate, or a statement that the shares are without par value.

(e) No certificate shall be issued for any share until such share is fully paid.

(f) As to corporations availing themselves of the provisions of section 29-952, the provisions of this section shall be applicable only to the shares of such corporations issued subsequent to such reincorporation or incorporation. (June 8, 1954, 68 Stat. 189, ch. 269, § 20; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 5; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 3.)

AMENDMENTS

1959—Subsec. (b) amended by act July 23, 1959, which substituted the provisions set forth in the text for former provisions which read: "Every certificate representing shares issued by a corporation which is authorized to issue shares the transferability of which is restricted or limited shall state upon the face or back thereof, in full or in the form of a summary, all of the limitations and restrictions upon the transferability thereof."

Subsec. (c) amended by act July 23, 1959, which substituted the provisions set forth in the text for former provisions which read: "Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall state upon the face or back thereof, in full or in the form of a summary, all of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued, and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series."

1957—Subsec. (f) added by act Sept. 2, 1957.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-908h. Issuance of fractional shares or scrip.

A corporation may, but shall not be obliged to, issue a certificate for a fractional share, and, by action of its board of directors, may issue in lieu thereof scrip or other evidence of ownership, which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or other evidence of ownership aggregating a full share, but which shall not, unless otherwise provided, entitle

the holder to exercise any voting right, or to receive dividends thereon or to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip or evidence of ownership to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip or evidence of ownership is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or evidence of ownership, or subject to any other conditions which the board of directors may deem advisable. (June 8, 1954, 68 Stat. 189, ch. 269, § 21.)

§ 29-908i. Liability of subscribers and shareholders.

(a) A holder of or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(b) No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall be personally liable as a shareholder, but the estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

(c) Where it cannot be determined that shares which have been issued and outstanding for more than twelve years are fully paid and nonassessable, a determination by the board of directors that the net assets of a corporation applicable to such shares have a fair value at least equal to the stated capital represented by such shares, shall, in the absence of fraud, have the same effect as if such shares had been issued in consideration of such net assets upon such a determination made at the time of issuance, except that no such determination shall affect any rights of any then existing creditors. (June 8, 1954, 68 Stat. 190, ch. 269, § 22; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 4.)

AMENDMENT

1959—Subsec. (c) added by act July 23, 1959.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-908j. Shareholders' preemptive rights.

(a) The preemptive right of a shareholder to acquire additional shares of a corporation may be limited or denied to the extent provided in the articles of incorporation.

(b) Unless otherwise provided by its articles of incorporation, any corporation may issue and sell its

shares to its employees or to the employees of any subsidiary corporation, without first offering such shares to its shareholders, for such consideration and upon such terms and conditions as shall be approved by the holders of two-thirds of its shares entitled to vote or by its board of directors pursuant to like approval of the shareholders. (June 8, 1954, 68 Stat. 190, ch. 269, § 23.)

§ 29-909. Bylaws.

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation. (June 8, 1954, 68 Stat. 190, ch. 269, § 24.)

§ 29-910. Meetings of shareholders.

(a) Meetings of shareholders may be held at such place within or without the District of Columbia as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(b) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation or the bylaws. (June 8, 1954, 68 Stat. 190, ch. 269, § 25.)

§ 29-910a. Notice of shareholders' meetings.

Except as provided in section 29-945 hereof, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid. (June 8, 1954, 68 Stat. 190, ch. 269, § 26; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 6; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 5.)

AMENDMENTS

1959—Act July 23, 1959, inserted in the first par. words “, in the absence of a provision in the bylaws specifying a different period of notice.”

1957—Act Sept. 2, 1957, added the introductory words “Except as provided in section 29-945 hereof” to the first par.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-911. Voting of shares.

(a) Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

(b) Shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

(c) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold until the contract of pledge or sale is fully executed.

(d) The articles of incorporation may provide that in all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or to distribute such votes on the same principle among any number of such candidates. (June 8, 1954, 68 Stat. 191, ch. 269, § 27.)

§ 29-912. Closing of transfer books and fixing record date.

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock-transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock-transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock-transfer books, the board of directors may fix in advance a date as the record date for any determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such

determination of shareholders, is to be taken. If the stock-transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. (June 8, 1954, 68 Stat. 191, ch. 269, § 28.)

§ 29-913. Voting of shares by certain holders.

(a) Shares standing in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(b) Shares standing in the name of a deceased person may be voted by his administrator or executor, either in person or by proxy. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him without a transfer of such shares into his name.

(c) Shares standing in the name of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver or trustee in bankruptcy was appointed.

(d) Except as otherwise provided in section 29-911, a shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(e) Shares standing in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

(f) Shares standing in the name of two or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by proxy by any one or more of such persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or by proxy unless a different apportionment of the vote is requested by such tenants. (June 8, 1954, 68 Stat. 192, ch. 269, § 29; July 23, 1959, 73 Stat. 240, Pub. L. 86-106, § 6.)

AMENDMENT

1959—Subsec. (a) amended by act July 23, 1959, which added presumption of validity respecting execution of a proxy.

Subsecs. (e) and (f) added by act July 23, 1959.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-914. Voting trust.

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting-trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as is the record of shareholders of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose. The trustee or trustees may execute and deliver to the transferors voting-trust certificates which shall be transferable in the same manner and with the same effect as certificates representing shares. (June 8, 1954, 68 Stat. 192, ch. 269, § 30.)

§ 29-915. Quorum of shareholders.

(a) Unless otherwise provided in the articles of incorporation or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders: *Provided*, That in no event shall a quorum consist of less than one-third of the outstanding shares having voting power.

(b) The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present when any business may be transacted that may have been transacted at the meeting as originally called.

(d) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number, or voting by classes, is required by this chapter or the articles of incorporation, and except that in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority. (June 8, 1954, 68 Stat. 191, ch. 269, § 31; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 7.)

AMENDMENT

1959—Subsec. (d) added by act July 23, 1959.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-916. Board of directors.

The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so provide. The articles of incorporation or bylaws may prescribe other qualifications for directors. (June 8, 1954, 68 Stat. 193, ch. 269, § 32.)

§ 29-916a. Number and election of directors.

The number of directors of a corporation shall not be less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, or until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except as hereinafter provided. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified. (June 8, 1954, 68 Stat. 193, ch. 269, § 33.)

§ 29-916b. Classification of directors.

The bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders. (June 8, 1954, 68 Stat. 193, ch. 269, § 34.)

§ 29-916c. Vacancies.

Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of

his predecessor in office. (June 8, 1954, 68 Stat. 193, ch. 269, § 35; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 8.)

AMENDMENT

1959—Act July 23, 1959, substituted "by affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation otherwise provide" for "by the board of directors".

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-916d. Quorum of directors.

A majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws. (June 8, 1954, 68 Stat. 193, ch. 269, § 36.)

§ 29-916e. Executive committee.

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation; but the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law. (June 8, 1954, 68 Stat. 194, ch. 269, § 37.)

§ 29-916f. Place of directors' meetings.

Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia as may be provided in the bylaws or by resolution adopted by a majority of the board of directors. (June 8, 1954, 68 Stat. 174, ch. 269, § 38.)

§ 29-916g. Notice of directors' meetings.

Except as provided in section 29-945 hereof, meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting. (June 8, 1954, 68 Stat. 194, ch. 269, § 39; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 7.)

AMENDMENT

1957—Act Sept. 2, 1957, added the introductory words "Except as provided in section 29-945 hereof" to the first sentence.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-917. Dividends.

The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

(a) No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital.

(b) Dividends may be paid out of paid-in surplus or surplus arising from the surrender to the corporation of any of its shares only upon shares having a preferential right to receive dividends, provided that the source of such dividends shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof. The limitations of this subparagraph shall not limit nor be deemed to conflict with the provisions of this chapter in respect of the distribution of assets as a liquidating dividend.

(c) If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(d) If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregate value so fixed in respect of such shares. The amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof.

(e) A split up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this section.

(f) No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation.

(g) Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation and may pay dividends from the net profits so determined by the directors. (June 8, 1954, 68 Stat. 194, ch. 269, § 40.)

§ 29-917a. Dividends in partial liquidation.

A corporation, from time to time, may distribute a portion of its assets, in cash or kind, to its shareholders as a liquidating dividend, in the following manner and subject to the following restrictions:

(a) The board of directors shall adopt a resolution recommending the payment of a liquidating dividend, specifying the class or classes of shareholders entitled thereto and the amount thereof, and directing that the question of such distribution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the question of such distribution shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose may be included in the notice of such meeting.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken by classes on the question of the proposed distribution. The affirmative vote of the holders of at least two-thirds of the outstanding shares of each class shall be required for the authorization of such distribution.

(d) No such distribution shall be made at a time when the corporation is insolvent or its net assets are less than its stated capital, or when such distribution would render the corporation insolvent or reduce its net assets below its stated capital.

(e) No such distribution shall be made to any class of shareholders unless all cumulative dividends accrued on preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(f) No such distribution shall be made to any class of shareholders which will reduce the remaining net assets below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(g) Each such distribution, when made, shall be identified as a liquidating dividend and the amount per share shall be disclosed to the shareholders receiving the same, concurrently with the payment thereof. (June 8, 1954, 68 Stat. 195, ch. 269, § 41.)

§ 29-918. Liability of directors in certain cases.

(a) In addition to any other liabilities imposed by law upon directors of a corporation—

(1) directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter, or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or any restrictions in the articles of incorporation;

(2) the directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of assets of a corporation to its shareholders which renders the corporation insolvent or reduces its net assets below its stated capital shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed, to the extent that the corporation is thereby rendered insolvent or its net assets are reduced below its stated capital;

(3) the directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without an adequate provision for, or the payment and discharge of, all debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged;

(4) the directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(b) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

(c) A director shall not be liable under either subparagraph (1) or (2) of this section if he relied and acted in good faith upon a balance sheet and profit-and-loss statement of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or certified by or otherwise represented in a written report of an independent public or certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

(d) Any director against whom a claim shall be asserted under or pursuant to this section, and who shall be held liable thereon, shall be entitled to contribution from the other directors who are likewise liable thereon.

(e) Any director against whom a claim shall be asserted under or pursuant to this section for the improper declaration of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who knowingly accepted or

received any such dividend or assets, in proportion to the amounts received by them, respectively.

(f) No suit shall be brought against any director for any liability imposed by this chapter except within three years after the right of action shall accrue. (June 8, 1954, 68 Stat. 196, ch. 269, § 42; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 9.)

AMENDMENT

1959—Subsec. (c) amended by act July 23, 1959, which inserted "or otherwise represented in a written report of" following "certified by".

Subsec. (f) added by act July 23, 1959.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-919. Officers.

(a) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. (June 8, 1954, 68 Stat. 197, ch. 269, § 43.)

§ 29-919a. Removal of officers.

Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. (June 8, 1954, 68 Stat. 197, ch. 269, § 44.)

§ 29-920. Books and records.

(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

(b) Any person or persons who shall be the holder or holders of record of at least 5 per centum of all the outstanding shares of a corporation shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its record of shareholders and to make extracts therefrom.

(c) A holder of a voting-trust certificate evidencing an interest in a voting trust conforming to the

provisions of this chapter shall have the same rights as a shareholder to examine and make extracts from the record of shareholders of the corporation.

(d) If any person or persons holding in the aggregate 5 per centum or more of all of the outstanding shares of a corporation shall present to any officer, director, or registered agent of the corporation a written request stating the purpose thereof, for a statement of its affairs, it shall be his duty to make or procure such a statement sworn to by the president or a vice president or by the treasurer or an assistant treasurer, embracing a particular account of its assets and liabilities in detail, and to have the same ready and on file at the registered office of the corporation within thirty days after the presentation of such request. Such statement shall at all times during business hours be open to the inspection of any shareholder and he shall be entitled to copy the same.

(e) Any corporation whose officers or agents shall refuse to allow any such shareholder, entitled under the provisions of this section to examine the record of shareholders, or his agent or attorney, so to examine and make extracts from its record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of \$50, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the record of shareholders of such corporation or any other corporation.

(f) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation. (June 8, 1954, 68 Stat. 197, ch. 269, § 45; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 10.)

AMENDMENT

1959—Subsec. (d) amended by act July 23, 1959, which inserted the words "stating the purpose thereof," after "written request."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

NOTES TO DECISIONS

1. Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-921. Incorporators.

Three or more natural persons of the age of twenty-one years or more may act as incorporators of a corporation by signing, verifying, and filing in duplicate in the office of the Commissioners articles of incorporation for such corporation. (June 8, 1954, 68 Stat. 198, ch. 269, § 46.)

§ 29-921a. Articles of incorporation.

The articles of incorporation shall set forth:

(a) The name of the corporation.
(b) The period of duration, which may be perpetual.

(c) The purpose or purposes for which the corporation is organized.

(d) The aggregate number of shares which the corporation shall have authority to issue; if said shares are to consist of one class only, the par value of each of said shares, or a statement that all of said shares are without par value; or, if said shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(e) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, voting power, limitations, restrictions, qualifications, and the special or relative rights in respect of the shares of each class.

(f) A statement that the minimum amount of capital with which the corporation shall commence business shall be not less than \$1,000.

(g) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between different series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(h) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(i) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws.

(j) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address.

(k) The number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

(l) The name and address, including street and number, if any, of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation

shall be controlling. (June 8, 1954, 68 Stat. 198, ch. 269, § 47.)

NOTES TO DECISIONS

Place of business after organization 1
Principal place of business 2

1. Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

2. Principal place of business

The provision of this chapter providing that each corporation "shall keep at each registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders" contemplated that principal place of business might also be outside the district after organization. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-921b. Filing of articles of incorporation.

(a) Duplicate originals of the articles of incorporation shall be delivered to the Commissioners. If the Commissioners find that the articles of incorporation conform to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of incorporation to which they shall affix the other duplicate original.

(b) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Commissioners, shall be delivered to the incorporators or their representatives. (June 8, 1954, 68 Stat. 199, ch. 269, § 48; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 8.)

AMENDMENT

1957—Subsec. (b) amended by act Sept. 2, 1957, which substituted "delivered to the incorporators or their representatives" for "recorded by the Commissioners in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

DESTRUCTION OF DUPLICATE CORPORATE PAPERS

Section 150 of act June 8, 1954, as added July 23, 1959, Pub. L. 86-106, § 17, provided that:

"The Recorder of Deeds, after publishing notice of his intention so to do, is authorized, one hundred and eighty days after the effective date of this section [see note set out under section 29-907a] to destroy all duplicate original corporation papers filed in his office pursuant to this Act [chapter] prior to October 2, 1957. Such notice shall describe in general terms each class of papers affected, and shall be published once a week for three consecutive weeks in a newspaper of general circulation in the District of Columbia, the third publication of such notice to appear not less than thirty days prior to the date after which such papers may be destroyed. Any corporation shall be entitled to the return to it of any paper authorized by this section to be destroyed upon written request to the Recorder of Deeds accompanied

by a fee in the amount of \$1 for each such paper to cover the cost of postage and handling."

§ 29-921c. Effect of issuance of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation. (June 8, 1954, 68 Stat. 199, ch. 269, § 49.)

§ 29-921d. Requirement before commencing business.

A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until at least the minimum amount of capital set forth in its articles of incorporation as the minimum amount of capital with which it will commence business has been fully paid in. (June 8, 1954, 68 Stat. 199, ch. 269, § 50.)

§ 29-921e. Organization meeting of directors.

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held within the United States, at the call of a majority of the directors so named, for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the shareholders, in which event the bylaws shall be adopted by the shareholders), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five days' notice thereof by mail to each director so elected, which notice shall state the time and place of the meeting: *Provided, however,* That if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting. (June 8, 1954, 68 Stat. 199, ch. 269, § 51.)

§ 29-921f. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired: *Provided,* That its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

(a) To change its corporate name.

(b) To change its period of duration.

(c) To change, enlarge, or diminish its corporate purposes.

(d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.

(e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

(f) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued.

(g) To change the designations of all or any part of its shares, whether issued or unissued, and to change the preferences, voting power, qualifications, limitations, restrictions, and the special or relative rights in respect of all or any part of its shares, whether issued or unissued.

(h) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(i) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(j) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(k) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(l) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(m) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(n) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(o) To limit, deny, or grant to shareholders of any class the preemptive right to subscribe for or acquire additional shares of the corporation, whether then or thereafter authorized. (June 8, 1954, 68 Stat. 200, ch. 269, § 52; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 9.)

AMENDMENT

1957—Subsec. (m) amended by act Sept. 2, 1957, which substituted "shares" for "share."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-921g. Procedure to amend articles of incorporation before acceptance of subscriptions to shares.

Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

(a) Amended articles of incorporation modifying, changing, or altering the original articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles of incorporation, verified and filed in duplicate with the Commissioners. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation.

(b) Such amended articles of incorporation shall be delivered in duplicate original to the Commissioners. If the Commissioners find that such amended articles of incorporation conform to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue an amended certificate of incorporation, to which they shall affix the other duplicate original.

(c) The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative.

(d) Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the place of the original articles of incorporation. (June 8, 1954, 68 Stat. 201, ch. 269, § 53; Sept. 2, 1957, 71 Stat. 569, Pub. L. 85-254, § 10.)

AMENDMENTS

1957—Subsec. (a) amended by act Sept. 2, 1957, which substituted "Amended" for "Amendments to the" and "with the Commissioners" for "by the Commissioners."

Subsec. (b) (3) amended by act Sept. 2, 1957, which substituted "issue an amended certificate of incorporation, to which they shall affix the other duplicate original" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds."

Subsec. (c) added by act Sept. 2, 1957. Former subsec. (c) redesignated (d).

Subsec. (d), formerly (c), so redesignated and amended by substituting "certificate" for "articles."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-921h. Procedure to amend articles of incorporation after acceptance of subscription to shares.

Amendments to the articles of incorporation shall be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes

to be effected thereby shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless any class of shares is entitled to vote as a class in respect thereof, as hereinafter provided, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class in respect thereof and of the total outstanding shares entitled to vote.

(d) Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting. (June 8, 1954, 68 Stat. 201, ch. 269, § 54.)

§ 29-922. When entitled to vote by classes.

The holders of the outstanding shares of a class whether by the provisions of the articles of incorporation such class of stock is entitled to vote or not shall be entitled to vote as a class upon a proposed amendment which would—

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(e) Change the designations, preferences, limitations, voting, or relative rights of the shares of such class.

(f) Change the shares of such class having a par value into the same or a different number of shares without par value, or change the shares of such class without par value into the same or a different number of shares having a par value.

(g) Change the shares of such class, whether with or without par value, into a different number of shares of the same class, or into the same or a different number of shares, either with or without par value, of other classes.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series.

(i) Create a new class of shares having rights and preferences prior and superior to the shares of such class.

(j) Limit or deny the existing preemptive rights of the shares of such class. (June 8, 1954, 68 Stat. 202, ch. 269, § 55.)

§ 29-923. Articles of amendment.

(a) The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name of the corporation;

(2) the amendment so adopted;

(3) the date of the adoption of the amendment by the shareholders;

(4) the number of shares outstanding, and the number of shares entitled to vote, and if the shares of any class are entitled to vote as a class, the designation of each such class and the number of outstanding shares thereof entitled to vote;

(5) the number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such amendment, respectively;

(6) If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

(7) if such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus as charged by such amendment.

(b) If issued shares without par value are changed into the same or a different number of shares having par value, the aggregate par value of the shares into which the shares without par value are changed shall not exceed the sum of (1) the amount of stated capital represented by such shares without par value, and (2) the amount of surplus, if any, transferred to stated capital on account of such change, and (3) any additional consideration paid for such shares with par value and allocated to stated capital. (June 8, 1954, 68 Stat. 202, ch. 269, § 56.)

§ 29-923a. Filing of articles of amendment.

(a) Duplicate originals of the articles of amendment shall be delivered to the Commissioners. If the Commissioners find that the articles of amendment conform to law, they shall, when all fees and taxes have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of amendment to which they shall affix the other duplicate original.

(b) The certificate of amendment with the duplicate original of the articles of amendment affixed thereto shall be delivered to the corporation or its representative. (June 8, 1954, 68 Stat. 203, ch. 269, § 57; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 11.)

AMENDMENT

1957—Subsec. (b) amended by act Sept. 2, 1957, which substituted "delivered to the corporation or its representative" for "recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-923b. Effect of certificate of amendment.

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. (June 8, 1954, 68 Stat. 203, ch. 269, § 58.)

§ 29-924. Redemption and cancellation of shares.

(a) If the articles of incorporation provide that redeemable shares redeemed, or purchased or otherwise acquired by the corporation, shall be canceled and shall not be reissued, then, in the event of such cancellation of shares, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(b) No redemption or purchase of redeemable shares shall be made which will reduce the remaining assets of the corporation below an amount sufficient to pay all debts and known liabilities of the corporation as they mature, except such debts and liabilities as have been otherwise adequately provided for, or which will reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon dissolution.

(c) When redeemable shares of a corporation have been canceled pursuant to the provisions of the articles of incorporation, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, which statement shall set forth—

- (1) the name of the corporation;
- (2) the aggregate number of shares which the corporation had authority to issue; itemized by classes and series;
- (3) the number of shares canceled, itemized by classes and series;
- (4) the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation;
- (5) a statement of the aggregated number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class, after giving effect to the cancellation;
- (6) a statement, expressed in dollars, of the amount of the stated capital and the amount of

paid-in surplus of the corporation after giving effect to such cancellation.

(d) Such statement shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(e) The filing of such statement by the Commissioners shall operate as an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(f) Nothing contained in this section shall be construed to forbid a reduction of authorized shares or a reduction of stated capital in any other manner permitted by this chapter. (June 8, 1954, 68 Stat. 203, ch. 269, § 59; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 12.)

AMENDMENTS

1957—Subsec. (d)(3) added by act Sept. 2, 1957, § 12 (1).

Subsecs. (e) and (f), formerly (f) and (g), so redesignated by act Sept. 2, 1957, § 12 (3). Former subsec. (e) which read "The duplicate original shall be recorded in the office of the Recorder of Deeds" was deleted by act Sept. 2, 1957, § 12 (2).

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-924b. Cancellation of reacquired shares.

(a) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it through redemption, purchase, or otherwise, and in the event of such cancellation a statement of cancellation shall be filed as provided in this section. When any reacquired shares have been canceled by resolution of the board of directors, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or assistant secretary, which statement shall set forth—

- (1) the name of the corporation;
- (2) the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;
- (3) the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class before giving effect to such cancellation;
- (4) the number of shares canceled, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;
- (5) a statement that the shares so canceled were canceled by a resolution duly adopted by the board of directors;
- (6) the aggregate number of issued shares, itemized by classes, par value of shares, shares

without par value, and series, if any, within a class, after giving effect to such cancellation;

(7) a statement, expressed in dollars, of the amount of the stated capital and the amount of the paid-in surplus of the corporation before giving effect to such cancellation;

(8) a statement, expressed in dollars, of the amount of the stated capital and the amount of the paid-in surplus of the corporation after giving effect to such cancellation.

(b) Such statement shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(c) Upon the filing of such statement by the Commissioners, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled and the shares so canceled shall be deemed to be authorized but unissued shares.

(d) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter. (June 8, 1954, 68 Stat. 204, ch. 269, § 60; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 13.)

AMENDMENT

1957—Subsec. (b)(3) amended by act Sept. 2, 1957, which substituted "return the other duplicate original to the corporation or its representative" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-925. Reduction of stated capital in certain cases.

(a) The reduction of the stated capital of a corporation where such reduction is not accompanied by an exchange, reclassification, or cancellation of shares, or by a reduction in the par value of issued shares, or by a reduction of the number of authorized shares of any class below the number of issued shares of that class, or by a redemption and cancellation of shares, may be made in the following manner:

(1) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter

for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote shall be taken on the question of the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote.

(b) When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, which statement shall set forth—

(1) the name of the corporation;

(2) a copy of the resolution of the shareholders approving such reduction;

(3) the total number of shares outstanding and the number of shares entitled to vote;

(4) the number of shares voted for and against such reduction, respectively;

(5) a statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus of the corporation adjusted to give effect to such reduction.

(c) Such statement shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(June 8, 1954, 68 Stat. 205, ch. 269, § 61; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 14.)

AMENDMENT

1957—Subsec. (c)(3) amended by act Sept. 2, 1957, which substituted "return the other duplicate original to the corporation or its representative" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-925a. Reduction of stated capital—Limits—Paid-in surplus.

(a) No reduction of stated capital shall be made under the provisions of section 29-925 which would reduce the amount of the aggregate stated capital of the corporation to an amount less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value, after such reduction, of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

(b) The surplus, if any, created by or arising out of the reduction of the stated capital of a corporation shall be deemed to be paid-in surplus, except where

such reduction is effected by the cancellation of its own shares belonging to the corporation, or by the redemption and cancellation of shares, in either of which events the paid-in surplus, if any, created by such reduction shall not exceed the amount by which the stated capital represented by such shares exceeded the cost thereof to the corporation. (June 8, 1954, 68 Stat. 206, ch. 269, § 62.)

§ 29-926. Reduction of paid-in surplus.

A corporation may, by resolution of its board of directors, apply any part or all of its paid-in surplus to the payment of dividends as permitted by section 29-917, or to the distribution of liquidating dividends as permitted by section 29-917a, to the payment of reasonable compensation for the sale or underwriting of its shares as permitted by section 29-908f, the reduction or elimination of any deficit arising from operating or other losses or from diminution in value of its assets. (June 8, 1954, 68 Stat. 206, ch. 269, § 63.)

§ 29-927. Procedure for merger.

Any two or more domestic corporations may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

(d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. (June 8, 1954, 68 Stat. 206, ch. 269, § 64.)

§ 29-927a. Procedure for consolidation.

Any two or more domestic corporations may consolidate into a new corporation in the following manner:

The board of directors of each corporation shall, by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.

(d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. (June 8, 1954, 68 Stat. 207, ch. 269, § 65.)

§ 29-927b. Meetings of shareholders.

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than twenty days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour, and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. (June 8, 1954, 68 Stat. 207, ch. 269, § 66.)

§ 29-927c. Approval by shareholders.

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares of each corporation unless as to any of such corporations two or more classes of shares are issued in which event as to such corporation or corporations the plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the outstanding shares of each such class. (June 8, 1954, 68 Stat. 207, ch. 267, § 67.)

§ 29-927d. Articles of merger or consolidation.

(a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and verified by him, and the corporate seal of each corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the plan of merger or the plan of consolidation;

(2) as to each corporation, the number of shares outstanding, and if there are two or more classes of shares issued, the designation of each such class and the number of shares thereof outstanding;

(3) as to each corporation, the number of shares voted for and against such plan respectively, and, if there are two or more classes of shares issued the number of shares of each such class voted for and against such plan, respectively.

(b) Such articles of merger or consolidation shall be delivered to the Commissioners. If the Commissioners find that such articles of merger or consolidation conform to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of merger or certificate of consolidation to which they shall attach the other duplicate original.

(c) The certificate of merger or certificate of consolidation, together with the duplicate original affixed thereto, shall be delivered to the surviving or new corporation, as the case may be, or its representative. (June 8, 1954, 68 Stat. 207, ch. 269, § 68; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 15.)

AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "delivered to the surviving or new corporation, as the case may be, or its representative" for "recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-927e. Effective date of merger or consolidation.

Upon the issuance of the certificate of merger or the certificate of consolidation by the Commissioners, the merger or consolidation shall be effected. (June 8, 1954, 68 Stat. 208, ch. 269, § 69.)

§ 29-927f. Effect of merger or consolidation.

When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as a private nature, of each of the merging or consolidating corporations; and all property—real, personal, and mixed—and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

(g) The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation. (June 8, 1954, 68 Stat. 208, ch. 269, § 70.)

§ 29-927g. Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State other than the District of Columbia, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to do business in the District of Columbia, and in every case it shall file with the Commissioners—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(2) an irrevocable appointment of the Commissioners of the District of Columbia as its agent to accept service of process in any such proceeding; and

(3) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolida-

tion of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise. (June 8, 1954, 68 Stat. 209, ch. 269, § 71.)

§ 29-927h. Merger of parent corporation and wholly owned subsidiary.

(a) Any corporation now or hereafter organized under the provisions hereof or existing under the laws of the District of Columbia, for the purpose of carrying on any kind of business authorized by this chapter, owning all of the stock of any other corporation now or hereafter organized hereunder or existing under the laws of the District of Columbia, or now or hereafter organized under the laws of any other State of the United States of America, if the laws under which said other corporation is formed shall permit a merger as herein provided, may file, in duplicate original with the Commissioners, a certificate of such ownership in its name and under its corporate seal, signed by its president or a vice president, and its secretary or assistant secretary, and setting forth a copy of the resolution of its board of directors to merge such other corporation, and to assume all of its obligations and the date of the adoption thereof. If the Commissioners find that such certificate of ownership conforms to law, they shall, when all fees have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of merger to which they shall affix the other duplicate original.

(b) The certificate of merger, together with the duplicate original affixed thereto, shall be delivered to the surviving corporation or its representative.

(c) Upon the issuance of the certificate of merger, the merger shall be effected and thereupon all of the estate, property, rights, privileges, and franchises of such other corporation shall vest in and be held and enjoyed by such parent corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by such parent corporation, and except as hereinafter in this section provided, in its name, but subject to all liabilities and obligations of such other corporation and the rights of all creditors thereof. The parent corporation shall not thereby acquire power to engage in any business, or to exercise any right, privilege, or franchise, of a kind which it could not lawfully engage in or exercise under the provisions of the law or laws by or pursuant to which such parent corporation is organized, or operates in the District of Columbia. The parent corporation shall be deemed to have assumed all of the obligations and liabilities of the merged corporation and shall be liable in the same manner as if it had itself incurred such liabilities and obligations. The parent corporation may relinquish its corporate name and assume in lieu thereof the name of the merged corporation, by including it in a provision to that effect in the resolution of merger adopted by the directors and set forth in the certificate of ownership, and upon the filing of such certificate the change of

name shall be completed, with the same force and effect and subject to the same conditions and consequences as if such change had been accomplished by proceedings under the appropriate section of this chapter. (June 8, 1954, 68 Stat. 210, ch. 269, § 72; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 16.)

AMENDMENTS

1957—Subsec. (a) (3) amended by act Sept. 2, 1957, § 16(1), which substituted "certificate of merger" for "certificate of ownership."

Subsec. (b) amended by act Sept. 2, 1957, § 16(2), which substituted "The certificate of merger, together with the duplicate original affixed thereto, shall be delivered to the surviving corporation or its representative" for "The certificate of merger or certificate of consolidation, together with the duplicate original affixed thereto, shall be recorded in the office of the Recorder of Deeds."

Subsec. (c) amended by act Sept. 2, 1957, § 16(3), which substituted "certificate of merger" for "certificate of ownership."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-927i. Rights of dissenting shareholders.

(a) If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be bound by the terms of the merger or consolidation.

(b) If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(c) If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the District of Columbia, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day

prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of 5 per centum per annum to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of the merger or consolidation.

(d) The right of a dissenting shareholder to be paid the fair value of his shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation. (June 8, 1954, 68 Stat. 210, ch. 269, § 73.)

NOTES TO DECISIONS

1. Stockholder's suit

Under this section authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares, dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting stockholders' shares was less than \$3,000. *Davis v. Universal Corporation* (D. C. Mun. App. 1957, 133 A. 2d 479).

§ 29-928. Sale, lease, exchange, or mortgage of assets in usual and regular course of business.

The sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part, of money or property, real or personal, including shares of any other corporation, whether or not such other corporation be organized under the provisions of this chapter, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required. (June 8, 1954, 68 Stat. 211, ch. 269, § 74; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 17.)

AMENDMENT

1957—Act Sept. 2, 1957, struck out the words "less than" following "other disposition of" and preceding "substantially."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-929. Sale, lease, exchange, or mortgage of assets other than in usual and regular course of business.

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms

and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, whether or not such other corporation be organized under the provisions of this chapter, as may be authorized in the following manner:

(a) The board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each shareholder of record entitled to vote within the time and in the manner provided by this chapter for the giving of notice of meetings of shareholders.

(c) At such meetings the shareholders may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote, unless there are two or more classes of stock issued and outstanding and entitled to vote, in which event such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such class of shares issued and outstanding and entitled to vote.

(d) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders. (June 8, 1954, 68 Stat. 211, ch. 269, § 75; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 18.)

AMENDMENT

1957—Act Sept. 2, 1957, inserted "if not made in the usual and regular course of its business," in the first paragraph.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-930. Voluntary dissolution of corporation by its incorporators.

A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time within one year from the date of the issuance of its certificate of incorporation in the following manner:

(a) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth—

- (1) the name of the corporation;
- (2) the date of issuance of its certificate of incorporation;
- (3) that none of its shares have been issued;

(4) that the corporation has not commenced business;

(5) that the amount, if any, actually paid in on subscriptions to its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(6) that no debts of the corporation remain unpaid;

(7) that all the incorporators elect that the corporation be dissolved.

(b) Duplicate originals of the articles of dissolution shall be delivered to the Commissioners. If the Commissioners find that the articles of dissolution conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of dissolution to which they shall affix the other duplicate original.

(c) The certificate of dissolution, together with the duplicate original affixed thereto, shall be delivered to the incorporators or their representatives.

(d) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease. (June 8, 1954, 68 Stat. 212, ch. 269, § 76; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 19.)

AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "delivered to the incorporators or their representatives" for "recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-930a. Dissolution by consent of shareholders.

A corporation may be dissolved by the written consent of the holders of record of all of its outstanding shares in the following manner:

Upon the execution of such written consent by all the shareholders of record, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth and contain—

(a) The name of the corporation.

(b) The names and respective addresses, including street and number, if any, of its officers.

(c) The names and respective addresses, including street and number, if any, of its directors.

(d) A copy of the agreement signed by all shareholders of record of the corporation consenting to its dissolution.

(e) A statement that such agreement has been signed by all shareholders of record of the corporation or signed in their names by their attorneys thereunto duly authorized. (June 8, 1954, 68 Stat. 213, ch. 269, § 77.)

§ 29-930b. Dissolution by act of corporation.

A corporation may be dissolved by the act of the corporation in the following manner:

(a) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on a resolution to dissolve the corporation, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote.

(d) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth—

(1) the name of the corporation;

(2) the names and respective addresses, including street and number, if any, of its officers;

(3) the names and respective addresses, including street and number, if any, of its directors;

(4) a copy of the resolution of the shareholders authorizing the dissolution of the corporation;

(5) the number of shares outstanding and entitled to vote;

(6) the number of shares voted for and against the dissolution of the corporation.

(June 8, 1954, 68 Stat. 213, ch. 269, § 78.)

§ 29-930c. Filing of statement of intent to dissolve.

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(a) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in their office.

(c) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 213, ch. 269, § 79; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 20.)

AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "Return the other duplicate original to the corporation or its representative" for "The other duplicate original shall be recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-930d. Effect of statement of intent to dissolve.

Upon the filing by the Commissioners of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the proper winding up thereof. (June 8, 1954, 68 Stat. 214, ch. 269, § 80.)

§ 29-930e. Proceedings after filing of statement of intent to dissolve.

After the filing by the Commissioners of a statement of intent to dissolve—

(a) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(b) The corporation, at any time during the liquidation of its business and affairs, may make application to the United States District Court for the District of Columbia to have the liquidation continued under the supervision of the court as provided in this chapter. (June 8, 1954, 68 Stat. 214, ch. 269, § 81.)

§ 29-930f. Revocation by consent of shareholders of voluntary dissolution proceedings.

By the written consent of the holders of record of all of its outstanding shares, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioners as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent by all the shareholders of record, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth and contain—

- (a) The name of the corporation.
- (b) The names and respective addresses, including street and number, if any, of its officers.
- (c) The names and respective addresses, including street and number, if any, of its directors.
- (d) A copy of the agreement signed by all shareholders of record of the corporation revoking such voluntary dissolution proceedings.
- (e) That such agreement is signed by all shareholders of record of the corporation or signed in their names by their attorneys thereunto duly authorized. (June 8, 1954, 68 Stat. 214, ch. 269, § 82.)

§ 29-930g. Revocation by act of corporation of voluntary dissolution proceedings.

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioners as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(a) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a meeting of shareholders.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote shall be taken on a resolution revoking the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote.

(d) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, which shall set forth—

- (1) the name of the corporation;
- (2) the names and respective addresses, including street and number, if any, of its officers;
- (3) the names and respective addresses, including street and number, if any, of its directors;
- (4) a copy of the resolution of the shareholders revoking the voluntary dissolution proceedings;
- (5) the number of shares outstanding and entitled to vote;
- (6) the number of shares voted for and against the revocation of the voluntary dissolution proceedings, respectively.

(June 8, 1954, 68 Stat. 215, ch. 269, § 83.)

§ 29-930h. Filing of statement of revocation of voluntary dissolution proceedings.

Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees have been paid as in this chapter prescribed—

(a) Endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in their office.

(c) Return the other duplicate original to the corporation or its representative. (June 8, 1954, 68 Stat. 215, ch. 269, § 84; Sept. 2, 1957, 71 Stat. 570, Pub. L. 85-254, § 21.)

AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "Return the other duplicate original to the corporation or its representative" for "The other duplicate original shall be recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-930i. Effect of statement of revocation of voluntary dissolution proceedings.

Upon the filing by the Commissioners of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may thereupon again carry on its business. (June 8, 1954, 68 Stat. 215, ch. 269, § 85.)

§ 29-930j. Articles of dissolution.

When all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary which shall set forth—

- (a) The name of the corporation.
- (b) That the corporation has theretofore filed with the Commissioners a statement of intent to dissolve, and the date on which such statement was filed.
- (c) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
- (d) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.
- (e) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit. (June 8, 1954, 68 Stat. 216, ch. 269, § 86.)

§ 29-930k. Filing articles of dissolution.

(a) Duplicate originals of such articles of dissolution shall be delivered to the Commissioners. If the Commissioners find that such articles of dissolution conform to law, they shall, when all fees have been paid as in this chapter prescribed—

- (1) endorse on each such duplicate original the word "Filed", and the month, day, and year of the filing thereof;
 - (2) file one of such duplicate originals in their office;
 - (3) issue a certificate of dissolution, to which they shall affix the other duplicate original.
- (b) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter. (June 8, 1954, 68 Stat. 216, ch. 269, § 87; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 22.)

AMENDMENT

1957—Subsec. (b) amended by act Sept. 2, 1957, which substituted "returned to the representative of the dis-

solved corporation" for "recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-931. Involuntary dissolution.

A corporation may be dissolved involuntarily by a decree of a court of equity in an action instituted by the Commissioners in the name of the District of Columbia, when it is made to appear to the court that—

- (a) The franchise of the corporation was procured through fraud; or
- (b) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or
- (c) The corporation has failed for thirty days to appoint and maintain a registered agent as provided in this chapter; or
- (d) The corporation has failed for thirty days after change of its registered office or registered agent to file with the Commissioners a statement of such change. (June 8, 1954, 68 Stat. 216, ch. 269, § 88.)

§ 29-931a. Venue and process.

Every action for the involuntary dissolution of a corporation on the grounds hereinbefore provided shall be commenced by the Commissioners in the United States District Court for the District of Columbia. Summons shall issue and shall be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Commissioners shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Commissioners shall cause a copy of such notice to be mailed by registered mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Commissioners of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for three successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the Commissioners, unless the decree is against the corporation and such cost is collected from it. (June 8, 1954, 68 Stat. 217, ch. 269, § 89.)

§ 29-931b. Jurisdiction of court to liquidate assets and business of corporation.

(a) The United States District Court for the District of Columbia shall have full power to liquidate the assets and business of a corporation—

- (1) upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court;

(2) when an action has been commenced by the Commissioners to dissolve a corporation and it is made to appear that liquidation of its business and affairs should precede the entry of a decree of dissolution;

(3) in an action by a shareholder when it is established that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof;

(4) in an action by a shareholder when it is established that the shareholders are deadlocked in voting power and for that reason have been unable at two consecutive annual meetings to elect successors to directors whose terms had expired.

(b) Proceedings under this section shall be brought in the United States District Court for the District of Columbia.

(c) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally. (June 8, 1954, 68 Stat. 217, ch. 269, § 90; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 11.)

AMENDMENT

1959—Subsec. (a) amended by act July 23, 1959, which added pars. (3) and (4).

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-931c. Procedure in liquidation of corporation by court.

(a) In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated. (June 8, 1954, 68 Stat. 217, ch. 269, § 91.)

§ 29-931d. Qualifications of receivers.

A receiver shall in all cases give such bond as the court may direct with such sureties as the court may require. (June 8, 1954, 68 Stat. 218, ch. 269, § 92.)

§ 29-931e. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. (June 8, 1954, 68 Stat. 218, ch. 269, § 93.)

§ 29-931f. Discontinuance of liquidation proceedings.

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear to the court that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. (June 8, 1954, 68 Stat. 218, ch. 269, § 94.)

§ 29-931g. Decree of involuntary dissolution.

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. (June 8, 1954, 68 Stat. 218, ch. 269, § 95.)

§ 29-931h. Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Commissioners. No fee shall be charged by the Commissioners for the filing thereof. (June 8, 1954, 68 Stat. 219, ch. 269, § 96.)

§ 29-931i. Survival of remedy after dissolution.

The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Commissioners, or (2) by proclamation of the Commissioners for failure to pay annual report fees or file annual reports as provided in the chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, or shareholders, or any right or claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within two years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration. (June 8, 1954, 68 Stat. 219, ch. 269, § 97.)

§ 29-932. Annual report of domestic corporation.

(a) Each corporation shall file with the Commissioners, on or before April 15 of each year, an annual report setting forth—

(1) the name of the corporation, the address, including street and number, if any, of its registered office in the District of Columbia, and the name of its registered agent at such address;

(2) the address, including street and number, if any, of its principal office in the District, if such office is other than its registered office;

(3) the names and respective addresses, including street and number, if any, of its directors and officers;

(4) a brief statement of the character of the business in which the corporation is actually engaged;

(5) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(6) a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value and series, if any, within a class.

(b) Such annual report shall be made on forms prescribed and furnished by the Commissioners, and the information therein contained shall be given as of the date of the execution of the report.

(c) It shall be executed by the corporation by its president, vice president, secretary, assistant secretary, or treasurer, and verified by the officer executing the report, and the corporate seal shall be thereto affixed. (June 8, 1954, 68 Stat. 219, ch. 269, § 98; July 23, 1959, 73 Stat. 241, Pub. L. 86-106, § 12.)

AMENDMENT

1959—Subsec. (a) amended by act July 23, 1959, which added par. (2) and redesignated former pars. (2)—(5) as pars. (3)—(6).

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

NOTES TO DECISIONS**1. Place of business after organization**

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-933. Admission of foreign corporation.

A foreign corporation shall procure a certificate of authority from the Commissioners before it transacts business in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in the District the business of banking, insurance, assurance, benefit, indemnity, building and loan association, or the acceptance of savings deposits, such corporations being admitted to and shall do business in the District of Columbia pursuant to the laws relating to such business. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the State under which such corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this chapter contained shall be construed to authorize the District to regulate the organization or the internal affairs of such corporation.

(b) A foreign corporation shall not be required to procure a certificate of authority merely for the prosecution of litigation, the collection of its debts, or the taking of security for the same, or by reason of the appointment of an agent for the solicitation of business not to be transacted in the District, nor for the sale of personal property to the United States within the District of Columbia unless a contract for such sale is accepted by the seller within the District or such property is delivered from stock of the seller within the District for use within the District. (June 8, 1954, 68 Stat. 219, ch. 269, § 99.)

§ 29-933a. Powers of foreign corporation.

No foreign corporations subject to the provisions of this chapter shall transact in the District any business for the conduct of which a domestic corporation may not be organized or which is prohibited to a domestic corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic

corporation of like character. (June 8, 1954, 68 Stat. 220, ch. 269, § 100.)

§ 29-933b. Corporate name of foreign corporations.

No certificate of authority shall be issued to a foreign corporation—

(a) Which has a name the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business in the District of Columbia, or that of any foreign corporation authorized to transact business in the District of Columbia, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter.

(b) The name of which does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of said words, unless such corporation, for use in the District, adds at the end of its name one of such words or an abbreviation thereof. (June 8, 1954, 68 Stat. 220, ch. 269, § 101.)

§ 29-933c. Change of name by foreign corporation.

Whenever a foreign corporation which is admitted to transact business in the District shall change its name to one under which a certificate of authority to transact business in the District would not be granted to it on application therefor, the authority of such corporation to transact business in the District shall be suspended and it shall not thereafter transact any business in the District until it has changed its name to a name which is available to it under the laws of the District. (June 8, 1954, 68 Stat. 220, ch. 269, § 102.)

§ 29-933d. Application for certificate of authority.

A foreign corporation may procure a certificate of authority to transact business in the District by making application therefor to the Commissioners, which application shall set forth—

(a) The name of the corporation and the State under the laws of which it is organized.

(b) If the name of the corporation does not contain one of the words "corporation", "company", "incorporated", "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in the District.

(c) The date of its incorporation and the period of its duration.

(d) The address, including street and number, if any, of its principal office in the State under the laws of which it is organized.

(e) The address, including street and number, if any, of its proposed registered office in the District, and the name of its proposed registered agent in the District at such address.

(f) A brief statement of the business it proposes to transact in the District.

(g) The names and respective addresses, including street and number, if any, of its directors and officers.

(h) Such additional information as may be necessary or appropriate in order to enable the Commissioners to determine whether such corporation is entitled to a certificate of authority to transact business in the District. Such application shall be made on forms prescribed and furnished by the Commissioners and shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. (June 8, 1954, 68 Stat. 221, ch. 269, § 103; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 13.)

AMENDMENTS

1959—Subsec. (f), formerly (g), so redesignated and amended by act July 23, 1959, § 13(b), (a), which substituted "A brief statement of the business it proposes to transact in the District" for "The purpose or purposes for which it was organized and which it proposes to pursue in the transaction of business in the District." Former subsec. (f) which read "The name or names of the State or States, if any, in which it is admitted or qualified to transact business" was repealed by act July 23, 1959, § 13(b).

Subsec. (g), formerly (h), so redesignated by act July 23, 1959, § 13(b). Former subsec. (g) redesignated (f).

Subsec. (h), formerly (k), so redesignated by act July 23, 1959, § 13(b). Former subsec. (h) redesignated (g).

Subsecs. (i) and (j), which read "A statement of the aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class" and "A statement of the aggregate number of its issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class", respectively, were repealed by act July 23, 1959, § 13(b).

Subsec. (k) redesignated (h) by act July 23, 1959, § 13(b).

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-933e. Filing of documents on application for certificate of authority.

(a) There shall be delivered to the Commissioners—

(1) duplicate originals of the application of the corporation for a certificate of authority, and

(2) a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the State wherein it is incorporated.

(b) If, according to law, a certificate of authority to transact business in the District should be issued to such corporation, the Commissioners shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such documents the word "Filed", and the month, day, and year of the filing thereof;

(2) file in their office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;

(3) issue a certificate of authority to transact business in the District, to which they shall affix the other duplicate original application.

(c) The certificate of authority with the duplicate original of the application affixed thereto by the Commissioners shall be delivered to the corporation or its representative. (June 8, 1954, 68 Stat.

221, ch. 269, § 104; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 23.)

AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "delivered to the corporation or its representative" for "recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-933f. Effect of certificate of authority.

Upon the issuance of a certificate of authority by the Commissioners, the corporation shall have the right to transact business in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend or to revoke such right to transact business in the District as provided in this chapter. (June 8, 1954, 68 Stat. 22, ch. 269, § 105.)

§ 29-933g. Registered office and registered agent of foreign corporation.

(a) Each foreign corporation authorized to transact business in the District shall have and continuously maintain in the District—

(1) a registered office which may be, but need not be, the same as its place of business in the District;

(2) a registered agent, which agent may be either an individual, resident in the District, whose business office is identical with such registered office, or a corporation authorized by its articles of incorporation to act as such agent and authorized to transact business in the District having a business office identical with such registered office.

(b) The address, including street and number, if any, of the initial registered office, and the name of the initial registered agent of each foreign corporation shall be as stated in its application for a certificate of authority to transact business in the District. (June 8, 1954, 68 Stat. 222, ch. 269, § 106.)

§ 29-933h. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation may from time to time change the address of its registered office. A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(b) A foreign corporation may change the address of its registered office or change its registered agent, or both, by filing with the Commissioners a statement setting forth—

(1) the name of the corporation;

(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office be changed, the address including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution duly adopted by the board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(c) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioners. If the Commissioners find that such statement conforms to the provisions of this chapter, they shall—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(d) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(e) Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Commissioners, who shall forthwith mail a copy thereof to the corporation at its principal office in the State under the laws of which it is organized as shown on the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection. (June 8, 1954, 68 Stat. 222, ch. 269, § 107; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 24; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 14.)

AMENDMENTS

1959—Subsec. (e) added by act July 23, 1959.

1957—Subsec. (c)(3) amended by act Sept. 2, 1957, which substituted "return the other duplicate original to the corporation or its representative" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-933i. Service of process on foreign corporation.

(a) Service of process in any suit, action, or proceeding, or service of any notice or demand required or permitted by law to be served on a foreign corporation, may be made on such corporation by service thereof on the registered agent of such corporation. Service of any such process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand

to the president, vice president, the secretary, or an assistant secretary of such corporate agent. During any period within which a foreign corporation authorized to transact business in the District shall fail to appoint or maintain in the District a registered agent, or whenever any such registered agent cannot with reasonable diligence be found at the registered office in the District of such corporation, or whenever the certificate of authority of any foreign corporation shall be revoked, then and in every such case the Commissioners shall be an agent and representative of such foreign corporation upon whom any process, notice, or demand may be served. Service on the Commissioners of any such foreign corporation shall be made by delivering to and leaving with them, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand. In the event any process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies to be forwarded by registered mail, addressed to such corporation at its principal office in the State under the laws of which it is organized as the same appears in the records of the Commissioners. Any service so had on the Commissioners shall be returnable in not less than thirty days: *Provided, however*, That, if a period of less than or greater than thirty days is prescribed by law or by rules of a court in the District or the rules or regulations of any agency of the United States or of the District, such prescribed period shall govern.

(b) If any foreign corporation shall transact business in the District without a certificate of authority, it shall, by transacting such business, be deemed to have thereby appointed the Commissioners its agent and representative upon whom any process, notice, or demand may be served. Service shall be made by delivering to and leaving with the Commissioners, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand, together with an affidavit giving the latest known post office address of such corporation and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered mail, addressed to such corporation at the address given in such affidavit. Service pursuant to this subsection shall be subject to the requirements of the last sentence of subsection (a) of this section.

(c) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

(d) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with reference thereto. (June 8, 1954, 68 Stat. 223, ch. 269, § 108; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 25; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 15.)

AMENDMENTS

1959—Subsec. (a) amended by act July 23, 1959, § 15(a), which inserted: "in the State under the laws of which it is organized" following "principal office."

Subsec. (b) added by act July 23, 1959, § 15(b). Former subsec. (b) redesignated (c).

Subsec. (c), formerly (b), so redesignated by act July 23, 1959, § 15(b). Former subsec. (c) redesignated (d).

Subsec. (d), formerly (c), so redesignated by act July 23, 1959, § 15(b).

1957—Subsec. (a) amended by act Sept. 2, 1957, which substituted "service" for "services" in the sixth sentence.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-933j. Amendment to articles of incorporation of foreign corporation.

Whenever the articles of incorporation of a foreign corporation authorized to transact business in the District are amended, such foreign corporation shall forthwith file with the Commissioners a copy of such amendment duly certified by the proper officer of the State under the laws of which such corporation is organized; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in the District, nor authorize such corporation to transact business in the District under any other name than the name set forth in its certificate of authority. (June 8, 1954, 68 Stat. 223, ch. 268, § 109.)

§ 29-933k. Merger of foreign corporation authorized to transact business in the District.

Whenever a foreign corporation authorized to transact business in the District shall be a party to a statutory merger permitted by the laws of the State under which it is organized, and such corporation shall be the surviving corporation, it shall forthwith file with the Commissioners a copy of the articles of merger duly certified by the proper officer of the State under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to transact in the District. (June 8, 1954, 68 Stat. 224, ch. 269, § 110.)

§ 29-933l. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in the District shall secure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Commissioners.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Commissioners, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority. (June 8, 1954, 68 Stat. 224, ch. 269, § 111.)

§ 29-933m. Annual report of foreign corporations.

Each foreign corporation authorized to transact business in the District shall file on or before April 15 of each year with the Commissioners an annual report setting forth—

(a) The name of the corporation and the State under the laws of which it is organized.

(b) If the name of the corporation does not contain one of the words "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it has elected to add thereto for use in the District.

(c) The date of its incorporation and the period of its duration.

(d) The address, including street and number, if any, of its principal office in the State under the laws of which it is organized.

(e) The address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address.

(f) A brief statement of the character of the business in which it is actually engaged in the District.

(g) The names and respective addresses, including street and number, if any, of its directors and officers.

Such annual report shall be made on forms prescribed and furnished by the Commissioners and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, vice president, secretary, assistant secretary, or treasurer, and verified by the officer making the report, and the corporate seal shall be thereto affixed. (June 8, 1954, 68 Stat. 224, ch. 269, § 112; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 16.)

AMENDMENTS

1959—Subsec. (f), formerly (g), so redesignated by act July 23, 1959. Former subsec. (f) which read "The name or names of the State or States other than the District, if any, in which it is admitted or qualified to transact business" was repealed by act July 23, 1959.

Subsec. (g), formerly (h), so redesignated by act July 23, 1959. Former subsec. (g) redesignated (f).

Subsec. (h) redesignated (g) by act July 23, 1959.

Subsec. (i) which read "A statement of the aggregate number of shares which the corporation has authority to issue, and the aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class" was repealed by act July 23, 1959.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by act July 23, 1959, effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-934. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in the District may withdraw from the District upon procuring from the Commissioners a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall file with the Commissioners an application for withdrawal.

(b) The application for withdrawal shall set forth—

(1) the name of the corporation and the State under the laws of which it is organized;

(2) that it is not transacting business in the District;

(3) that it surrenders its authority to transact business in the District;

(4) that it revokes the authority of its registered agent in the District to accept service of process and consents that service of process in any suit, action, or proceeding based upon any cause of action arising in the District during the time it was authorized to transact business in the District may thereafter be made on such corporation by service thereof on the Commissioners;

(5) a post-office address to which the Commissioners may mail a copy of any process against the corporation that may be served on them;

(6) such information as may be necessary or appropriate in order to enable the Commissioners to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

(c) The application for withdrawal shall be made on forms prescribed and furnished by the Commissioners and shall be executed by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, the same shall be executed on behalf of the corporation by such receiver or trustee and verified by him. (June 8, 1954, 68 Stat. 225, ch. 269, § 113; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 26.)

AMENDMENT

1957—Subsec. (b) (5) amended by act Sept. 2, 1957 which substituted "them" for "him."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-934a. Filing of application for withdrawal.

(a) Duplicate originals of such application for withdrawal shall be delivered to the Commissioners. Upon receipt thereof they shall examine the same and, if they find that it conforms to the provisions of this chapter, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of withdrawal to which they shall affix the other duplicate original.

(b) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in the District shall cease. (June 8, 1954, 68 Stat. 225, ch. 269 § 114; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 27.)

AMENDMENT

1957—Subsec. (b) amended by act Sept. 2, 1957, which substituted "delivered to the corporation or its repre-

sentative" for "recorded in the office of the Recorder of Deeds."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-934b. Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to transact business in the District may be revoked by the Commissioners when they find that—

(1) the certificate of authority of the corporation was procured through fraud practiced upon the District; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(3) the corporation has failed for a period of ninety days to pay any fees, charges, or penalties prescribed by this chapter; or

(4) the corporation has failed for ninety days to appoint and maintain a registered agent in the District; or

(5) the corporation has failed for thirty days after change of its registered office or registered agent to file with the Commissioners a statement of such change; or

(6) the corporation has failed to file its annual report as required by this chapter; or

(7) the corporation for a period of two years has not transacted any business in the District; or

(8) The corporation has failed to file with the Commissioners a duly authenticated copy of each amendment to its articles of incorporation within thirty days after such amendment becomes effective; or

(9) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the Commissioners unless (1) they shall have given the corporation not less than thirty days' notice by mail, addressed to such corporation at its principal office as the same appears in the records of the Commissioners or at its registered office in the District, of their intent to revoke the certificate of authority, and (2) the corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or to appoint a registered agent in the District, or to file the required statement of change of registered office or registered agent, or to file such annual report, or to file a statement showing that it has transacted business in the District within a period of two years, or to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (June 8, 1954, 68 Stat. 226, ch. 269, § 115; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 28.)

AMENDMENT

1957—Act Sept. 2, 1957, designated existing provisions as subsec. (a), redesignated clauses (a)—(1) as clauses (1)—(9), deleted from clause (9) the words "in which event the Commissioners shall give not less than thirty days' notice forwarded by registered mail, addressed to such corporation at its principal office as the same appears in the records of the Commissioners or at its registered office in the District, of their intent to revoke the certificate of authority." and added subsec. (b).

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-934c. Issuance of certificate of revocation.

(a) Upon revoking any such certificate of authority, the Commissioners shall—

(1) issue a certificate of revocation in duplicate;

(2) file one of such certificates in their office;

(3) mail to such corporation at its registered office in the District a notice of such revocation together with the other such certificate.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in the District shall cease. (June 8, 1954, 68 Stat. 226, ch. 269, § 116; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 29.)

AMENDMENT

1957—Subsec. (a) amended by act Sept. 2, 1957, which substituted "their" for "his" in clause (2) and added "together with the other such certificate" and deleted the sentence "The certificate of revocation, together with the duplicate original affixed hereto, shall be recorded in the office of the Recorder of Deeds." from clause (3).

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-934d. Effect of revocation or withdrawal upon actions and contracts.

The revocation of certificate of authority or the voluntary withdrawal of a foreign corporation whereby its authority to do business in the District shall cease and be determined, shall not affect any action then pending, nor affect any right of action upon any contract made by the corporation in the District before such revocation or withdrawal, and, in any action upon any liability or obligation so incurred before the revocation or withdrawal, the process against the corporation may be served, after the filing thereof, upon the Commissioners. (June 8, 1954, 68 Stat. 226, ch. 269, § 117.)

§ 29-934e. Application to foreign corporations transacting business on the effective date of this chapter.

Foreign corporations transacting business in the District at the time this chapter takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this chapter shall, within six months after the effective date of this chapter, procure a certificate of authority and shall otherwise comply with all applicable provisions of this chapter. Failure to secure a certificate of authority within the time provided in this section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this

chapter for transacting business without a certificate of authority. (June 8, 1954, 68 Stat. 227, ch. 269, § 118.)

REFERENCES IN TEXT

Effective date of this chapter one hundred and eighty days after June 8, 1954, see Effective Date note set out under section 29-901.

§ 29-934f. Transacting business without certificate of authority.

(a) No foreign corporation which is subject to the provisions of this chapter and which transacts business in the District without a certificate of authority shall be permitted to maintain an action at law or in equity in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall an action at law or in equity be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in the District until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to transact business in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action at law or suit in equity in any court of the District.

(c) A foreign corporation which transacts business in the District without a certificate of authority shall be liable to the District, for the years or parts thereof during which it transacted business in the District without a certificate of authority, in an amount equal to all fees and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in the District as required by this chapter and thereafter filed all reports required by this chapter; and in addition thereto it shall be liable for a penalty of not in excess of \$500. The Commissioners shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation. (June 8, 1954, 68 Stat. 227, ch. 269, § 119.)

NOTES TO DECISIONS

Compliance with provisions 1

Purpose 2

Qualification after motion to dismiss 3

1. Compliance with provisions

Under provision prohibiting a foreign corporation transacting business in the District without a certificate from maintaining an action until such certificate is obtained and that such failure shall not impair the validity of any contract or act of the corporation, non-compliance with the statutes was a mere temporary disability and capable of oblation at any stage of the proceedings and hence the statute was not absolutely prohibitive of an action of a foreign corporation but was merely suspensory until compliance with the statute. *Hill-Lanham, Inc. v. Lightview Development Corp.* (1958, 163 F. Supp. 475).

2. Purpose

Under provisions prohibiting foreign corporations transacting business in the District without a certificate from maintaining actions therein, real purpose of legislation

was to bring such corporations under regulation of public officials charged with such responsibility to end that public could have the same information respecting their background and financial standing as demanded of domestic corporations and as a consequence to render them amenable to ordinary legal processes. *Hill-Lanham, Inc., v. Lightview Development Corp.* (1958, 163 F. Supp. 475).

3. Qualification after motion to dismiss

Under provision that foreign corporation which transacts business in District of Columbia without a certificate of authority shall not be permitted to maintain an action at law or in equity in any court of the District until such a certificate is obtained, defendant was not entitled to have suit brought by foreign corporation on a contract entered into in District of Columbia dismissed for failure to qualify as a foreign corporation when plaintiff obtained a certificate of authority subsequent to filing of defendant's motion to dismiss the action. *Federal Loose Leaf Corp. v. Woodhouse Stationery Co.* (1958, 163 F. Supp. 482).

§ 29-935. Commissioners—Duties and functions.

(a) The Commissioners shall be charged with the administration and enforcement of this chapter. Said Commissioners are authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress. The compensation of such personnel shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended.

(b) The Commissioners may transfer any or all of the functions vested in them by this chapter to any agent designated by them pursuant to the provisions of this chapter, or to any office or agency established by them pursuant to Reorganization Plan Numbered 5 of 1952.

(c) The Commissioners of the District of Columbia shall provide a distinctive official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear such legend as the Commissioners may determine.

(d) Every certificate and other document or paper executed by the Commissioners, in pursuance of any authority conferred upon them by this chapter, and sealed with the seal prescribed by subsection (b) hereof, and all copies of such papers as well as of documents and other papers filed in accordance with the provisions of this chapter, when certified by them and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The Commissioners are authorized to attend and participate in the meetings of national organizations of State officials having supervision over corporations, and of the committees thereof, and there is hereby authorized to be appropriated such sums as may be necessary to defray the expenses of attendance at such meetings and to pay such annual dues or other fees as may be necessary to membership in said organizations. The Commissioners are further authorized to visit the corporation departments of the various States when in their judgment such visits are necessary or desirable in connection with the organization or proper conduct of any office or agency established by them.

(f) The Commissioners are authorized to make, modify, and enforce such regulations as they may deem necessary to carry out the provisions of this chapter, prescribe penalties for the violation of any

such regulations not exceeding a fine of \$300 or imprisonment for ninety days, or both, and to prescribe such forms and procedures for use in the conduct of the business of any office or agency established by them as they may deem appropriate. (June 8, 1954, 68 Stat. 227, ch. 269, § 120.)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (a), is classified to U.S. Code, title 5, chapter 21.

DELEGATION OF FUNCTIONS

Org. Ord. No. 101, 54-1980, dated Sept. 16, 1954, and amended Oct. 14, 1954; Nov. 30, 1954; June 10, 1955, and Feb. 19, 1960, of the Board of Commissioners of the District of Columbia provided:

Delegation of Authority to the Recorder of Deeds to Administer the D. C. Business Corporation Act

Pursuant to the authority contained in Public Law 389, 83d Congress, herein referred to as the D. C. Business Corporation Act [this chapter], it is hereby ordered:

PART I

The following functions are delegated to the Office of Recorder of Deeds, under the supervision of the Recorder of Deeds, D. C., who shall have full authority over such functions, including the power to redelegate to other officials and employees of his Office such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations and shall be subject to the administrative direction and control of the Commissioner to whom the Office of Recorder of Deeds is assigned.

(a) Issues certificates of incorporation, reincorporation, amendment of articles of incorporation, merger, consolidation, ownership, and dissolution of domestic corporations.

(b) Issues certificates of authority and amended certificates of authority to foreign corporations.

(c) In accordance with Section 123 (a) of the Act [section 29-938(a)], issues proclamations listing the names of domestic and foreign corporations which have failed or refused to pay annual report fees, or to file annual reports.

(d) Issues certificates of reinstatement to proclaimed corporations which have filed a petition of reinstatement and which otherwise comply with the requirements for reinstatement of the D.C. Business Corporation Act [this chapter].

(e) Recommends to the Corporation Counsel the institution of necessary proceedings in the name of the District of Columbia, to dissolve a corporation, or to enjoin a corporation from transacting unauthorized business, and the Corporation Counsel, if he shall concur in any such recommendation shall institute and prosecute such proceeding.

(f) Receives applications for, and issues certificates of withdrawal to foreign corporations desiring to withdraw their authority to transact business from the District.

(g) Develops and proposes to the Commissioners regulations and procedures necessary for carrying out the provisions of the D.C. Business Corporation Act [this chapter].

(h) Collects all fees, license taxes, penalties, and other charges, as prescribed in the D. C. Business Corporation Act [this chapter], and deposits same with the Collector of Taxes, D.C.

(i) Receives and files all papers required by law to be filed in connection with incorporation, regulation, merger, consolidation, and dissolution of business corporations, domestic or foreign, in the District of Columbia.

(j) Serves as custodian of the official seal prescribed by the Commissioners for use in executing certificates and other documents or papers, in pursuance of the authority conferred by the D.C. Business Corporation Act [this chapter] and certifies and authenticates copies of documents and other papers filed pursuant to such Act [this chapter].

(k) Serves as representative of the Commissioners in attending and participating in the meetings of national organizations of State officials having supervision over

corporations, and of the committees thereof; and visits corporation departments of the various States, as necessary or desirable, in connection with the proper performance of the functions assigned herein, subject to prior approval of the Commissioners of such visits.

(l) Prescribes and furnishes forms for reports and other documents required to be filed under the provisions of the D.C. Business Corporation Act [this chapter].

(m) Prepares, and provides upon request, forms for all documents and papers required to be filed under the provisions of the D.C. Business Corporation Act [this chapter].

(n) Serves as consultant and adviser to the Board of Commissioners and to the heads of District departments and offices on matters relating to the incorporation, regulation, merger, consolidation, and dissolution of business corporations in the District of Columbia.

(o) Upon proper application of any person or corporation referred to in section 9(a) of the D.C. Business Corporation Act [section 29-906a(a)], determines whether a specified corporate name is available for corporate use; if available, reserves the exclusive right for the applicant to the use of such name for a period of sixty days; and authorizes, upon filing of proper notice, the transfer of such name to any person or corporation other than the applicant for whom the name was reserved.

(p) Revokes certificates of authority of foreign corporations to transact business in the District of Columbia; issues certificates of revocation of certificates of authority; and corrects errors in proclamations of revocation.

(q) Reserves names of all corporations, the articles of incorporation of which have been revoked, and of all foreign corporations, the certificates of authority of which have been revoked, until December 31 of the year in which the proclamation of revocation was issued.

(r) Refuses to file any articles, statements, certificates, reports, applications, notices or other papers relating to any corporation, domestic or foreign, organized under or subject to the Act [this chapter] until all fees and charges provided to be paid in connection therewith shall have been paid to them, or while the corporation is in default in the payment of any fees, charges or penalties provided to be paid by or assessed against it.

(s) As appropriate, disapproves any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by the Act [this chapter] to be approved by the Commissioners before the same shall be filed in their office, and within ten days after the delivery thereof to them, to give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

(t) In the event a domestic corporation fails to appoint or maintain a registered agent as required by law, the Recorder of Deeds, in the name of the Commissioners, shall act as agent of such corporation, upon whom any process, notice, or demand may be served; and said Recorder shall keep records of all processes, notices, and demands served thereon, and shall record the time of such service and the action with respect thereto.

(u) In the event a foreign corporation, authorized to transact business in the District, fails to appoint or maintain in the District a registered agent, as required by law, or whenever any such registered agent cannot with reasonable diligence be found at the registered office in the District of such corporation, or whenever the certificate of authority of any foreign corporation shall be revoked, the Recorder of Deeds, in the name of the Commissioners, shall act as agent and representative of such corporation, upon whom any process, notice, or demand may be served; and said Recorder shall keep records of all processes, notices, and demands served thereon, and shall record the time of such service and the action with respect thereto.

(v) In the event the Commissioners of the District of Columbia receive an irrevocable appointment as an agent of a surviving or new corporation, after a merger or consolidation of domestic and foreign corporations, to accept service of process in any proceeding for the enforcement of any obligation of any domestic corporation which is a

party to such merger or consolidation and in any proceeding for the enforcement of rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation, the Recorder of Deeds, in the name of the Commissioners, shall act as agent of such corporation, upon whom any process may be served, in any such proceeding; and said Recorder shall keep records of all process served, and shall record the time of such service and the action with respect thereto.

(w) Assesses penalties, in accordance with section 119 (c) of the Act [section 29-934f(c)], in an amount not in excess of \$100 for foreign corporations transacting business in the District of Columbia without a Certificate of Authority and recommends to the Board of Commissioners any penalties proposed in excess of \$100, all such penalties to be in addition to all charges and fees which would have been imposed by the Act [this chapter] had the corporation duly applied for and received a Certificate of Authority.

(x) Receives notices of resignation, executed in triplicate, from registered agents of domestic corporations wishing to resign, and mails one copy thereof to the corporation at its registered office and another copy thereof to the corporation at its principal office in the District.

(y) Receives notices of resignation, executed in duplicate, from registered agents of foreign corporations, and mails one copy thereof to the corporation at its principal office in the state under the laws of which it is organized.

(z) Acts as agent and representatives of every foreign corporation which shall transact business in the District of Columbia without a certificate of authority, upon whom any process, notice, or demand may be served as provided in Section 108(b) of the District of Columbia Business Corporation Act, as amended. [section 29-933i(b)]

PART II

For the purpose of carrying out the functions assigned in Part I herein, there shall be established in the Office of Recorder of Deeds the position of Superintendent of Corporations and, in addition, so many organizational components and positions with such duties and responsibilities as the Recorder, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART III

All functions relating or pertaining to business corporations, Boards of Trade, Institutions of Learning, Religious Societies, Charitable, Educational, and Religious Associations, and Cooperative Associations which were transferred from the Recorder of Deeds to the Commissioners by Section 143 of the D. C. Business Corporation Act [section 29-953] are re-transferred to the Recorder of Deeds, including the authority to redelegate such functions as provided for in Part I herein.

§ 29-936. Fees and license taxes, and charges.

(a) There are hereby imposed the following fees and charges:

- (1) fees for filing documents and issuing certificates;
- (2) license fees;
- (3) miscellaneous charges.
- (b) The Commissioners shall charge for—
 - (1) filing articles of incorporation, \$20;
 - (2) filing amendment to articles of incorporation, \$20;
 - (3) filing articles of merger or consolidation, \$20;
 - (4) filing a statement of intent to dissolve, \$5;
 - (5) filing articles of reincorporation, 20;
 - (6) filing articles of dissolution, \$10;
 - (7) filing statement of change of address of registered office or change of registered agent, or both, \$1;
 - (8) filing statement of the establishment of a series of shares, \$5;

(9) filing an application of a foreign corporation for certificate of authority to transact business in the District and issuing a certificate of authority, \$20;

(10) filing an application for reservation of a corporate name or for a renewal of reservation, \$5;

(11) filing notice of transfer of a reserved corporate name, \$5;

(12) filing an application of a foreign corporation for amended certificate of authority to transact business in the District and issuing an amended certificate of authority, \$20;

(13) filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the District, \$5;

(14) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the District, \$20;

(15) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$5.

(16) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, \$50;

(17) filing any other statement or report, except an annual report, of a domestic or a foreign corporation, \$1;

(18) for indexing each document filed, except an annual report, of a domestic or a foreign corporation, \$2;

(19) for furnishing a certified copy of any document, instrument, report, or paper relating to a corporation, \$5;

(c) An initial license fee is hereby imposed as follows:

(1) Every domestic corporation upon the filing of its articles of incorporation shall pay, in addition to any other fees and charges imposed by this chapter, the sum of 2 cents for each authorized share of its capital stock up to and including ten thousand shares, and the sum of 1 cent for each additional authorized share up to and including fifty thousand shares, and the sum of one-half of 1 cent for each additional authorized share in excess of fifty thousand shares: *Provided*, That in any case in which the articles of incorporation, of a domestic corporation authorizes par value shares having a par value per share other than \$100 per share, then, in respect to such shares only, the aggregate par value of all of such shares shall be divided by the figure 100 and the quotient so obtained shall be the number of shares for the purpose of the initial license tax as to such shares: *And provided further*, That in no case shall the initial license fee payable be less than \$10.

(2) Every domestic corporation upon the filing of any amendment of its articles of incorporation effecting an increase of its authorized capital stock, in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (c)(1) of this section on the total of the authorized number of shares, including the proposed increase and the initial license fee so computed on the total of the

authorized number of shares excluding said increase: *Provided*, That in no case shall the sum payable be less than \$10.

(3) Upon filing of articles of consolidation or articles of merger, if the corporation created in the case of articles of consolidation, or the corporation surviving in the case of articles of merger shall be a domestic corporation, then in addition to any other fees and charges imposed by this chapter, a sum equal to the difference between the initial license fee computed at the rates provided in paragraph (c) (1) of this section upon the total of the authorized number of shares of the corporation created by such consolidation or surviving in the case of a merger and the initial license fee so computed upon the aggregate amount of the total authorized number of shares of such of the constituent corporations as are domestic corporations: *Provided further*, That in no case shall the sum payable as an initial license fee be less than \$20.

(d) Each foreign corporation authorized under the provisions of this chapter to do business in the District shall pay an annual report fee of \$10, which sum shall be paid at the time of the filing of the annual report required of such corporations under the provisions of this chapter.

(e) Each domestic corporation organized, incorporated, or reincorporated under the provisions of this chapter shall pay, at the rate hereinafter set out, an annual report fee based upon the amount of its total authorized capital stock on the 15th day of March immediately preceding the date on which such annual report is due to be filed. The annual report fee shall be paid at the time of filing the annual report required of such corporations under the provisions of this chapter. The amount of the annual report fee shall be as follows:

Where the total authorized capital stock does not exceed \$25,000, \$15; where the total authorized capital stock exceeds \$25,000, but does not exceed \$100,000, \$25; where the total authorized capital stock exceeds \$100,000, but does not exceed \$300,000, \$40; where the total authorized capital stock exceeds \$300,000, but does not exceed \$500,000, \$70; where the total authorized capital stock exceeds \$500,000, but does not exceed \$1,000,000, \$100; and a further sum of \$50 for each \$1,000,000, or fraction thereof, in excess of \$1,000,000. Shares without par value, for the purpose of ascertaining the amount of the annual report fee, but for no other purpose, shall be taken to be of the par value of \$100 each.

(f) In the case of a newly organized corporation, the amount of the annual report fee to be paid at the time of the filing of its first annual report shall be an amount at the rates provided in subsection (e) of this section prorated on a monthly basis for the period from the date its certificate of incorporation or reincorporation was filed with the Commissioners to the April 15 on which said first annual report is due to be filed.

(g) If the annual report fee of any domestic corporation is unpaid on the April 15 on which the same is due, the annual report fee shall bear interest at the rate of 1 per centum per month until paid.

(h) All taxes, fees, and charges provided for in this chapter shall be paid to the Commissioners and

deposited in the Treasury of the United States to the credit of the District. (June 8, 1954, 68 Stat. 228, ch. 269, § 121; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 30.

AMENDMENT

1957—Subsec. (c) amended by act Sept. 2, 1957, which substituted "(c)" for "(b)" in clause (2), and substituted "articles" for "an agreement," wherever appearing, "(c)" for "(b)", "shares of such "for" shares such "and" constituent corporations" for "constituent corporation" in clause (2).

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-937. Effect of failure to pay annual report fee or to file annual report.

If any corporation incorporated or reincorporated under this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall for two consecutive years fail or refuse to pay any annual report fee or fees payable under this chapter, or fail or refuse to file any annual report as required by this chapter for two consecutive years, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be inoperative. (June 8, 1954, 68 Stat. 230, ch. 269, § 122.)

§ 29-938. Proclamation of revocation.

(a) On the second Monday in September of each year, the Commissioners shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any annual report fee or fees or failed or refused to file any annual report as required by this chapter for two consecutive years next preceding June 30 in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Commissioners shall be filed in their office and shall be published once during the month of September in each of two daily newspapers of general circulation in the District of Columbia.

(c) Upon publication of the proclamation of revocation as provided in this chapter each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interest.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of three years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to collect their assets, convey and dispose of such of their properties as are not to be distributed in kind to their shareholders, pay, satisfy, and discharge their liabilities and obligations and do all other acts required to liquidate their business and affairs, and, after paying or adequately providing for the payment of all its obligations, to distribute the remainder of their assets, either in cash or in kind among their shareholders according to their respective rights and interests, but not for the purpose of continuing the business for which such corporation shall have been organized: *Provided, however,* That with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within three years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or proceedings so begun or commenced be continued bodies corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed. (June 8, 1954, 68 Stat. 230, ch. 269, § 123; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 31.)

AMENDMENT

1957—Subsec. (b) amended by act Sept. 2, 1957, which deleted the second sentence reading "A certified copy of the proclamation shall be transmitted to the Recorder of Deeds and he shall cause notation of the fact of revocation to be made upon the articles of incorporation of each domestic corporation listed in said proclamation."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-938a. Penalty for carrying on business after issuance of proclamation.

Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both, in the discretion of the court. (June 8, 1954, 68 Stat. 231, ch. 269, § 124.)

§ 29-938b. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Commissioners that any corporation named in said proclamation has not failed or refused to pay any annual report fee or file any annual report for two consecutive years, or has been inadvertently included in the list of corporations as so failing or refusing to pay annual report fees or file reports, the Commissioners are authorized to correct such mistake by issuing a proclamation to that effect and

restoring the articles of incorporation or certificate of authority, as the case may be, into good standing with like effect as if such proclamation of revocation, as to such corporation, had not been issued. (June 8, 1954, 68 Stat. 231, ch. 269, § 125.)

§ 29-938c. Reservation of name of proclaimed corporation.

The Commissioners shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31 of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name. (June 8, 1954, 68 Stat. 232, ch. 269, § 126.)

§ 29-938d. Reinstatement of proclaimed corporations.

Upon filing a petition for reinstatement by a proclaimed corporation accompanied by the filing of the delinquent reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this chapter, together with any penalties imposed by this chapter, and upon payment of the reinstatement fee provided by this chapter at any time after the date of the issuance of the proclamation, the Commissioners, if they find that all of the documents offered for filing conform to law, shall file them in their office and shall issue their certificate of reinstatement which shall have the effect of annulling the revocation proceedings theretofore taken as to such corporation and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued. (June 8, 1954, 68 Stat. 232, ch. 269, § 127.)

§ 29-939. Penalty for failure to file annual report on time.

Any corporation organized under this chapter or any foreign corporation having a certificate of authority under this chapter which fails or refuses to file the annual report required by this chapter to be filed on April 15 of each year shall pay a penalty of \$25. (June 8, 1954, 68 Stat. 232, ch. 269, § 128.)

§ 29-940. Penalty for failure to maintain registered office or registered agent.

Any corporation incorporated or reincorporated under this chapter, or any foreign corporation which has been issued a certificate of authority under this chapter, which fails or refuses to maintain a registered office or a registered agent in the District of Columbia, in accordance with the provisions of this chapter shall be deemed to be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined in an amount not exceeding \$500. (June 8, 1954, 68 Stat. 232, ch. 269, § 129.)

§ 29-941. Effect of nonpayment of fees.

(a) The Commissioners shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter, until all fees and charges provided to be paid in connection therewith shall have been paid to them or while the corporation is in default in the payment of any fees, charges, or penalties herein provided to be paid by or assessed against it.

(b) No corporation required to pay a fee, charge, or penalty under this chapter shall maintain in the District of Columbia any action at law or suit in equity until all such fees, charges, and penalties have been paid in full. (June 8, 1954, 68 Stat. 232, ch. 269, § 130; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 32.)

AMENDMENT

1957—Subsec. (a) amended by act Sept. 2, 1957, which substituted "them" for "him."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-942. Penalties—Violation or failure a misdemeanor.

Any person, or corporation, who violates any provision of this chapter, or fails to comply with any provision thereof, for which violation or failure no penalty is provided therein or elsewhere in the laws of the District of Columbia, shall be deemed guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be fined not exceeding \$500 for each and every violation or failure. (June 8, 1954, 68 Stat. 233, ch. 269, § 131.)

§ 29-943. Rights and immunities of witnesses.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 8, 1954, 68 Stat. 233, ch. 269, § 132.)

§ 29-944. Monopolies and restraints of trade.

Nothing in this chapter shall be interpreted to authorize a corporation to do any act in violation of the common law or the statutes relating to the District of Columbia or of the United States with respect to monopolies and illegal restraint of trade. (June 8, 1954, 68 Stat. 233, ch. 269, § 133.)

CROSS REFERENCE

Monopolies and combinations in restraint of trade, see U.S. Code, title 15, ch. 1.

§ 29-945. Waiver of notice.

Whenever any notice whatever is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of any corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. (June 8, 1954, 68 Stat. 233, ch. 269, § 134.)

§ 29-946. Voting requirements of articles of incorporation.

Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. (June 8, 1954, 68 Stat. 233, ch. 269, § 135.)

§ 29-947. Informal action by shareholders.

Any action required by this chapter to be taken at a meeting of the shareholders of a corporation, or any other action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. In the event that the action which is consented to is such as would have required the filing of a certificate under any section of this chapter, if such action had been voted upon by the shareholders at a meeting thereof, the certificate filed under such section shall state that written consent has been given hereunder, in lieu of stating that the shareholders have voted upon the corporate action in question, if such last-mentioned statement is required thereby. (June 8, 1954, 68 Stat. 234, ch. 269, § 136.)

§ 29-948. Appeal from Commissioners.

(a) If the Commissioners shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Commissioners before the same shall be filed in their office, they shall, within ten days after the delivery thereof to them give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the United States District Court for the District of Columbia, by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(b) If the Commissioners shall revoke the certificate of authority to transact business in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the United States District Court for the District of Columbia, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in the District and a copy of the notice of revocation given by the Commissioners; whereupon the matter shall be tried de novo by the court and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(c) Appeals from all final orders and judgments entered by the United States District Court for the District of Columbia under this section in review of any ruling or decision of the Commissioners may be taken to the United States Circuit Court of Appeals for the District of Columbia by either party to the proceeding within sixty days after service on such party of a copy of the order or judgment of the United States District Court for the District of Columbia. (June 8, 1954, 68 Stat. 234, ch. 269, § 137.)

UNITED STATES COURT OF APPEALS

Designation of court of appeals in each circuit as the United States Court of Appeals for the circuit and substitution of "court of appeals" for "circuit court of appeals" in all laws of the United States in force on Sept. 1, 1948, in which such term is referred to, see act June 25, 1948, 62 Stat. 870, 991, ch. 646, §§ 1, 32(a), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, set out in part as U.S. Code, title 28, § 43.

§ 29-949. Certificates and certified copies of certain documents to be received in evidence.

All certificates issued by the Commissioners in accordance with the provisions of this chapter, and all copies of documents filed in their office in accordance with the provisions of this chapter when certified by them, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Commissioners under the seal of their office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. (June 8, 1954, 68 Stat. 234, ch. 269, § 138.)

§ 29-950. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. (June 8, 1954, 68 Stat. 235, ch. 269, § 139.)

§ 29-951. Forms to be furnished by Commissioners.

All reports required by this chapter to be filed in the office of the Commissioners shall be made on forms which shall be prescribed and furnished by the Commissioners. Forms for all other documents to be filed in the office of the Commissioners shall be furnished by the Commissioners on request therefor, but the use thereof, unless otherwise spe-

cifically prescribed in this chapter, shall not be mandatory. (June 8, 1954, 68 Stat. 235, ch. 269, § 140.)

§ 29-952. Reincorporation or incorporation of existing corporations.

I. REINCORPORATION

(a) Any corporation which is organized and existing under the laws of the District of Columbia on December 5, 1954, and which is organized for profit and for a purpose or purposes authorized by this chapter may avail itself of the provisions of this chapter and may become reincorporated hereunder in the following manner:

(1) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this chapter, setting forth the proposed articles of reincorporation, and directing that such proposed reincorporation be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice setting forth the proposed articles of reincorporation or a summary thereof shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders shall be taken on the proposed reincorporation; and it shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares unless two or more classes of shares are issued, in which event it shall be adopted upon receiving the affirmative vote of two-thirds of the outstanding shares of each class issued.

(b) Upon receiving such approval, the articles of reincorporation shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name (which may be different from its existing name) under which the corporation elects to be reincorporated and which shall be subject to the other provisions of this chapter;

(2) the address, including street and number, if any, of its registered agent in the District of Columbia, and the name of its registered office at such address;

(3) the period of duration, which may be perpetual and which may be different from its existing period of duration;

(4) the purpose or purposes (which may be different from its existing purposes) which it will hereafter carry on, and which shall not include any purpose prohibited to a corporation organized under this chapter;

(5) the aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of each of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of

shares of each class and a statement of the par value of each share of each such class or that such shares were without par value;

(6) if the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power;

(7) any other provision, not inconsistent with law or this chapter (whether or not included in its existing certificate of incorporation), for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws;

(8) the number of directors of the corporation, and a statement that the board of directors adopted a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this chapter in the manner set forth in the articles of reincorporation;

(9) a statement that the corporation elects to surrender its existing charter and to be reincorporated under and subject to the provisions of this chapter;

(10) the aggregate number of shares outstanding of each class; and

(11) the number of shares of each class voted for and against such reincorporation.

(c) It shall not be necessary to set forth in the articles of reincorporation any of the corporate powers enumerated in this chapter. Whenever a provision of the articles of reincorporation is inconsistent with a bylaw, the provision of the articles of reincorporation shall be controlling.

(d) Duplicate originals of the articles of reincorporation shall be delivered to the Commissioners. If the Commissioners find that the articles of reincorporation conform to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of reincorporation to which they shall affix the other duplicate original;

(4) deliver such certificate of reincorporation and other duplicate original to the corporation or its representative.

II. INCORPORATION

(a) Any corporation which is created under the provisions of a special Act of Congress to transact business in the District of Columbia for profit and for purposes authorized by this chapter may avail itself of the provisions of this chapter and may become incorporated hereunder in the following manner:

(1) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should elect to avail itself of the provisions of this chapter and become

incorporated hereunder, and directing that such proposed incorporation be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice of such proposed incorporation shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(3) At such meeting a vote of the shareholders shall be taken on the proposed incorporation; and it shall be adopted upon receiving the affirmative vote of the holders of a majority of the outstanding shares, unless two or more classes of shares are issued in which event it shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares of each class issued.

(b) Upon such approval being given by the shareholders, a statement of incorporation shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the name of the corporation, which shall contain the word "corporation", "company", "incorporated", or "limited", or shall end with an abbreviation of one of said words;

(2) the address, including street and number, if any, of its registered office in the District of Columbia, and the name of its registered agent at such address;

(3) the purpose or purposes for which the corporation was organized and which it will hereafter carry on;

(4) the aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of each of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class and a statement of the par value of each share of each such class or that such shares were without par value;

(5) if the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power;

(6) a statement that the corporation elects to avail itself of the provisions of this chapter and become incorporated hereunder;

(7) the number of directors of the corporation, and a statement that the board of directors adopted a resolution declaring it advisable in the judgment of the board that the corporation should elect to avail itself of the provisions of this chapter and become incorporated thereunder;

(8) the aggregate number of shares outstanding of each class; and

(9) the number of shares of each class voted for and against such incorporation.

(c) It shall not be necessary to set forth in the statement of incorporation any of the corporate powers enumerated in this chapter.

(d) Duplicate originals of the statement of incorporation shall be delivered to the Commissioners, together with a copy of the corporation's charter of articles or certificate of incorporation then in effect, certified by the secretary of the corporation. If the Commissioners find that the statement of incorporation conforms to law, they shall, when all fees and charges have been paid as in this chapter prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office, together with said copy of the corporation's charter or articles or certificate of incorporation as then in effect;

(3) issue a certificate of incorporation to which they shall affix the other duplicate originals; and

(4) deliver such certificate of incorporation and other duplicate original to the corporation or its representative.

(June 8, 1954, 68 Stat. 235, ch. 269, § 141; Sept. 2, 1957, 71 Stat. 572, Pub. L. 85-254, § 33.)

AMENDMENTS

1957—Act Sept. 2, 1957, amended section to read as above set out. As originally enacted the section read:

"Any corporation which is either—

"(1) organized and existing under the laws of the District of Columbia on the date this Act takes effect [see section 146 of act June 8, 1954, set out as note under section 29-901] and which is organized for profit and for a purpose or purposes authorized by this Act [this chapter]; or

"(2) created under the provisions of a special Act of Congress to transact business in the District of Columbia for profit and for purposes authorized by this Act [this chapter];

may avail itself of the provisions of this Act [this chapter] and may become reincorporated or incorporated hereunder in the following alternative manner:

"I. Reincorporation

"(a) The board of directors shall adopt a resolution declaring it advisable in the judgment of the board that the corporation should be reincorporated under the provisions of this Act [this chapter] and further setting forth the following statements for articles of incorporation under this Act [this chapter]:

"(1) The name which the corporation elects to be reincorporated under and which shall contain the word 'corporation', 'company', 'incorporated', or 'limited', or shall contain an abbreviation of one of said words.

"(2) The designation of the address, including street and number, if any, of its registered office in the District of Columbia; and the name of its registered agent at such address.

"(3) The purpose or purposes for which the corporation was organized and which it will hereafter carry on.

"(4) The aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class, if any, that have a par value and the par value of each share of each such class, and the number of shares of each class, if any, that are without par value.

"(5) If the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power.

"(6) The number of directors of the corporation.

"(7) Any other provisions, not inconsistent with law, or this Act [this chapter], for the regulation of the internal affairs of the corporation.

"(8) That it elects to surrender its existing charter and to be reincorporated under and subject to the provisions of this Act [this chapter].

"It shall not be necessary to set forth in the articles of reincorporation any of the corporate powers enumerated in this Act [this chapter].

"(b) Written or printed notice setting forth the proposed articles of reincorporation or a summary thereof shall be given to each shareholder of record within the time and in the manner provided in this Act [this chapter] for giving notice of meetings of shareholders.

"(c) At such meeting a vote of the shareholders shall be taken on the proposed reincorporation and it shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the outstanding shares unless two or more classes of shares are issued in which event it shall be adopted upon receiving the affirmative vote of two-thirds of the outstanding shares of each class issued.

"(d) Upon receiving such approval, articles of reincorporation shall be executed in duplicate by the corporation by its president or vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the Commissioners.

"(e) If the Commissioners find that the articles of reincorporation conform to law, they shall, when all fees and charges have been paid as in this Act [this chapter] prescribed—

"(1) endorse on each of such duplicate originals the word 'Filed', and the month, day, and year of the filing thereof;

"(2) file one of such duplicate originals in their office;

"(3) issue a certificate of reincorporation to which they shall attach the other duplicate original.

"(f) The certificate of reincorporation, together with the duplicate original of the articles of reincorporation affixed thereto, shall be recorded in the office of the Recorder of Deeds.

"II. Incorporation

"(a) By filing with the Commissioners a copy of its charter, or articles of incorporation, then in effect, certified by the secretary of said corporation, together with a certificate executed on behalf of the corporation by the president or a vice president and the secretary or the assistant secretary setting forth the following:

"(1) The name of the corporation, which shall contain the word 'corporation', 'company', 'incorporated', or 'limited', or shall end with an abbreviation of one of said words.

"(2) The designation of the address, including street and number, if any, of its registered office in the District of Columbia; and the name of its registered agent at such address.

"(3) The purpose or purposes for which the corporation was organized and which it will hereafter carry on.

"(4) The aggregate number of shares which the corporation was authorized to issue and, if said shares were of one class only, the par value of such shares, or a statement that all were without par value, as the case may be; or if said shares were divided into classes, the number of shares of each class, if any, that have a par value and the par value of each share of each such class, and the number of shares of each class, if any, that are without par value.

"(5) If the shares were divided into classes, the designation of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights in respect of the shares of each class and whether the shares of any class have full, limited, or no voting power.

"(6) The number of directors of the corporation.

"(7) Any other provisions, not inconsistent with law, or this Act [this chapter], for the regulation of the internal affairs of the corporation.

"It shall not be necessary to set forth in such certificate any of the corporate powers enumerated in this Act [this chapter].

"(b) A copy of a resolution of the board of directors certified to by the secretary of such corporation which shows that said board believes it advisable that the corporation should elect to avail itself of the provisions of this Act [this chapter] and become incorporated hereunder.

"(c) A certificate of the secretary of such corporation to the effect that such action by the corporation has been ratified and approved by the affirmative vote of not less than a majority of the outstanding shares of capital stock of such corporation entitled to vote.

"(d) If the Commissioners find that such papers conform to law, they shall accept them for filing in the same manner as herein provided for the filing of articles of incorporation."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

§ 29-952a. Effect of issuance of certificate of reincorporation or incorporation.

Upon the issuance under section 29-952 of a certificate of reincorporation or of incorporation, as the case may be, by the Commissioners the existence of the corporation shall be continued under this chapter, and such certificate shall be conclusive evidence that all conditions precedent required to be performed under section 29-952 have been complied with and that the corporation has been reincorporated or incorporated under this chapter, as the case may be, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of reincorporation or of incorporation; and the corporation shall be entitled to and be possessed of all the privileges, franchises, and powers and subject to all the provisions of this chapter as fully and to the same extent as if such corporation had been originally incorporated under this chapter; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved, and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this chapter: *Provided, however,* That any corporation thus reincorporating or incorporating under the provisions of this chapter shall be subject to all the contracts, debts, claims, duties, liabilities, and obligations of the corporations thus reincorporated or incorporated as if such reincorporation or incorporation had not taken place and neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such reincorporation or incorporation. Such reincorporated or incorporated corporation shall not be subject to the payment of the initial license tax provided by this chapter. (June 8, 1954, 68 Stat. 237, ch. 269, § 142; Sept. 2, 1957, 71 Stat. 574, Pub. L. 85-254, § 34.)

AMENDMENT

1957—Act Sept. 2, 1957, substituted catchline reading "Effect of issuance of certificate of reincorporation or incorporation" for "Effect of filing articles of reincorporation or certificates of incorporation" and "Upon the issuance under section 29-952 of a certificate of reincorporation or of incorporation, as the case may be, by the Commissioners the existence of the corporation shall be continued under this chapter, and such certificate shall be conclusive evidence that all conditions precedent required to be performed under section 29-952 have been complied with and that the corporation has been reincorporated or incorporated under this chapter, as the

case may be, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of reincorporation or of incorporation," for "Upon the issuance of articles of reincorporation or the certificate of incorporation by the Commissioners the existence of the corporation shall be continued under this chapter."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

NOTES TO DECISIONS

Place of business after organization 1
Pre-existing corporation 2
Principal place of business 3

1. Place of business after organization

This chapter, considered in its entirety, contemplates that principal place of business of a corporation may be outside the District after organization in the sense of creation, and there was no intention to make the proviso that "no corporation may be organized" under the chapter "unless the place where it conducts its principal business is located within the District of Columbia" a continuing regulation. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

2. Pre-existing corporation

The provision of this chapter granting to a corporation which is reincorporated under the chapter all the privileges and powers and making corporation subject to all provisions of the chapter was intended to place a pre-existing corporation on equality with one newly organized, so far as benefits and burdens under the chapter were concerned, but in order not to deprive a pre-existing corporation of that which it already had, the subsequent provision confirming and assuring all privileges and powers theretofore belonging to the corporation was intended to preserve them intact. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

3. Principal place of business

The proviso that no corporation may be organized unless place where it conducts its principal business is located within the District of Columbia speaks prospectively, and where corporation owning a baseball club, although reincorporated under the 1954 act, was organized under the act of 1901, imposing no restrictions upon the place where the corporation might conduct its principal business, such corporation was not required to conduct its principal business at a place within the District and was not prohibited from moving its American League franchise to any other city outside the District. *Murphy v. Washington American League Baseball Club, Inc., et al.* (1959, 267 F. 2d 655, 105 U.S. App. D.C. 378).

The proviso that no corporation may be organized unless the place where it conducts its principal business is located within District of Columbia did not apply to corporation operating professional baseball team as reincorporated corporation which under old act had power to conduct its principal place of business outside District of Columbia, and though not exercised, the power available by amendment to certificate of corporation was preserved under the Act, and hence proviso would not preclude corporation from transferring its franchise to a city outside the District. *Murphy v. Washington American League Baseball Club, Inc.* (1958, 167 F. Supp. 215, affirmed 267 F. 2d 655, 105 U.S. App. D.C. 378).

§ 29-953. Transfer of duties of Recorder of Deeds.

(a) All powers conferred and all duties imposed upon the Recorder of Deeds of the District of Columbia by any Act of Congress in relation to the organization of corporations, the amendment of certificates of incorporation or charters of corporations, change in capital stock, change of name, reincorporation, dissolution, or other corporate action are on December 5, 1954, hereby transferred to, imposed upon, and shall be exercised or performed

by the Commissioners; and wherever the words "Recorder of Deeds" or other words denoting that officer appear in any of the Acts of Congress relating to the organization of corporations under the laws of the District of Columbia, or to amendments to the certificate of incorporation or charter of any corporation organized and existing under any of such Acts, or to changes of name, changes of capital stock, reincorporation, dissolution, or other corporate action of any such corporation, whether such words relate to the powers and duties of such officer in relation to organization of corporations under any such Acts, or to any of the corporate Acts hereinbefore enumerated or are used in connection with the imposition of obligations or duties or the conferring of rights or privileges upon corporations or other persons, such words shall be construed to mean the Commissioners. All fees and charges, except as hereinafter provided, now chargeable by the Recorder of Deeds for doing the work or performing the services hereby transferred to the Commissioners shall, after December 5, 1954, be chargeable by the Commissioners. On and after December 5, 1954, all certificates of incorporation or charters for the organization of corporations under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or for the amendment of any such certificate of incorporation or charter, changes in capital stock, reincorporation, dissolution, or other corporate action under any such chapter, shall be delivered to the Commissioners in duplicate original. If the Commissioners find that any such document conforms to law, they shall, when all fees have been paid as prescribed by law—

(1) endorse on each such duplicate original the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(b) The filing of such document in the office of the Commissioners shall have the same force and effect as the recordation or lodging for recordation of certificates of incorporation and other corporate documents hereinbefore enumerated, formerly had in the office of the Recorder of Deeds.

(c) On December 5, 1954, the Commissioners shall take possession of all original books, papers, and records theretofore filed, recorded, used, or acquired by the Recorder of Deeds in the exercise of the powers and in the performance of the duties hereby transferred to the Commissioners, but nothing herein contained shall require the Recorder of Deeds to transfer any copies or transcripts of corporate papers that may constitute part of the records of his office. (June 8, 1954, 68 Stat. 238, ch. 269, § 143; Sept. 2, 1957, 71 Stat. 575, Pub. L. 85-254, § 35.)

AMENDMENTS

1957—Act Sept. 2, 1957, § 35(1), amended subsec. (a) (3) which substituted "return the other duplicate origi-

nal to the corporation or its representative" for "the other duplicate original shall be recorded in the office of the Recorder of Deeds." It also struck out "of" after "recordation" and changed it to "or".

Subsec. (b) amended by act Sept. 2, 1957, § 35(2), which substituted "or" for "of" following "recordation."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 2, 1957, effective on thirtieth day after Sept. 2, 1957, see section 36 of act Sept. 2, 1957, set out as a note under section 29-905.

DELEGATION OF FUNCTIONS

Retransfer of authority to the Recorder of Deeds to administer the D.C. Business Corporation Act, see note under section 29-935.

§ 29-954. Separability of provisions.

The invalidity of any portion of this chapter shall not affect the validity of any other portion thereof which can be given effect without such invalid part. (June 8, 1954, 68 Stat. 238, ch. 269, § 144.)

§ 29-955. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter, or any part thereof, or any certificate of incorporation or certificate of authority issued pursuant to its provisions. (June 8, 1954, 68 Stat. 238, ch. 269, § 145.)

§ 29-956. Appropriation of funds.

There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such amounts as may be necessary to carry into effect the provisions of this chapter. (June 8, 1954, 68 Stat. 239, ch. 269, § 147.)

§ 29-957. Use of certified mail.

Wherever provision of this chapter authorizes or requires the service or forwarding of any process, notice, or demand by registered mail, such provision shall be deemed to include as an alternative the service or forwarding of such process, notice, or demand by certified mail. (June 8, 1954, ch. 269, § 148, as added July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 17.)

CROSS REFERENCES

Certified mail receipts as prima facie evidence of delivery see § 14-407.

EFFECTIVE DATE

Section effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.

§ 29-958. Civil actions and prosecutions.

All civil actions under this chapter which the Commissioners are authorized to commence, and all prosecutions for violations of the provisions of this chapter, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. (June 8, 1954, ch. 269, § 149, as added July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 17.)

EFFECTIVE DATE

Section effective on sixtieth day after July 23, 1959, see section 18 of act July 23, 1959, set out as a note under section 29-907a.



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TITLE 30.—DOMESTIC RELATIONS

Chap.	Sec.
1. Marriage.....	30-101
2. Property Rights.....	30-201

Chapter 1.—MARRIAGE

Sec.	
30-101.	Prohibitions—Marriages void ab initio.
30-102.	Marriage may be decreed to be void.
30-103.	Marriages void from date of decree—Age of consent.
30-104.	Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.
30-105.	Marriage out of District of domiciled persons.
30-106.	Persons authorized to perform marriage ceremony.
30-107.	Marriage performed by unauthorized person—Penalty.
30-108.	Celebration of marriage without license—Penalty.
30-109.	Issuance of license.
30-110.	Duty of clerk before issuing license—Perjury.
30-111.	Consent of parent or guardian.
30-112.	Form of license—Return—Coupon.
30-113.	Failure to make return—Penalty.
30-114.	Record of clerk—Contents.
30-115.	Marriage records transferred from health department.
30-116.	Slave marriages.
30-117.	Issue of marriage of colored persons—Legitimacy—Property rights.

§ 30-101. Prohibitions—Marriages void ab initio.

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First. The marriage of a man with his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

Second. The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son, sister's son.

Third. The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1283.)

CROSS REFERENCES

Divorce and separation, see § 16-401 et seq.
 Proceedings to annul a marriage, see §§ 16-402, 16-407 to 16-411.

NOTES TO DECISIONS

Common-law marriage 1
 Defense in collateral proceedings 2
 Delinquent or dependent children 3

Divorce obtained by fraud 4
 Divorced persons 5
 Laches and estoppel 6
 Previous undissolved marriage 7
 Remarriage during period for appeal 8
 State laws 9
 Voidable marriages 10

1. Common-law marriage

Proof of common-law marriage was not sufficient to sustain a contract in consideration of marriage. *Evans v. Neumann* (1922, 278 F. 1013, 51 App. D.C. 300).

Common-law marriage is not invalid and surviving widow may recover compensation. *Hoage v. Murch Bros. Constr. Co.* (1931, 50 F. 2d 983, 60 App. D.C. 218).

The rule which finds a common-law marriage upon the removal of the impediment, has sometimes been applied though one or both of the parties knew of the impediment, and this result seems socially sound. *Thomas v. Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

The removal of an impediment to marriage while the parties continued to live together as husband and wife in the District of Columbia, gives rise to a "common law marriage." *McVicker v. McVicker* (App. D. C. 1942, 130 F. 2d 837). See, also, *Thomas v. Murphy* (1940, 107 F. 2d 268, 71 App. D. C. 69).

Intermittent visitations by persons domiciled in New Jersey to the District of Columbia after entry of divorce decree of one of such parties could not suffice to alter the parties' domiciliary status, so that they might establish a common-law marriage under the law of the District of Columbia on such visits. *Metropolitan Life Insurance Company v. Chase et al.* (1960, 189 F. Supp. 326).

Where insured, who had been previously married to woman who had borne him children, ceremonially married second woman in District of Columbia in 1941, in 1948 divorced first wife, and continued to live with second woman as husband and wife until his death in 1957, and at all times husband and second woman were domiciled in New Jersey, the attempted ceremonial marriage was void under the law of District of Columbia, and no common-law marriage came into existence after 1948, since the New Jersey statute and public policy prohibited common-law marriages, and second woman was not insured's widow, even though second woman and insured may have, on visits to District of Columbia from time to time, held themselves out as husband and wife, and second woman was not entitled to proceeds of life policy payable to widow, or if there was no widow, to children, but insured's surviving children were entitled to the proceeds. *Id.*

A common-law marriage is recognized as legal in the District of Columbia, and the removal of an impediment while parties continue to live together as husband and wife gives rise to a common-law marriage under the District's law. *Id.*

2. Defense in collateral proceedings

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such District, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver v. Oliver* (1951, 185 F. 2d 429, 87 U.S. App. D. C. 334).

3. Delinquent or dependent children

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

4. Divorce obtained by fraud

Although District residents, seeking divorce in Virginia, are in pari delicto, a divorce fraudulently obtained will render a subsequent marriage by one absolutely void. *Simmons v. Simmons* (1927, 19 F. 2d 690, 57 App. D.C. 216, 54 A. L. R. 75).

Status of parties obtaining divorce by falsehood and subterfuge; decree void; subsequent marriage void; decree not required if marriage void ab initio. *Frey v. Frey* (1932, 59 F. 2d 1046, 61 App. D.C. 232).

5. Divorced persons

This section does not apply to the prohibited remarriage of a divorced person. *Loughran v. Loughran* (1934, 54 S. Ct. 684, 292 U.S. 216, 78 L. Ed. 1219). See, also, *Thomas v. Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

6. Laches and estoppel

Plaintiff who caused divorce action to be instituted in Virginia by defendant, and thereafter married defendant and lived with her for more than 10 years, is barred by the principles of laches or estoppel from challenging the Virginia decree of divorce. *Goodloe v. Hawk* (1940, 113 F. 2d 753, 72 App. D.C. 287).

Since this chapter, read as a whole, is not clear regarding intention of Congress as to whether doctrines of laches and estoppel can be applied in both independent annulment suits and in an attack upon marriage in divorce action on ground of invalidity of prior divorce decree of one of the parties, it must be construed and a reasonable intent must be attributed to Congress. *Ruppert v. Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

In wife's divorce suit, where at time of hearing of motion for new trial on ground of newly discovered evidence that wife's foreign divorce decree from another was invalid because of fraud perpetrated on court regarding wife's residence, law in District of Columbia had been declared to be that in annulment proceedings doctrines of laches and estoppel were inapplicable but thereafter it was held that the general public policy no longer prevented application in annulment actions of laches and estoppel doctrines in determining the effect to be given an irregular foreign divorce decree, wife was entitled to a determination of the case on the basis of the law as declared in the later decision. *Id.*

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Id.*

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of wife's prior foreign divorce decree, trial court dismissed complaint on ground that wife's previous marriage had not been terminated but made no finding of fact and stated no conclusions of law upon issues of laches and estoppel of husband to set up invalidity of foreign divorce decree of wife, judgment was reversed and cause remanded for further findings of fact and conclusions of law on such issue. *Id.*

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Id.*

Husband seeking annulment of marriage to second wife with whom he had lived for some 15 years was not barred by laches or estoppel from asserting invalidity of his Mexican mail order divorce from first wife, where Mexican divorce was wholly null and void, marriage to first wife remained undissolved, no appearance had been made in Mexico, no fraudulent misrepresentations as to residence or domicile or otherwise had been practiced upon Mexican court and neither husband, second wife, nor first wife had ever been deceived by Mexican divorce. *Sears v. Sears* (D.C. Mun. App. 1960, 166 A. 2d 748).

7. Previous undissolved marriage

Estoppel cannot be availed of to defeat the public policy of the District of Columbia which renders void a marriage attempted to be entered into by party whose prior marriage still remained undissolved. *Metropolitan Life Insurance Company v. Chase et al.* (1960, 189 F. Supp. 326).

Public policy is against bigamous marriages. *Sears v. Sears* (D.C. Mun. App. 1960, 166 A. 2d 748).

Where parties were married in Maryland and husband had a previous undissolved marriage, marriage was void ab initio in District of Columbia without being so decreed. *Koonin, next friend of Hornsby v. Hornsby* (D.C. Mun. App. 1958, 140 A. 2d 309).

8. Remarriage during period for appeal

Where marriage was annulled, remarriage of wife after final decree of annulment but before expiration of period for appeal was valid. *Tillinghast v. Tillinghast* (1928, 25 F. 2d 531, 58 App. D.C. 107).

9. State laws

Marriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction. *Loughran v. Loughran* (1934, 54 S. Ct. 684, 292 U.S. 216, 78 L. Ed. 1219).

Mere statutory prohibition by the state of the domicile either generally of the remarriage of a divorced person, or of remarriage within a prescribed period after the entry of the decree, is given only territorial effect and such a statute does not invalidate a marriage solemnized in another state in conformity with the laws thereof. *Id.*

Language of the Illinois statute does not go so far as the language of the District regarding prohibited marriages which "shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings." *Abramson v. Abramson* (1931, 49 F. 2d 501, 60 App. D.C. 119).

A marriage which is void under the laws of the state where it was celebrated is void in the District of Columbia. *Rhodes v. Rhodes* (1938, 96 F. 2d 715, 68 App. D.C. 313).

Particular public-policy may require annulment of marriage without regard to guilt or innocence of parties affected, but the general public policy in this jurisdiction, as judicially interpreted, no longer prevents application in annulment actions of the laches and estoppel doctrines in determining the effect to be given foreign divorce decrees. *Goodloe v. Hawk* (1940, 113 F. 2d 753, 72 App. D.C. 287).

Divorce decree of Virginia court granted person acquiring domicile to obtain divorce but with intention of remaining for an indefinite period is valid under Virginia law and will be recognized in the District of Columbia. *Id.*

10. Voidable marriages

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley et al. v. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

§ 30-102. Marriage may be decreed to be void.

Any of such marriages may also be declared to have been null and void by judicial decree. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1284.)

CROSS REFERENCE

Proceedings to annul marriage, see §§ 16-402, 16-407 to 16-411.

NOTES TO DECISIONS

Void marriages 1
Voidable marriages 2

1. Void marriages

Where it appears to the court that a marriage is an absolute nullity, the duty under the law is to decree such a marriage void and prevent any further criminal union of the parties. *Simmons v. Simmons* (1927, 19 F. 2d 690, 57 App. D.C. 216, 54 A.L.R. 75).

2. Voidable marriages

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley etc. v. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

§ 30-103. Marriages void from date of decree—Age of consent.

The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

First. The marriage of an idiot or of a person adjudged to be a lunatic.

Second. Any marriage the consent to which of either party has been procured by force or fraud.

Third. Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state.

Fourth. When either of the parties is under the age of consent, which is hereby declared to be eighteen years of age for males and sixteen years of age for females. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1285; June 30, 1902, 32 Stat. 543, ch. 1329; Aug. 12, 1937, 50 Stat. 626, ch. 596, § 1.)

AMENDMENTS

1937—Par. Fourth amended by act Aug. 12, 1937, which increased the age of consent for males from sixteen to eighteen and for females from fourteen to sixteen.

1902—Par. Fourth added by act June 30, 1902.

CROSS REFERENCE

Proceedings for divorce or to annul marriage, see § 16-402 et seq.

NOTES TO DECISIONS

Annulment because of lunacy 1
Disease 2
Grounds for annulment 3
Law governing 4
Proof 5
Purpose 6
Remarriage within period for appeal 7
Voidable marriages 8

1. Annulment because of lunacy

"Full force and effect will be given to section 1285 (§ 30-103), if the adjudication of lunacy referred to therein is construed to mean adjudication of lunacy in the suit instituted for the annulment of the marriage, although such adjudication per se might not authorize the appointment of a committee, as under section 115b of the code (§ 21-301), which requires a direct proceeding for the purpose." *Mackey v. Peters* (22 App. D. C. 341).

Suit for annulment of marriage because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. *Id.*

2. Disease

"Public policy" does not require that an innocent woman must live in marital relationship with a syphilitic

husband where marriage is procured by fraud of husband in concealing the disease. *Stone v. Stone* (1943, 136 F. 2d 761, 78 U. S. App. D. C. 5).

Where wife suing for annulment of marriage, contracted in Virginia, because of husband's alleged fraudulent concealment of fact that he was suffering with a venereal disease, produced evidence indicating that husband concealed his condition and that wife on being advised that husband had disease immediately separated and speedily instituted annulment suit, suit was improperly dismissed notwithstanding wife failed to produce Virginia examining physician. *Id.*

Where wife sought annulment of marriage, contracted in Virginia, on ground of husband's fraudulent concealment of fact that he was suffering with a venereal disease, and wife acted promptly, as soon as she ascertained truth, and refused thereafter to continue marital status, the wife who failed to produce Virginia examining physician, counsel having been appointed by court to represent husband, did not come under rule that a party who has it peculiarly within his power to produce a witness, by failing to do so, creates an inference that if the testimony were produced it would be unfavorable. *Id.*

3. Grounds for annulment

Where husband prior to marriage told wife of his opposition to birth prevention, and wife promised that contraception would not be practiced, but immediately after marriage she refused to have marital relations unless some means were used to prevent conception, and they never had marital relations, husband was entitled to annulment on ground of fraud. *Zoglio v. Zoglio* (D.C. Mun. App. 1960, 157 A. 2d 627).

Concealment of pregnancy as fraud. *Lenoir v. Lenoir* (24 App. D. C. 160).

Mere barrenness is not a ground for the annulment of a marriage, though the prime object of marriage is thus defeated. *Burroughs v. Burroughs* (1925, 4 F. 2d 938, 55 App. D.C. 271).

4. Law governing

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the right to annulment of a marriage contracted under such circumstances was the law as it prevailed in state where marriage occurred. *Hitchens v. Hitchens* 1942, 47 F. Supp. 73).

5. Proof

In suit for annulment of marriage, on ground of fraud, proof must be clear and convincing, particularly if suit is undefended. *Zoglio v. Zoglio* (D.C. Mun. App. 1960, 157 A. 2d 627).

6. Purpose

It is the purpose of this section that marriages procured by fraud may be set aside at instance of innocent party. *Stone v. Stone* (1943, 136 F. 2d 761, 78 U.S. App. D.C. 5).

7. Remarriage within period for appeal

A marriage of the unsuccessful party is not void which was performed before the twenty-day period allowed for appeal from an annulment decree, such provision being for the protection of the unsuccessful party. *Tillinghast v. Tillinghast* (1928, 25 F. 2d 531, 58 App. D.C. 107).

8. Voidable marriages

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley etc. v. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

§ 30-104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

A proceeding to declare the nullity of a marriage may be instituted in the case of an infant under the age of consent by such infant, through a next friend, or by the parent or guardian of such infant; and in the case of an idiot or lunatic by next friend. But no such proceedings shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and wilfully contracted any marriage declared illegal by the foregoing sections. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1286; June 30, 1902, 32 Stat. 543, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "contracted" for "contracted."

CROSS REFERENCE

Proceedings to annul marriage, see § 16-402 et seq.

NOTES TO DECISIONS

Generally 1
Capable of contracting marriage 6
Laches and estoppel 2
Minor's domicile 3
Suit by female minor 4
Void and voidable 5

1. Generally

Suit for annulment of marriage because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. *Mackey v. Peters* (22 App. D.C. 341).

2. Laches and estoppel

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Ruppert v. Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

Since this chapter, read as a whole, is not clear regarding intention of Congress as to whether doctrines of laches and estoppel can be applied in both independent annulment suits and in an attack upon marriage in divorce action on ground of invalidity of prior divorce decree of one of the parties, it must be construed and a reasonable intent must be attributed to Congress. *Id.*

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of wife's prior foreign divorce decree, trial court dismissed complaint on ground that wife's previous marriage had not been terminated but made no finding of fact and stated no conclusions of law upon issues of laches and estoppel of husband to set up invalidity of foreign divorce decree of wife, judgment was reversed and cause remanded for further findings of fact and conclusions of law on such issue. *Id.*

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Id.*

3. Minor's domicile

Where minor, 19 years of age contracted a marriage in Maryland and thereafter discovered that husband had a previous undissolved marriage, minor could not acquire a domicile by choice in District of Columbia either before or after her marriage and Municipal Court for the District of Columbia did not have jurisdiction to declare marriage a nullity although decree sought was available in her domiciliary state and in state where marriage was performed. *Koonin, next friend of Hornsby v. Hornsby* (D.C. Mun. App. 1958, 140 A. 2d 309).

4. Suit by female minor

Procedure of bringing suit for annulment of a marriage by a minor in name of a next friend is proper where minor is under age of consent; however, where female minor is over age of 18, suit should be brought in minor's name. *Koonin, next friend of Hornsby v. Hornsby* (D.C. Mun. App. 1958, 140 A. 2d 309).

5. Void and voidable

Statute classifies some marriages as void and others as voidable, and in the latter case prohibits, under some circumstances, the bringing of actions to declare them void. *Rhodes v. Rhodes* (1938, 96 F. 2d 715, 68 App. D.C. 313).

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley etc. v. Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

6. Capable of contracting marriage

Where husband's marriage to first wife remained undissolved and husband's Mexican mail order divorce from first wife was wholly null and void and husband had married a second wife, husband was not "capable of contracting marriage" within this section providing that proceeding to nullify marriage cannot be maintained by person who, being capable of contracting marriage, has entered into illegal marriage, and consequently husband could sue for annulment of second marriage. *Sears v. Sears* (D.C. Mun. App. 1960, 166 A. 2d 748).

§ 30-105. Marriage out of District of domiciled persons

If any marriage declared illegal by the foregoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1287.)

NOTES TO DECISIONS

Defense in collateral proceedings 1
Prohibited remarriage of divorced persons 2

1. Defense in collateral proceedings

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such District, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver v. Oliver* (1951, 185 F. 2d 429, 87 U.S. App. D.C. 334).

2. Prohibited remarriage of divorced persons

This section has no application to marriages in violation of a statute which prohibits remarriage of party divorced for adultery. *Loughran v. Loughran* (1934, 54 S. Ct. 684, 292 U.S. 216, 78 L. Ed. 1219).

§ 30-106. Persons authorized to perform marriage ceremony.

For the purpose of preserving the evidence of marriages in the District, every minister of the gospel

appointed or ordained according to the rites and ceremonies of his church, whether his residence be in the District or elsewhere in the United States or the Territories, may be authorized by any judge of the United States District Court for the District of Columbia to celebrate marriages in the District. And marriages may be celebrated in the District by any judge or justice of any court of record: *Provided, however,* That marriages of members of any church or religious society which does not by its custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such society, the license in such case to be issued to, and returns to be made by, a person appointed by such church or religious society for that purpose. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1288; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1904—Act Apr. 23, 1904, added the proviso.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "judge of the United States District Court for the District of Columbia" for "justice of the District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Religious corporations and societies defined 1
Religious practices 2

1. Religious corporations and societies defined

Belief in or teaching of a Supreme Being or supernatural power is not essential to qualify for tax exemption accorded to "religious corporations," "churches" or "religious societies," under the D. C. Code. *Washington Ethical Society v. District of Columbia* (1957, 249 F. 2d 127, 101 U.S. App. D.C. 371).

2. Religious practices

A Washington Ethical Society which holds regular Sunday services and has "leaders" to preach and minister to the members who are trained graduates of established theological institutions qualifies as a "religious corporation or society" and its building is one primarily and regularly used for public religious worship and entitled to tax exemption under the District of Columbia Tax Statute. *Washington Ethical Society v. District of Columbia* (1957, 249 F. 2d 127, 101 U.S. App. D.C. 371).

§ 30-107. Marriage performed by unauthorized person—Penalty.

If any one except a minister or other person authorized by section 30-106 shall on and after March 3, 1901 celebrate the rites of marriage in said District, he shall be subject to the penalty prescribed in section 30-108. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1289.)

§ 30-108. Celebration of marriage without license—Penalty.

No person authorized hereby to celebrate the rites of marriage shall do so in any case without first having delivered to him a license therefor addressed to him issued from the clerk's office of said United States District Court for the District of Columbia, under a penalty of not more than five hundred dollars, in the discretion of the court, to be recovered upon information in the municipal court of the District. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1290; June 30, 1902, 32 Stat. 543, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207,

§ 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1902—Act June 30, 1902, inserted after "therefor," the words "addressed to him."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal court was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 30-109. Issuance of license.

A license to marry shall not be issued until three days have elapsed from date of application for issuance of said license. (Aug. 12, 1937, 50 Stat. 626, ch. 596, § 2.)

§ 30-110. Duty of clerk before issuing license—Perjury.

It shall be the duty of the clerk of the United States District Court for the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names, ages, and color of the parties desiring to marry, and if they are underage the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1291; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 30-111. Consent of parent or guardian.

If any male person intending to marry and seeking a license therefor shall be under twenty-one years of age, or any female so intending shall be under eighteen years of age, and shall not have been previously married, the said clerk shall not issue such license unless the father of such person, or, if there be no father, the mother, or, if there be neither father nor mother, the guardian, if there be such, shall consent to such proposed marriage, either personally to the clerk, or by an instrument in writing attested by a witness and proved to the satisfaction of the clerk. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1292.)

NOTES TO DECISIONS

Law governing 1
Majority of female 2

1. Law governing

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the right to annulment of a marriage contracted under

such circumstances was the law as it prevailed in state where marriage occurred. *Hitchens v. Hitchens* (1942, 47 F. Supp. 73).

2. Majority of female

There was no statute in force which clearly provided that female infants should as a general rule attain their majority at the age of 18 years. Exceptions to the common-law rule have been provided by statute; these, however, recognize the continued existence of the general rule of the common law. *Jones v. Jones* (1934, 72 F. 2d 829, 63 App. D.C. 373, 95 A.L.R. 352).

§ 30-112. Form of license—Return—Coupon.

Licenses to perform the marriage ceremony shall be addressed to some particular minister, magistrate, or other person authorized by section 30-106 to perform or witness the marriage ceremony and shall be in the following form:

Number ____.

To _____, authorized to celebrate (or witness) marriages in the District of Columbia, greeting:

You are hereby authorized to celebrate (or witness) the rites of marriage between _____, of _____, and _____, of _____, and having done so, you are commanded to make return of the same to the clerk's office of the United States District Court for the District of Columbia within ten days under a penalty of fifty dollars for default therein.

Witness my hand and seal of said court this _____ day of _____, anno Domini _____.

Clerk.

By _____ Assistant Clerk.

Said return shall be made in person or by mail on a coupon issued with said license and bearing a corresponding number therewith within ten days from the time of said marriage, and shall be in the following form:

Number ____.

I, _____, who have been duly authorized to celebrate (or witness) the rites of marriage in the District of Columbia, do hereby certify that, by authority of a license of corresponding number herewith, I solemnized (or witnessed) the marriage of _____ and _____, named therein, on the _____ day of _____, at _____, in said District.

A second coupon, of corresponding number with the license, shall be attached to and issued with said license, to be given to the contracting parties by the minister or other person to whom such license was addressed, and shall be in the following form:

Number ____.

I hereby certify that on this _____ day of _____, at _____, _____ and _____ were by (or before) me united in marriage in accordance with the license issued by the clerk of the United States District Court for the District of Columbia.

Name _____,

Residence _____.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1293; June 30, 1902, 32 Stat. 543, ch. 1329; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1904—Act Apr. 23, 1904, made various changes in the form of the licenses and certificates.

1902—Act June 30, 1902, added the provision that the licenses should be addressed to a particular person authorized to perform marriages in the District.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 30-113. Failure to make return—Penalty.

Any minister or other person, having solemnized or witnessed the rites of marriage under the authority of a license issued as aforesaid, who shall fail to make return as therein required, shall be liable to a penalty of fifty dollars upon conviction of said failure upon information in the municipal court of said district. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1294; Apr. 23, 1904, 33 Stat. 298, ch. 1490, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

AMENDMENT

1904—Act Apr. 23, 1904, inserted after the word "solemnized," the words "or witnessed."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

§ 30-114. Record of clerk—Contents.

The clerk of the said court shall provide a record book in his office, consisting of applications and licenses in blank, to be filled up by him with the names and residences of the parties for whose marriage any license may have been issued, said applications and licenses to be numbered consecutively from one upward; and also a record book in which shall be recorded, in the order of their numbers, the certificates of the minister or other persons authorized, upon their return to said office, corresponding to said record book of licenses issued, and a copy of any license and certificate of marriage so kept and recorded, certified by the clerk under his hand and seal, shall be competent evidence of the marriage. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1295.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

The Police Court and the Municipal Court were consolidated into a court designated as the Municipal Court for the District of Columbia by act Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1. See section 11-751.

CROSS REFERENCES

Duty of director of public health to enforce regulations to secure full and correct records of vital statistics, see § 6-102.

Fees for copies of record, see § 1-244(g).

Penalty for making false or fictitious transcript of any record of marriage, see §§ 6-302, 6-304.

Proof of marriage, in prosecutions for nonsupport of wife or minor children, see § 22-904.

§ 30-115. Marriage records transferred from health department.

The clerk of the United States District Court for the District of Columbia shall have the same control and custody of the marriage records transferred from the health department as he has of the other marriage records in his office. (Feb. 25, 1929, 45 Stat.

1285, ch. 314, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

TRANSFER OF FUNCTIONS

Department of Public Health headed by a Director established under direction and control of a Commissioner and previously existing Health Department abolished, see note set out under section 6-101.

§ 30-116. Slave marriages.

All colored persons in the District who, previous to their actual emancipation, had undertaken and agreed to occupy the relation to each other of husband and wife, and were cohabiting together as such or in any way recognizing the relation as existing on the 25th day of July, 1866, whether the rites of marriage have been celebrated between them or not, are deemed husband and wife, and are entitled to all the rights and privileges and subject to the duties and obligations of that relation in like manner as if they had been duly married according to law. All the children of such persons shall be deemed legitimate, whether born before or after the date mentioned. When such parties have ceased to cohabit before such date, in consequence of the death of the woman or from any other cause, all the children of the woman recognized by the man to be his shall be deemed legitimate. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1296.)

§ 30-117. Issue of marriage of colored persons—Legitimacy—Property rights.

The issue of any marriage of colored persons contracted and entered into according to any custom prevailing at the time in any of the States wherein the same occurred shall, for all purposes of descent and inheritance and the transmission of both real and personal property within the District of Columbia, be deemed and held to be legitimate and capable of inheriting and transmitting inheritance, and taking as next of kin and distributees according to law, from and to their parents or either of them, and from and to those from whom such parents or either of them may inherit or transmit inheritance, anything in the laws of such State to the contrary notwithstanding: *Provided*, That nothing herein shall be construed as implying that any such marriage is not valid or such issue legitimate for all other purposes. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1297.)

Chapter 2.—PROPERTY RIGHTS

Sec.

- 30-201. Married women—Power to dispose of separate property—Under 21 years of age.
- 30-202. Married women may make covenant running with the land.
- 30-203. Disabilities of infant feme covert—Guardian.
- 30-204. Trustee for separate estate of married woman—Not necessary—Appointment.
- 30-205. Husband may convey directly to wife—Rights of creditors—Such conveyance not deemed notice of existence of creditors of husband.

Sec.

- 30-206. Equitable separate estate.
- 30-207. Wife's separate property not liable for husband's debts.
- 30-208. Power of married women separately to trade, to contract and to sue and be sued—Husband not liable for wife's separate contract or tort.
- 30-209. Contracts of married woman deemed made in reference to her separate estate.
- 30-210. Liability of husband for debts of wife before marriage.
- 30-211. Husband liable for wife's acts in certain cases.
- 30-212. Insurance of husband's life—By wife—By husband—Proceeds taken free from claims.
- 30-213. Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.
- 30-214. Insurance payable on death of wife to children, descendants, or her representatives.
- 30-215. Receipt of married woman for payment of money deposited by her—Deposits made to defraud creditors.
- 30-216. Release of dower.

§ 30-201. Married women—Power to dispose of separate property—Under 21 years of age.

Subject to provisions of subsection (b) of section 18-201a, married women shall hold all their property of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as husbands have the power to dispose of their property, and no more; except that no disposition of her real or personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 8.)

AMENDMENT

1957—Act Aug. 31, 1957, added the introductory phrase "Subject to provisions of subsection (b) of section 18-201a" and substituted the words "as fully as husbands have the power to dispose of their property, and no more; except that" for "as if they were unmarried; Provided, That."

EFFECTIVE DATE OF 1957 AMENDMENT

Section effective 90 days after Aug. 31, 1957, see section 11 of act Aug. 31, 1957, set out as a note under section 18-101.

CROSS REFERENCES

Curtesy abolished, see § 18-215a.

Dower abolished, except for marriages and seisin antedating Nov. 29, 1959, and superseded by the sharing in the real estate or renouncing the devise and bequest and taking an intestate share, as provided by law, see § 18-201a.

NOTES TO DECISIONS

Common law 1
Indorsement of stock certificates 2
Majority of female 3
Tenancy by entirety 4
Wills 5

1. Common law

At common law, the husband was entitled during coverture, to the full control and benefits of property held by entirety, and this right was not derived from the nature of the estate but from the general principle of common law vesting of the wife's property in the husband, and the husband's right to rents and profits was subject to execution, and husband could convey the property so as to divest the wife of possession during his life and, in the case he survived her, to vest in the grantee an absolute estate. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

2. Indorsement of stock certificates

The indorsement, by a wife, of stock certificates, delivered to her husband to be used by him as security for a loan, does not violate this section, the wife having no part in the transaction. *Columbia Nat. Bank v. Shacklett* (1927, 18 F. 2d 172, 57 App. D.C. 130).

3. Majority of female

There was no statute in force in the District of Columbia which clearly provided that female infants should as a general rule attain their majority at the age of 18 years. Exceptions to the common-law rule have been provided by statute; these, however, recognize the continued existence of the general rule of the common law. *Jones v. Jones* (1934, 72 F. 2d 829, 63 App. D.C. 373, 95 A.L.R. 352).

4. Tenancy by entirety

"Tenancy by entirety" epitomized the common-law unity of husband and wife by uniting the conceptions of marital entity and joint tenancy and the spouses were neither joint tenants nor tenants in common, for, husband and wife being considered as one person, they could not hold the estate by moieties as joint tenants, per tout et per my, but both were seised of the entirety, per tout et non per my, and the consequence of this was a union of husband and wife in the estate so that neither could dispose of any part without the assent of the other and the whole remained to the survivor. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

"Tenancy by entirety" is available only to husband and wife and is a convenient mode of protecting a surviving spouse from inconvenient administration of the decedent's estate and from the other's improvident debts, each has the right to receive the property at the death of the other clear of the latter's attempt to encumber it or subjection to payment of his obligations, and the accretion to sole ownership is subject to taxation. *Id.*

Under this chapter each spouse is entitled to the enjoyment and benefits of the whole property held by entirety and neither has a separate estate therein which may be subjected to a conveyance or execution. *Id.*

Under Married Woman's Property Statute, husband can not assert exclusive right to rents and profits from property owned by spouses as tenants by entireties or divest wife of her share thereof either directly by conveyance or indirectly by execution, so that neither may convey any interest in property without other's authority or consent, nor perform any act or make any contract respecting property which would prejudicially affect other spouse. *Deschenes v. McFerren* (D.C. Mun. App. 1956, 125 A. 2d 386).

Where husband's contract to sell realty owned by spouses as tenants by entireties was not accepted on behalf of wife, who had been adjudged of unsound mind, purchasers were liable to spouses for reasonable rental value of purchasers' use and occupancy of property after being notified by husband that he had decided not to sell property and that no committee would be appointed for wife, as he had promised purchasers, though they received permission from husband to enter into possession of property. *Id.*

Good faith reliance by persons contracting with husband to purchase realty owned by spouses as tenants by entireties on his promise to have a committee appointed to accept contract for his wife, who had been adjudged of unsound mind, did not entitle purchasers to possession of property after notice to them by husband that he had decided not to sell property and that no committee would be appointed for wife. *Id.*

5. Wills

Where will executed in 1928 stated that testatrix's husband had been excluded from benefits thereunder because all the real estate in which testatrix was interested was held in joint tenancy with husband and all of testatrix's earnings for 25 years had gone into such real estate, and the residuary clause devised all the residue, real, personal, and mixed, to testatrix's brother, and testatrix's husband thereafter died before testatrix whose will was not thereafter republished, the residuary clause was valid, as respects real estate theretofore owned by testatrix in joint tenancy with her husband who had predeceased testatrix. *Fairclaw v. Forrest* (1942, 130 F. 2d

829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531, 318 U.S. 756, 87 L. Ed. 1130).

§ 30-202. Married women may make covenant running with the land.

In all deeds made after January 1, 1902, to married women of real estate or chattels real it shall be competent for the grantee or lessee to bind herself and her assigns by any covenant running with or relating to said real estate or chattels real the same as if she were a feme sole. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1170.)

§ 30-203. Disabilities of infant feme covert—Guardian.

In case any married woman entitled to a separate estate as aforesaid shall be an infant under twenty-one years of age, she shall be under the same disabilities in regard thereto as other infants, except as herein elsewhere provided, and a guardian of said estate shall be appointed. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1157.)

CROSS REFERENCE

Adult at age 18 or marriage where will provides a bequest payable at majority, see § 18-722.

§ 30-204. Trustee for separate estate of married woman—Not necessary—Appointment.

It shall not be necessary for a married woman to have a trustee to secure to her the sole and separate use of her property; but if she desires it she may make a trustee by deed, or she may apply to a court of equity and have a trustee appointed, in which appointment the uses and trusts for which the trustee holds the property shall be declared. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1153.)

§ 30-205. Husband may convey directly to wife—Rights of creditors—Such conveyance not deemed notice of existence of creditors of husband.

Whenever any interest or estate of any kind in any property, real, personal, or mixed, situate, lying, or being within this District, has been or shall on and after March 3, 1901, be sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by any husband directly or indirectly to his wife, and has been or shall on and after March 3, 1901, be subsequently sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by such wife and husband during their coverture, or after January 1, 1902, by such wife solely or by such wife after such coverture has terminated, or shall after January 1, 1902, be devised or bequeathed by such wife during such coverture or after such coverture has terminated, the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband, directly or indirectly, to his wife shall not after January 1, 1902, be deemed or taken, at law or in equity, to have given, preserved, or reserved, nor to give, preserve, or reserve, to any subsisting creditor of such husband, by reason of any debt or obligation, claim, or demand whatsoever, any other or greater right, lien, or cause of action against such interest or estate, or against any third person, his heirs, executors, administrators, or assigns, than such creditors would have had in case such interest or estate had been sold, conveyed, assigned, mortgaged, leased, transferred or delivered, or devised, or bequeathed by such husband directly to such third

person. And the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband directly or indirectly to his wife, or the recital thereof in any instrument of writing whatever, shall not after January 1, 1902, be deemed or taken, at law or in equity, to give or impart nor to have given or imparted notice to any third person, his heirs, executors, administrators, or assigns of the existence or of the possibility or probability of the existence of any subsisting creditor or creditors of such husband. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1152.)

§ 30-206. Equitable separate estate.

Nothing contained in this chapter shall be construed to prevent the creation of equitable separate estates. Said estates shall be held according to the provisions of the respective settlements thereof and shall be subject to and governed by the rules and principles of equity applicable to such estates. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1171.)

§ 30-207. Wife's separate property not liable for husband's debts.

All the property, real, personal, and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage from any person whomsoever, by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor, or personal exertions, or as proceeds of a judgment at law or decree in equity, or in any other manner, shall be her own property as absolutely as if she were unmarried, and shall be protected from the debts of the husband and shall not in any way be liable for the payment thereof: *Provided*, That no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1151.)

CROSS REFERENCE

Fraudulent conveyances, see § 12-401 et seq.

NOTES TO DECISIONS

- Actions in replevin 1
- Burden of proof 2
- Fraudulent transfers 3
- Gifts between husband and wife 4
- Guaranty of husband's indebtedness 5
- Judgment subject to collateral attack 6
- Note and deed of trust 7
- Surety for husband 8

1. Actions in replevin

Either spouse may prosecute replevin against the other, in the courts of the District. *Notes v. Snyder* (1925, 4 F. 2d 426, 55 App. D.C. 233, 41 A.L.R. 1052).

2. Burden of proof

In action against decedent's administrator and widow to recover money judgment against administrator under agreement whereby decedent promised to pay plaintiff certain sums for her child's support during minority in consideration of a release and to set aside as fraudulent a transfer to widow, administrator and widow had burden of proving that agreement, which was valid on its face, was invalid and that transfer was valid. *Brady v. Games* (1942, 128 F. 2d 754, 76 U.S. App. D.C. 47).

3. Fraudulent transfers

In action against decedent's administrator and widow to recover money judgment against administrator under a certain agreement and to set aside as fraudulent decedent's transfer of property to widow, evidence including fact that transfer was made while action on agreement

was pending justified jury in finding that transfer was made with intent to hinder, delay, or defraud plaintiff. *Brady v. Games* (1942, 128 F. 2d 754, 76 U.S. App. D.C. 47).

4. Gifts between husband and wife

Gifts between husband and wife, followed quickly thereafter by insolvency on the part of the donor, are justly regarded by the courts with suspicion. *Harding v. Aaronson* (1934, 69 F. 2d 845, 63 App. D.C. 107).

5. Guaranty of husband's indebtedness

Subject to the requirement of the Constitution that full faith and credit shall be given by States to the judicial decrees of other States, a judgment of another State on a guaranty by a married woman of her husband's indebtedness will be enforced, notwithstanding statutory provisions. *Hieston v. National City Bank* (1922, 280 F. 525, 51 App. D.C. 394, 24 A.L.R. 1434).

6. Judgment subject to collateral attack

A judgment against a married woman is not subject to collateral attack upon an averment that it is founded on the consideration of an accommodation note. *Carroll v. Elkins* (1929, 29 F. 2d 638, 58 App. D.C. 265).

7. Note and deed of trust

A note and deed of trust signed by a married woman, as surety for her husband, is void. *Bradbury v. Howard*, (1929, 31 F. 2d 222, 58 App. D.C. 383). See, also, *Steele v. Harrison* (1929, 32 F. 2d 965, 59 App. D.C. 69).

8. Surety for husband

A married woman's note is void when she signed as surety of her husband and it is likewise void in hands of payee's assignee. *Schwartz v. Sacks* (1925, 2 F. 2d 188, 55 App. D.C. 87).

Married woman's liability on note dated and made payable in Washington, D. C., which maker signed in Pennsylvania is determined by law of District of Columbia as to question of wife's capacity to sign note as accommodation maker for husband. *Kiess v. Baldwin* (1935, 74 F. 2d 470, 64 App. D.C. 66).

§ 30-208. Power of married women separately to trade, to contract, and to sue and be sued—Husband not liable for wife's separate contract or tort.

Married women shall have power to engage in any business, and to contract, whether engaged in business or not, and to sue separately upon their contracts, and also to sue separately for the recovery, security, or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried; contracts may also be made with them, and they may also be sued separately upon their contracts, whether made before or during marriage, and for wrongs independent of contract committed by them before or during their marriage, as fully as if they were unmarried, and upon judgments recovered against them execution may be issued as if they were unmarried; nor shall any husband be liable upon any contract made by his wife in her own name and upon her own responsibility, nor for any tort committed separately by her out of his presence without his participation or sanction. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1155; May 28, 1926, 44 Stat. 676, ch. 419.)

AMENDMENT

1926—Act May 28, 1926, struck out the provision "that no married woman shall have power to make any contract as surety or guarantor or as accommodation drawer, acceptor, maker, or indorser."

CROSS REFERENCE

Actions not subject to abatement because of marriage, see § 12-112.

NOTES TO DECISIONS

Accommodation indorsers 1
 Action for damages from conspiracy 2
 Action in replevin 3
 Actions to recover rent 4
 Indorsement of stock certificates to husband 5
 Libel 6
 Minor's claim for loss of mother's support 7
 Negotiable instruments 8
 Partnerships 9
 Personal injury actions 10
 Repeal 11
 Surety for husband 12
 Tort action against husband 13
 Tort liability 14

1. Accommodation indorsers

Married women may make contracts as accommodation indorsers. *Jett v. Montague Mfg. Co.* (1933, 61 F. 2d 918, 61 App. D.C. 277).

2. Action for damages from conspiracy

Wife may maintain an action against persons who formed a conspiracy with her husband to falsely charge her with adultery which was to be brought against her in divorce action. *Ewald v. Lane*, (1939, 104 F. 2d 222, 70 App. D.C. 89).

3. Action in replevin

Either spouse may bring replevin against the other, in order to recover possession of personal property if wrongfully detained. *Notes v. Snyder* (1925, 4 F. 2d 426, 55 App. D.C. 233, 41 A.L.R. 1052).

4. Actions to recover rent

Under the District Rent Law, a married woman, who is the owner of "rental property," may exercise all the remedies which are secured to owners as such under the act. *Barbagallo v. Fishbien* (1923, 286 F. 780, 52 App. D.C. 318).

Sections 201 et seq. of this title have changed the common-law principles of marital unity so that the husband cannot now assert an exclusive right to the rents and profits or divest the wife of her share directly by conveyance or indirectly by execution. *Fairclaw v. Forrest* (1942, 130 F. 2d 829, 76 U.S. App. D.C. 197, 143 A.L.R. 1154, certiorari denied 63 S. Ct. 531; 318 U.S. 756, 87 L. Ed. 1130).

5. Indorsement of stock certificates to husband

This section is not violated when wife indorsed and delivered stock to her husband as she was not a party to the transactions whereby the several banks made the loans to her husband and received the collateral stock from him. *Columbia Nat. Bank v. Shacklett* (1927, 18 F. 2d 172, 57 App. D.C. 130).

6. Libel

A married woman trading as feme sole may have action for libel concerning her business without joining her husband. *Wills v. Jones* (13 App. D.C. 482).

7. Minor's claim for loss of mother's support

Minor child would not, on basis of negligent injury to mother by third parties, have enforceable claim against the third parties for loss of mother's support, education, care, society, affection, and kindness during period of mother's incapacity. *Pleasant v. Washington Sand & Gravel Co., et al.* (1959, 262 F. 2d 471, 104 U.S. App. D.C. 374).

8. Negotiable instruments

When defendant contracted with plaintiff to borrow the money as her separate property, and his note promised to pay her and not her husband, he could not deny her capacity to sue thereon for his default. *Richards v. Bippus* (18 App. D.C. 293).

Where a married woman purchases real estate and gives as part payment the promissory notes of herself and husband secured by deed of trust upon the property, a separate suit is maintainable against her as the notes relate to her sole and separate estate. *Sonnemann v. Loeb* (11 App. D.C. 143).

9. Partnerships

Where automobile passenger sued driver, who was partner of passenger's husband, and others, for injuries sustained in intersectional collision, and passenger's husband was joined as plaintiff, but not as defendant, and suit was not against partnership, under District of Columbia law, the suit was not barred by rule that spouses are not liable for tortious acts of one against

the other, though the alleged tort was committed within the ambit of partnership activities. *Tobin v. Hoffman* (D. C. Mun. App. 1953, 96 A. 2d 597).

Statutes removing disabilities of married women should not be construed so broadly as to permit a partnership between husband and wife. *Norwood v. Francis* (25 App. D.C. 463).

10. Personal injury actions

A husband is not a "necessary party" to suit by wife to recover damages to herself for injuries negligently inflicted on her person *Lansburgh & Bro. v. Clark* (1942, 127 F. 2d 331, 75 U.S. App. D.C. 339).

Under this section, wife has right to recover damages to herself for injuries negligently inflicted on her person. *Id.*

Under act of Congress June 1, 1896, 29 Stat. 193, known as "Married Woman's Act," a married woman may sue without joinder of husband to recover damages for personal injuries. *Capital Trac. Co. v. Rockwell* (17 App. D.C. 369).

11. Repeal

In view of the judicial history of this section, taken together with the proviso, it was plainly the legislative intent that the repeal of the proviso should remove the restrictions imposed by it upon the rights of married women to make contracts as sureties or guarantors, or as accommodation drawers, acceptors, makers, or indorsers, thereby empowering them to enter into such contracts as if unmarried. *Jett v. Montague Mfg. Co.* (1933, 61 F. 2d 918, 61 App. D.C. 277).

This section repeals § 1155, 1901 code, which prohibited married women from being sureties. *Steele v. Harrison* (1929, 32 F. 2d 965, 59 App. D.C. 69).

12. Surety for husband

A married woman cannot sign note as surety for husband. *Schwartz v. Sacks* (1925, 2 F. 2d 188, 55 App. D.C. 87).

13. Tort action against husband

A wife may not maintain an action for tort committed by her husband upon her person before coverture, where the action is begun, but not brought to justice before marriage. *Spector v. Weisman* (1930, 40 F. 2d 792, 59 App. D.C. 280).

Action against former husband for assault committed after decree of absolute divorce had been entered, but before expiration of six months period when decree would become effective, could be maintained as against contention that a married woman may not sue for assault committed on her by her husband during coverture. *Steele v. Steele* (1946, 65 F. Supp. 329).

14. Tort liability

Neither husband nor wife is liable for the tortious acts of one against the other and this is the common law rule which prevails today in the District, unaffected by this section. *Yellow Cab Co. v. Dreslin* (1950, 181 F. 2d 626, 86 U.S. App. D.C. 327 19 A.L.R. 2d 1001).

Under District of Columbia law, the common law rule that spouses are not liable for tortious acts of one against the other is extant and unaffected by code provision that married women shall have power to sue for torts committed against them. *Tobin v. Hoffman* (D.C. Mun. App. 1953, 96 A. 2d 597).

§ 30-209. Contracts of married woman deemed made in reference to her separate estate.

Every contract made by a married woman which she has the power to make shall be deemed to be made with reference to her estate which is made her separate estate by this chapter, and also her equitable separate estate, if any she has, as a source of credit to the extent of her power over the same, unless the contrary intent is expressed in the contract. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1156.)

NOTES TO DECISIONS

1. In general

A contract clearly within the power of a married woman to make, "must be deemed to have been made with refer-

ence to her separate estate, there being no contrary intent expressed. She is therefore liable to be sued separately thereon." *Dobbins v. Thomas* (26 App. D.C. 157). See, also, *Dobbins v. Thomas* (30 App. D.C. 511).

§ 30-210. Liability of husband for debts of wife before marriage.

No husband shall be liable in any manner for any debts of his wife contracted or for any claims or demands of any kind against her arising prior to marriage, but she and her property shall remain liable therefor in the same manner as if the marriage had not taken place. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1166.)

CROSS REFERENCE

Actions not subject to abatement because of marriage see § 12-112.

§ 30-211. Husband liable for wife's acts in certain cases.

Nothing in this chapter shall be construed to relieve the husband from liability for the debts, contracts, or engagements which the wife may incur or enter into upon the credit of her husband, or as his agent, or for necessities for herself or for his or their children; but as to all such cases his liability shall be or continue as at common law. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1177.)

CROSS REFERENCES

Criminal liability for failure to support wife, see § 22-903.

Joint deposits, accounts, or safety-deposit boxes, see § 26-201 et seq.

NOTES TO DECISIONS

Credit 1
Funeral expenses 2
Necessaries 3

1. Credit

A wife, who has been furnished with ample means with which to pay cash for articles of clothing may not purchase the same on her husband's credit. *Salts v. Huddleston* (1930, 36 F. 2d 537, 59 App. D.C. 133).

2. Funeral expenses

Under the common law and under this section the husband is primarily liable for "necessaries" furnished his wife which include funeral expenses and such obligation is not affected by this chapter. *In re Tunison's Estate* (1948, 75 F. Supp. 573).

Where testatrix' will failed to make provision for her funeral expenses, her husband was primarily liable for funeral expenses incurred in and out of the District of Columbia, and such expenses were properly chargeable against husband's distributive share of estate, and, if distributive share payable to husband was not sufficient to defray such funeral expenses, excess thereof was payable out of personalty of estate. *Id.*

3. Necessaries

This section "does not undertake to provide that she shall not render herself liable for necessities when contracted for independently of her husband and with reference to her separate estate, but merely that, in such cases, the husband shall not be relieved of any liability therefor that he may be under by virtue of the common law. It does not substitute the common-law liability of the husband for that of the wife, but retains it as an additional security for the benefit of the other contracting party." *Dobbins v. Thomas* (26 App. D. C. 157).

Married Women's Act for the District of Columbia does not substitute common law liability of husband for that of wife but retains it as an additional security for benefit of the other contracting party even though there may be situations in which wife can render herself liable for necessities when contracted for independently of husband. *Stein v. Woodward & Lothrop* (D.C. Mun. App. 1951, 77 A. 2d 564).

§ 30-212. Insurance of husband's life—By wife—By husband—Proceeds taken free from claims.

Any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, may insure or cause to be insured for her sole use, the life of her husband for any definite period or for the term of his natural life; and any husband may cause his own life to be insured for the sole use of his wife, and may also assign any policy of insurance upon his own life to his wife for her sole use; and in case of the wife surviving her husband the sum or net amount of such insurance becoming due and payable by the terms of the insurance shall be payable to her for her own use, free from the claims of the representatives of her husband or any of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1161.)

§ 30-213. Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.

All policies of life insurance upon the life of any person maturing on or after January 1, 1902, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1162.)

§ 30-214. Insurance payable on death of wife to children, descendants, or her representatives.

If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1163.)

§ 30-215. Receipt of married woman for payment of money deposited by her—Deposits made to defraud creditors.

The receipt of any married woman for the payment of money deposited by her before or after marriage shall be a valid discharge to any individual or corporation making such payment: *Provided*, That nothing contained in this section shall prevent any creditor of the husband from attaching the same or restraining the payment by injunction if the deposit was made in fraud of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1164.)

§ 30-216. Release of dower.

If the wife of the party executing a deed, being not less than eighteen years of age, shall desire to release her dower in the property conveyed, she may do so either by joining in the same deed or by a separate deed, wherever executed, signed, sealed, and acknowledged by her in the same manner as provided in section 45-402, and her acknowledgment shall be certified in like manner. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 494; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, amended section generally. Prior to such amendment read as follows: "If the wife of the party executing said deed, being not less than eighteen

years of age, shall desire to release her right of dower in the property conveyed, she shall unite in the deed with her husband and sign, seal, and acknowledge the same in the same manner as her husband, and the officer taking her acknowledgment shall add to the above form of certificate a further certificate to the following effect, namely:

"And at the same time personally appeared before me, in said District, E F, the wife of said C D, personally well known to me (or proved by the oath of credible witnesses) to be such, and acknowledged the same to be her act and deed.

"Such wife, however, may release her right of dower by her separate deed, when the release claims or derives title from, by, through or under her husband."

CROSS REFERENCES

Conveyance of real estate acquired after insanity or absence for seven years of wife, see § 18-204.

Curtesy abolished, see § 18-215a.

Dower abolished, except for marriages and seizin antedating Nov. 29, 1959, and superseded by the sharing in the real estate or renouncing the devise and bequest and taking an intestate share, as provided by law, see § 18-201a.

Release of dower of a person non compos mentis, see § 21-301.

NOTES TO DECISIONS

Deeds 1
Mortgages 2

1. Deeds

By a deed, voluntarily executed and duly acknowledged by husband and wife, the entire title of both may be conveyed. *Hitz v. Jenks* (1887, 8 S. Ct. 143, 123 U.S. 297, 31 L. Ed. 156).

"The relinquishment of an inchoate right of dower which a married woman makes by joining in a deed with her husband, can operate against her only by way of estoppel." *Follansbee v. Follansbee* (1 App. D. C. 326).

If the conveyance or instrument in which the wife joins is void, or ceases for any reason to operate, and no title has passed, or none remained, the release does not, after that, operate against the wife. *Id.*

2. Mortgages

When a wife joins in a mortgage, she retains her dower in the property, subject to the mortgage. *Follansbee v. Follansbee* (1 App. D. C. 326).

31

32

33

34

35

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chap.		Sec.
1.	Board of Education.....	31-101
2.	Compulsory School Attendance and Work Permits	31-201
3.	Tuition of Nonresidents.....	31-301
4.	Free Textbooks.....	31-401
5.	Vocational Rehabilitation of Residents of the District of Columbia.....	31-501
6.	Teachers, School Officers, and Other Employees in General.....	31-601
7.	Retirement of Public School Teachers...	31-701
8.	Use of School Buildings.....	31-801
9.	Medical and Dental Colleges.....	31-901
10.	Gallaudet College.....	31-1001
11.	Miscellaneous	31-1101
12.	Aviation Education in High Schools.....	31-1201
13.	Educational Agency for Surplus Property.	31-1301
14.	Public School Food Services.....	31-1401
15.	Salaries of Teachers, School Officers and Other Employees.....	31-1501

Chapter 1.—BOARD OF EDUCATION

Sec.	
31-101.	Qualifications and appointment—Compensation—Secretary—Meetings—Members exempt from personal liability—Costs and supersedeas bond.
31-102.	Appointment—Promotion—Transfer or dismissal of directors, teachers, upon recommendation of superintendent.
31-103.	Determination of general policies—Expenditures of funds—Appointment of teachers and employees.
31-104.	Annual estimates.
31-105.	Superintendent—Appointment—Term of office—Duties.
31-106.	Superintendent authorized to act between meetings of the board.
31-107.	Acting superintendent authorized to act in absence of superintendent.
31-108.	Removal of superintendent.
31-109.	Repealed.
31-110.	Director of intermediate instruction for white schools—Appointment—Duties.
31-111.	Supervisor of manual training—Appointment—Duties.
31-112.	Classification of academic and scientific subjects in certain high schools.
31-113.	"Head of the department" and "head teacher" defined—Duties—Limitation as to number of students in classes.
31-114.	Teachers and officials—Examination—Qualifications—Appointments.
31-115.	Principals of schools—Duties.
31-116.	Teachers on trial or under investigation to have counsel.
31-117.	Masculine pronoun to include both male and female.
31-118.	Teachers' college—Expansion of normal schools.
31-119.	Repealed.
31-120.	Accrediting junior colleges—Effect.

§ 31-101. Qualifications and appointment—Compensation—Secretary—Meetings—Members exempt from personal liability—Costs and supersedeas bond.

(a) The control of the public schools of the District of Columbia is hereby vested in a Board of

Education to consist of nine members all of whom shall have been for five years immediately preceding their appointment bona fide residents of the District of Columbia and three of whom shall be women. The members of the Board of Education shall be appointed by the United States District Court judges of the District of Columbia for terms of three years each, and members shall be eligible for reappointment. The members shall serve without compensation. Vacancies for unexpired terms, caused by death, resignation, or otherwise, shall be filled by the judges of the United States District Court for the District of Columbia. The board shall appoint a secretary, who shall not be a member of the board, and they shall hold stated meetings at least once a month during the school year and such additional meetings as they may from time to time provide for. All meetings whatsoever of the board shall be open to the public, except committee meetings dealing with the appointment of teachers. The members of the Board of Education of the District of Columbia shall not be personally liable in damages for any official action of the said board performed in good faith in which the said members participate, nor shall any member of said board be liable for any costs that may be taxed against them or the board on account of any such official action by them as members of the said board; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever.

(b) The judges of the United States District Court for the District of Columbia shall have power to remove any member of the Board of Education at any time for adequate cause affecting his character and efficiency as a member, after a public hearing on a verified complaint filed by the United States Attorney for the District of Columbia, or one of his assistants, and on issues framed by a verified answer. The United States District Court of the District of Columbia is empowered to promulgate rules to carry out the purpose of this subsection. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Jan. 26, 1929, 45 Stat. 1139, ch. 105; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 2, 1957, 71 Stat. 341, Pub. L. 85-119, § 1.)

CODIFICATION

Subsec. (a) is comprised of first par. of section 2 of act June 20, 1906. Remaining paragraphs of such section 2 are classified to sections 31-102 to 31-104, respectively.

AMENDMENTS

1957—Act Aug. 2, 1957, designated existing provisions as subsec. (a) and added subsec. (b).

1929—Act Jan. 26, 1929, amended section to relieve individual members of the Board of Education of personal liability for acts of the board.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia." "United States District Court judges" was substituted for "District Court judges" to conform to such change of name.

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia." "District Court judges" was substituted for "supreme court judges" to conform to such change of name.

CROSS REFERENCES

Accrediting junior colleges, see § 31-120.
Child labor and work permits generally, powers and duties of the Board, see § 36-201 et seq.
Compulsory school attendance, exemptions, work permits, powers and duties of Board, see § 31-201 et seq.
Department of school attendance and work permits, see § 31-211 et seq.
Duties of Board in connection with plans and specifications for school buildings, see § 9-219.
Duty to educate colored children, see § 31-1110.
Duty to furnish schoolrooms and teachers for colored persons, see § 31-1113.
Free textbooks and school supplies, see § 31-401 et seq.
Jurisdiction and control over school buildings, see § 31-801 et seq.
Power to license institutions of learning, see §§ 29-415 to 29-419.
Religious schools not entitled to privileges and benefits of school laws of district, see § 29-512.
Retirement of public school teachers, see § 31-701 et seq.
School census, see § 31-208 et seq.
Selection of school to be attended, approval of Board, see § 31-1111.

§ 31-102. Appointment—Promotion—Transfer or dismissal of directors, teachers, upon recommendation of superintendent.

No appointment, promotion, transfer, or dismissal of any director, supervising principal, principal, head of department, teacher, or any other subordinate to the superintendent of schools, shall be made by the Board of Education, except upon the written recommendation of the superintendent of schools. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

CODIFICATION

Section is comprised of second par. of section 2 of act June 20, 1906. Pars. one, three and four of such section 2 are classified to sections 31-101, 31-103 and 31-104, respectively.

CROSS REFERENCE

General provisions concerning teachers, school officers, and other employees, see title 31, ch. 6.

NOTES TO DECISIONS

Appointment of teachers 1
Mandamus to restore position 2
Rules of board 3

1. Appointment of teachers

The secretary of the board is not empowered to appoint teachers but this power is vested in the board. *Coleman v. District of Columbia* (1922, 279 F. 990, 51 App. D.C. 352).

Letter from secretary notifying teacher of appointment does not estop the board from denying that she was appointed without condition. *Id.*

2. Mandamus to restore position

Board of Education may be compelled by mandamus to restore to position a school matron dismissed without authority from superintendent. *Whitwell v. United States ex rel. Selden* (1932, 58 F. 2d 895, 61 App. D.C. 169).

3. Rules of board

The board being empowered to make rules and regulations, they must be deemed to have the force and effect of law. *United States ex rel. Denney v. Callahan* (1924, 294 F. 992, 54 App. D.C. 61). See, also, *United States ex rel. Cromwell v. Doyle* (1938, 99 F. 2d 448, 69 App. D.C. 215).

§ 31-103. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.

The board shall determine all questions of general policy relating to the schools, shall appoint the executive officers hereinafter provided for, define their duties, and direct expenditures. All expenditures of public funds for such school purposes shall be made and accounted for as now provided by law under the direction and control of the Commissioners of the District of Columbia. The board shall appoint all teachers in the manner hereinafter prescribed and all other employees provided for in this chapter. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

CODIFICATION

Section is comprised of third par. of section 2 of act June 20, 1906. Pars. one through three of such section 2 are classified to sections 31-101, 31-102 and 31-104, respectively.

§ 31-104. Annual estimates.

The Board of Education shall annually on the first day of October transmit to the commissioners of the District of Columbia an estimate in detail of the amount of money required for the public schools for the ensuing year, and said commissioners shall transmit the same in their annual estimate of appropriations for the District of Columbia, with such recommendations as they may deem proper. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

CODIFICATION

Section is comprised of fourth par. of section 2 of act June 20, 1906. Par. one through three of such section 2 are classified to sections 31-101 to 31-103, respectively.

CROSS REFERENCES

Apportionment of funds between white and colored schools, see § 31-1112.

Budget estimates, see §§ 47-202, 47-203.

STATUTORY REFERENCE

Budget and Accounting Act, 1921, see U.S. Code, title 31, ch. 1.

§ 31-105. Superintendent—Appointment—Term of office—Duties.

The board shall appoint one superintendent for all the public schools in the District of Columbia, who shall hold said office for a term of three years and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He shall have a seat in the board and the right to speak on all matters before the board, but not the right to vote. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

CROSS REFERENCES

Approval of free textbooks and supplies, see § 31-404.
Excusing children who are regularly employed from school attendance, see § 31-202.

Ex officio member of Commission on Licensure to Practice Healing Art, see § 2-103.

Removal of superintendent, see § 31-108.

School census, see § 31-208 et seq.

§ 31-106. Superintendent authorized to act between meetings of the board.

The superintendent of schools of the District of Columbia is authorized to accept the resignation or the application for retirement of any employee, to grant leave of absence to any employee, to extend or terminate any temporary appointment, and to make

all changes in personnel and appointments growing out of such resignation, retirement, leave of absence, termination of temporary appointment, or caused by the decease or suspension of any employee, or the organization of a new class or classes, and to perform such other duties necessary for the operation of the public school system as may be authorized by the Board of Education, provisionally and until the next regular meeting of the Board of Education. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 1.)

CROSS REFERENCE

Appointment, promotion, transfer, or dismissal of teachers or directors, recommendation of superintendent, see § 31-102.

§ 31-107. Acting superintendent authorized to act in absence of superintendent.

The authority conferred on the superintendent of schools by section 31-106 shall, during his authorized absence, devolve on the person designated as acting superintendent of schools. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 2.)

§ 31-108. Removal of superintendent.

The board shall have power to remove the superintendent at any time for adequate cause affecting his character and efficiency as superintendent. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31-109. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section, act June 4, 1924, 43 Stat. 374, ch. 250, § 12, provided for two first assistant superintendents of schools, one for the white and one for the colored schools, and described their duties.

§ 31-110. Director of intermediate instruction for white schools—Appointment—Duties.

The board, upon the written recommendation of the superintendent of schools, shall appoint a director of intermediate instruction for the white schools who shall have charge under the direction of the superintendent of the unification of educational work of grades five to eight, inclusive. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31-111. Supervisor of manual training—Appointment—Duties.

There shall be appointed by the board a supervisor of manual training who, under the direction of the superintendent, shall have supervision of manual training instruction. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31-112. Classification of academic and scientific subjects in certain high schools.

The Board of Education shall classify all academic and scientific subjects in the Central, Eastern, Western, and Business High Schools, and the McKinley Manual Training School into eight departments so that each department shall contain correlated subjects and the M Street High School and the Armstrong Manual Training School shall be similarly classified into four departments so that each department shall contain correlated subjects. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5.)

§ 31-113. "Head of the department" and "head teacher" defined—Duties—Limitation as to number of students in classes.

Whenever a department includes two or more high schools then the teacher in charge of the department shall be designated "head of the department," otherwise the teacher in charge of the department shall be designated "head teacher": *Provided*, That heads of departments as such have only an advisory capacity in educational matters and upon all questions shall be inferior in authority to the principal of each particular school: *Provided further*, That no class shall be formed in the high schools with less than ten pupils for a period not longer than fifteen days. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5.)

CROSS REFERENCE

Head of department of military science and tactics, see § 31-622a.

§ 31-114. Teachers and officials—Examination—Qualifications—Appointments.

No teacher, head of department, principal, or supervising principal shall be appointed to any position in the graded schools, high schools, manual training schools, or teachers' college, and no director, assistant director, or teacher of special studies shall be appointed until he shall have passed an examination prescribed by the boards of examiners. No person without a degree from an accredited college, or a graduation certificate from an accredited normal school, such normal school graduate to have had at least five years of experience as a teacher in a high school, shall on and after June 20, 1906 be appointed to teach any academic or scientific subjects in the teachers' college, high, and manual training schools. This provision for examination shall not apply to teachers coming from the teachers' college, or teachers being advanced from the different classes in the grade schools. No teacher of manual training, drawing, domestic science, domestic art, music and physical culture in the teachers' college, high and manual training schools shall be appointed without like qualifications to those required of teachers of academic and scientific subjects in the high schools, and teachers of those subjects shall receive their longevity increase according to their previous number of years of experience in teaching in accredited normal, high and manual training high school. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 26, 1912, 37 Stat. 156, ch. 182; Feb. 25, 1929, 45 Stat. 1276, ch. 314, § 1.)

CODIFICATION

References to normal school were changed to teachers college to conform to the provision of the District of Columbia Appropriation Act, 1930, which provided for expansion of the normal schools into teachers' colleges.

Provision for qualification requirements and longevity increases of teachers of manual training, drawing, domestic science, domestic art, music and physical culture is from the District of Columbia Appropriation Act, 1913.

Section is from part of seventh par. of section 6 of the District of Columbia Teachers' Salary Act of 1906.

CROSS REFERENCE

Teaching the nature and effect of alcoholic drinks and narcotics on the human system, and requiring teachers to be qualified in the teaching thereof, see U.S. Code, title 20, §§ 111-113.

NOTES TO DECISIONS

Qualifications 1
Salary 2

1. Qualifications

Possession of college degree does not alone fulfill eligibility requirements for senior and normal school teachers. *United States ex rel. Gillem v. Carusi* (1929, 32 F. 2d 942, 59 App. D.C. 46).

2. Salary

When teacher is promoted from class 4 to position of high school teacher in class 6, she is entitled to the increase in salary provided by this act. *District of Columbia v. Gardner* (1924, 298 F. 1005, 54 App. D.C. 390).

§ 31-115. Principals of schools—Duties.

Principals of normal, high, and manual training schools shall each have entire control of his school, both executive and educational, subject only in authority to the superintendent of schools for the white schools and to the colored assistant superintendent for the colored schools, to whom in each case he shall be directly responsible. (June 20, 1906, 34 Stat. 320, ch. 3446, § 7.)

ASSISTANT SUPERINTENDENT OF SCHOOLS

Provision of two first assistant superintendent of schools, one for the white and one for the colored schools and description of their duties, formerly contained in Act June 4, 1924, 43 Stat. 374, ch. 250, § 12, set out as section 31-109, was repealed by act July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

§ 31-116. Teachers on trial or under investigation to have counsel.

When a teacher is on trial or being investigated he or she shall have the right to be attended by counsel and by at least one friend of his or her selection. (June 20, 1906, 34 Stat. 321, ch. 3446, § 10.)

NOTES TO DECISIONS

1. Generally

See *Nalle v. Oyster* (1913, 33 S. Ct. 1043, 230 U.S. 165, 57 L. Ed. 1439).

§ 31-117. Masculine pronoun to include both male and female.

Wherever the masculine pronoun occurs in this chapter it shall be construed to apply to either male or female teachers or employees of the Board of Education. (June 20, 1906, 34 Stat. 321, ch. 3446, § 12.)

§ 31-118. Teachers' college—Expansion of normal schools.

The Board of Education shall have power to make all necessary rules and regulations for the organization and government of the normal schools, to prescribe the course of study to be pursued therein, and to fix terms for the admission and graduation of pupils: *Provided*, That the Board of Education is hereby authorized, under appropriations hereafter to be made, to expand the two existing normal schools into teachers' colleges, and at the end of the fourth year thereof to award appropriate degrees. (Leg. Assem., June 23, 1873, p. 50, ch. 8, § 3; Feb. 25, 1929, 45 Stat. 1276, ch. 314, § 1.)

CODIFICATION

Proviso is from the District of Columbia Appropriation Act, 1930.

NOTES TO DECISIONS

1. Nonresidents

Where section 303 of this title showed that Congress assumed to deal with the subject specifically and in mandatory language, this section did not authorize the board in its discretion to impose a charge on a nonresident student whose father was employed in the District of Columbia. *Cavanagh v. Ballou* (1941, 36 F. Supp. 445).

§ 31-119. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section, acts June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 374, ch. 250, § 11, required the Board of Education to designate the number of classrooms in elementary school buildings for the purpose of determining the classification of teaching and administrative principals.

§ 31-120. Accrediting junior colleges—Effect.

'The Board of Education shall be, and is hereby, authorized and empowered to accredit junior colleges operating within the District of Columbia: *Provided*, That the entrance requirements of such junior colleges be not less than high-school graduation, and the number of semester hours required for the title Associate in Arts or Associate in Science be not less than sixty, and the number and character of the courses offered and the number and qualifications of the faculty be reasonable, and the institution be possessed of suitable classroom, laboratory, and library equipment.

Accreditation by the Board of Education of the District of Columbia shall have the same force and effect as is usual in the case of accreditation by the various accrediting agencies of the several states of the Union. (July 2, 1940, 54 Stat. 729, ch. 523.)

Chapter 2.—COMPULSORY SCHOOL ATTENDANCE AND WORK PERMITS

Sec.

- 31-201. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.
- 31-202. Employed children between 14 and 16 excused from attendance after completing eighth grade.
- 31-203. Mentally or physically unfit excused from attendance—Specialized instruction.
- 31-204. Board of Education to define valid excuses for absence—Absence without valid excuse unlawful.
- 31-205. Daily record of attendance.
- 31-206. Designated absences in a month to be reported.
- 31-207. Failure to keep child at school a misdemeanor—Penalty.

SCHOOL CENSUS

- 31-208. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.
- 31-209. Enrollment and withdrawal of pupils to be reported.
- 31-210. Neglect or refusal to furnish information for enumeration—Penalty.

ADMINISTRATION

- 31-211. Department of school attendance and work permits—Creation.
- 31-212. Director—Appointment—Employees—Competitive examinations.
- 31-213. Juvenile court given jurisdiction.

§ 31-201. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.

Every parent, guardian, or other person residing permanently or temporarily in the District of Columbia who has custody or control of a child between the ages of seven and sixteen years shall cause said child to be regularly instructed in a public school or in a private or parochial school or instructed privately during the period of each year in which the public schools of the District of Columbia are in

session: *Provided*, That instruction given in such private or parochial school, or privately, is deemed equivalent by the Board of Education to the instruction given in the public school. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 1.)

CROSS REFERENCES

- Board of education, see § 31-101 et seq.
 Child labor and working permits generally, see title 36, ch. 2.
 Department of school attendance and work permits, see § 31-211 et seq.
 Length of school day, see § 31-1101.
 School census, see § 31-208 et seq.
 Selection of school to be attended, see § 31-1111.

§ 31-202. Employed children between 14 and 16 excused from attendance after completing eighth grade.

Any child between the ages of fourteen and sixteen years who has completed satisfactorily the eighth-grade course of study prescribed for the public elementary schools of the District of Columbia, or a course of study deemed by the Board of Education equivalent thereto, may be excused by the superintendent of schools from further attendance at school under the provisions of sections 31-201 to 31-210, provided he is actually, lawfully, and regularly employed. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 2.)

CROSS REFERENCE

Powers and duties of superintendent, see § 31-105.

§ 31-203. Mentally or physically unfit excused from attendance—Specialized instruction.

The Board of Education of the District of Columbia may issue a certificate excusing from attendance at school a child who, upon examination ordered by such board, is found to be unable mentally or physically to profit from attendance at school: *Provided, however*, That if such examination shows that such child may benefit from specialized instruction adapted to his needs, he shall attend upon such instruction. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 3.)

§ 31-204. Board of Education to define valid excuses for absence—Absence without valid excuse unlawful.

The Board of Education shall define in its rules and regulations valid excuses for absence from school, and the absence of a child between the ages of seven and sixteen years for any reason other than so defined as valid shall be unlawful. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 4.)

§ 31-205. Daily record of attendance.

An accurate daily record of the attendance of all children between the ages of seven and sixteen years shall be kept by the teachers of every public, private, or parochial school and by every teacher giving instruction privately. Such record shall at all times be open to the school-attendance officers or other persons authorized to enforce sections 31-201 to 31-210, who may inspect and copy the same. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 5.)

§ 31-206. Designated absences in a month to be reported.

It shall be the duty of every principal or head teacher of every public, private, or parochial school, or private teacher to report to the department of

school attendance and work permits the name and address of any child between the ages of seven and sixteen years enrolled in his school whenever such child has been absent from school two day sessions or four one-half day sessions or more in any school month, together with the reason for such absence as far as known. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. I, § 6.)

§ 31-207. Failure to keep child at school a misdemeanor—Penalty.

The parent, guardian, or other person residing permanently or temporarily in the District of Columbia and having charge or control of any child between the ages of seven and sixteen years who is unlawfully absent from public or private school or private instruction shall be guilty of a misdemeanor, and upon conviction of failure to keep such child regularly in public or private school or to cause it to be regularly instructed in private, shall be punished by a fine of \$10 or by commitment to jail for five days, or by both, at the discretion of the court: *Provided*, That each two days such child remains away from school unlawfully shall constitute a separate offense: *Provided further*, That upon conviction of the first offense, sentence may, upon payment of costs, be suspended and the defendant placed on probation. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. I, § 7.)

CROSS REFERENCE

Suspension of sentence in cases in Juvenile Court, see § 11-968.

SCHOOL CENSUS

§ 31-208. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.

It shall be the duty of the director of school attendance and work permits, under instruction of the superintendent of schools, approved by the Board of Education, to cause to be made, annually or as frequently as may be found necessary or desirable, a complete census of all children between the ages of three and eighteen years permanently or temporarily residing in the District of Columbia. Such census shall be amended from day to day as changes of residence occur among children within the ages prescribed in sections 31-201 to 31-210, and as other persons come within the ages prescribed, and as other persons within such ages shall become residents of the District. The record of such enumeration of children shall give the full name, address, race, sex, and date and place of birth of every such child, the school attended by him, and if the child is not at school the name and address of his employer, if any, and the name, address, and occupation of the parents or guardian. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 1.)

§ 31-209. Enrollment and withdrawal of pupils to be reported.

It shall be the duty of the principal or head teacher of every public, private, or parochial school or private teacher, in accordance with the rules adopted by the Board of Education, to report to the director of the department of school attendance and work permits the name, address, sex, age, and race of every child under eighteen years of age residing

permanently or temporarily in the District of Columbia who enrolls in or withdraws from his school. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 2.)

§ 31-210. Neglect or refusal to furnish information for enumeration—Penalty.

Any parent, guardian, custodian, principal, or teacher of a child between the ages of three and eighteen who willfully neglects or refuses to provide the information required by sections 31-201 to 31-210, or who knowingly makes any false or untrue statement, shall be guilty of a misdemeanor and on conviction shall be punished by a fine of \$10 or by commitment to jail for five days, or by both, at the discretion of the court. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 3.)

ADMINISTRATION

§ 31-211. Department of school attendance and work permits—Creation.

The Board of Education is hereby authorized to consolidate the administrative duties incident to the enforcement of the provisions of sections 31-201 to 31-213 and of the act to regulate child labor under a single division to be known as the department of school attendance and work permits. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. III, § 1.)

CROSS REFERENCE

Child Labor Law and powers and duties of Board of Education, see title 36, ch. 2.

§ 31-212. Director—Appointment — Employees — Competitive examinations.

The Board of Education is hereby authorized, empowered, and directed to appoint a director of said department whose rank shall correspond to that of other directors who serve as officers of the Board of Education, and who shall be known as the Director of the Department of School Attendance and Work Permits, and also to appoint such a number of attendance officers, inspectors, clerks, and other assistants as shall be necessary to carry out the provisions of sections 31-201 to 31-213.

Such appointments, other than that of the director of said department and clerks, shall be made from a list of applicants obtained from open competitive examinations conducted by the respective boards of examiners of the Board of Education, and designed to test the fitness of the applicants for the duties to be performed. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 2; July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21.)

AMENDMENTS

1945—Act July 21, 1945, amended section by striking out "and who shall be paid the same salary as said directors," following "Board of Education" in first par.

§ 31-213. Juvenile court given jurisdiction.

The juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising under sections 31-201 to 31-213. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 3; May 29, 1928, 45 Stat. 1006, ch. 908, § 26.)

AMENDMENT

1928—Act May 29, 1928, changed the word "from" to read "under."

Chapter 3.—TUITION OF NONRESIDENTS

Sec.

31-301. Repealed.

31-301a. Attendance at Teachers' College by foreign students.

31-302 to 31-306. Repealed.

31-307. Payment of tuition by nonresidents—Board of Education to fix tuition—Deposit of payments—Exception.

31-308. Board of Education to determine who is required to pay tuition—Penalties—Prosecutions to be conducted by Corporation Counsel.

31-309. Definitions.

31-310. Authority of Commissioners not affected—Delegation of functions—Section 31-301a to remain in full force and effect.

31-311. Payment of tuition by students of Teachers College.

§ 31-301. Repealed. Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 6(1).

Section, acts Mar. 3, 1899, 30 Stat. 1056, ch. 422, § 1; Apr. 14, 1906, 34 Stat. 113, ch. 1623; June 26, 1912, 37 Stat. 161, ch. 182, related to the payment of tuition by nonresidents, and is now covered by sections 31-307 to 31-311.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the school semester which commences at least 60 days after Sept. 8, 1960, see section 8 of act Sept. 8, 1960, set out as a note under section 31-307.

§ 31-301a. Attendance at Teachers' College by foreign students.

Notwithstanding any other provision of law, not to exceed twenty-five foreign students who are in the United States on valid unexpired student visas may be permitted to attend the District of Columbia Teachers College each year on the same basis, so far as payment of tuition and fees are concerned, as a resident of the District of Columbia. Admission to and attendance at such college by such students shall be subject to rules and regulations prescribed by the Board of Education of the District of Columbia. (Apr. 23, 1958, 72 Stat. 98, Pub. L. 85-384, § 1.)

§§ 31-302 to 31-306. Repealed. Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 6(2-6).

Section 31-302, act July 21, 1914, 38 Stat. 536, ch. 191, provided that taxes paid by nonresidents were to be credited against tutelage charges.

Section 31-303, act Mar. 3, 1915, 38 Stat. 910, ch. 80, § 1, authorized admission of pupils whose parents are employed in the District of Columbia.

Section 31-304, act Mar. 28, 1918, 40 Stat. 470, ch. 28, § 1, authorized admission of soldiers and sailors on duty at stations adjacent to District of Columbia.

Section 31-305, act June 28, 1944, 58 Stat. 515, ch. 300, § 1, authorized admission of children of officers and men of the Army, Navy and Marine Corps and of employees of the United States stationed outside the District of Columbia.

SIMILAR PROVISIONS

Similar provision to those formerly contained in section 31-305 appeared in the following prior appropriation acts:

1944—July 1, 1943, 57 Stat. 324, ch. 184, § 1.

1943—June 27, 1942, 56 Stat. 435, ch. 452, § 1.

1942—July 1, 1941, 55 Stat. 512, ch. 271, § 1.

1941—June 12, 1940, 54 Stat. 319, ch. 333, § 1.

1940—July 15, 1939, 53 Stat. 1017, ch. 281, § 1.

1939—Apr. 4, 1938, 52 Stat. 170, ch. 62, § 1.

1938—June 29, 1937, 50 Stat. 371, ch. 403, § 1.

1937—June 23, 1936, 49 Stat. 1869, ch. 726, § 1.

1936—June 14, 1935, 49 Stat. 356, ch. 241, § 1.

1935—June 4, 1934, 48 Stat. 860, ch. 389, § 1.

1934—June 16, 1933, 48 Stat. 236, ch. 93, § 1.

1933—June 29, 1932, 47 Stat. 360, ch. 308, § 1.

1932—Feb. 23, 1931, 46 Stat. 1394, ch. 282, § 1.
 1931—July 3, 1930, 46 Stat. 969, ch. 848, § 1.
 1930—Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1.
 1929—May 21, 1928, 45 Stat. 662, ch. 659, § 1.
 1928—Mar. 2, 1927, 44 Stat. 1314, ch. 271, § 1.
 1927—May 10, 1926, 44 Stat. 433, ch. 276, § 1.
 1926—Mar. 3, 1925, 43 Stat. 1233, ch. 477, § 1.
 1925—June 7, 1924, 43 Stat. 558, ch. 302, § 1.

Section 31-306, act June 29, 1949, 63 Stat. 309, ch. 279, § 1, provided that no part of the appropriations made for the public schools shall be used for the free instruction of pupils who dwell outside the District of Columbia.

Sections 31-302 to 31-306 are now covered by sections 31-307 to 31-311.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the first day of the school semester which commences at least 60 days after Sept. 8, 1960, see section 8 of act Sept. 8, 1960, set out as a note under section 31-307.

§ 31-307. Payment of tuition by nonresidents—Board of Education to fix tuition—Deposit of payments—Exception.

(a) In the case of (1) each adult who attends a public school of the District of Columbia and does not reside in the District of Columbia, and (2) each child who attends such a public school and does not have a parent or guardian who resides in the District of Columbia, or is not an orphan, there shall be paid to the Board of Education the amount fixed by the Board of Education pursuant to subsection (b) of this section.

(b) The amount which shall be paid with respect to each person subject to subsection (a) of this section shall be fixed by the Board of Education with the approval of the Board of Commissioners of the District of Columbia as the amount necessary to cover the expense of tuition and cost of textbooks and school supplies used by such person.

(c) All amounts received by the Board of Education under this section shall be paid into the Treasury of the United States, to the credit of the District of Columbia.

(d) Notwithstanding the provisions of subsection (a) of this section, upon the submission of evidence satisfactory to the Board of Education that care, custody, and substantial support are supplied by the person or persons with whom a child is residing in the District of Columbia, and that the parent or guardian of such child is unable to supply such care, custody, and support, or that such child is self-supporting, such child shall be considered a resident of the District of Columbia for the purpose of school attendance and exempt from the requirement to pay tuition. (Sept. 8, 1960, 74 Stat. 853, Pub. L. 86-725, § 2.)

EFFECTIVE DATE

Section 8 of act Sept. 8, 1960, provided that: "This Act [adding sections 31-307 to 31-311 and repealing sections 31-301 and 31-302 to 31-306] shall take effect on the first day of the school semester which commences at least sixty days after the date of enactment of this act [Sept. 8, 1960]."

SHORT TITLE

Section 1 of act Sept. 8, 1960, provided that: "This Act [adding sections 31-307 to 31-311 and repealing sections 31-301 and 31-302 to 31-306] may be cited as the 'District of Columbia Nonresident Tuition Act.'"

§ 31-308. Board of Education to determine who is required to pay tuition—Penalties—Prosecutions to be conducted by Corporation Counsel.

(a) The Board of Education shall take such action as may be necessary to determine which of the persons, attending or desiring to attend the public schools of the District of Columbia, for whom tuition shall be paid as required by section 31-307, and said Board is authorized, with the approval of the Commissioners of the District of Columbia, to make regulations to carry out the intent and purposes of sections 31-307 to 31-311.

(b) Any person who makes a statement required or authorized by sections 31-307 to 31-311 to be filed with the Board of Education knowing that the information set forth in such statement is false, shall be fined not more than \$300 or imprisoned for not more than ninety days, or both. Any person violating any regulation made pursuant to the authority in sections 31-307 to 31-311 shall be fined not more than \$100 or imprisoned for not more than thirty days.

(c) All prosecutions for violations of sections 31-307 to 31-311, or regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. As used in sections 31-307 to 31-311 the term "Corporation Counsel" means the attorney for the District of Columbia, by whatever title such attorney may be known, designated by the Board of Commissioners of the District of Columbia to perform the functions prescribed for the Corporation Counsel in sections 31-307 to 31-311. (Sept. 8, 1960, 74 Stat. 853, Pub. L. 86-725, § 3.)

§ 31-309. Definitions.

As used in sections 31-307 to 31-311—

(1) the term "child" means a person who is less than twenty-one years of age;

(2) the term "orphan" means a child who resides in the District of Columbia and who does not have a living parent or guardian;

(3) the term "adult" means a person who is twenty-one years of age, or older;

(4) the term "guardian" means a person (A) appointed as a guardian for a child by a court of competent jurisdiction, and

(B) who has control or custody of such child;

(5) the term "parent" means a person (A) who (i) is a natural parent of a child (ii) is a stepfather or stepmother of a child, or (iii) has adopted a child, and (B) who has custody or control of such child; and

(6) the term "Board of Education" means the Board of Education of the District of Columbia. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 4.)

§ 31-310. Authority of Commissioners not affected—Delegation of functions—Section 31-301a to remain in full force and effect.

(1) Nothing in sections 31-307 to 31-311 shall be construed so as to affect the authority vested in the Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by sections 31-307 to 31-311 in the Commissioners of the District of Columbia or in any office or agency

under the jurisdiction and control of said Commissioners may be delegated by said Commissioners in accordance with section 3 of such plan.

(2) Sections 31-307 to 31-311 shall not be construed as superseding section 31-301a, and such section shall continue in full force and effect. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 5.)

REFERENCES IN TEXT

Reorganization Plan Numbered 5 of 1952, referred to in the text, is set out in the Appendix to Title 1, Administration.

§ 31-311. Payment of tuition by students of Teachers College.

Nothing contained in sections 31-307 to 31-311 shall be construed as preventing the Board of Education from requiring students of the District of Columbia Teachers College to pay tuition, and the said Board is authorized, in its discretion, to require the payment of tuition by the students of such college, whether or not resident in the District of Columbia, with the exception of those students who are authorized to be excused from the payment of tuition by an Act other than sections 31-307 to 31-311. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 7.)

Chapter 4.—FREE TEXTBOOKS

Sec.

- 31-401. Textbooks and supplies furnished without charge.
- 31-402. Books—Property of District—Loaned to students.
- 31-403. Parents and guardians responsible for books—Liability.
- 31-404. Limitation on purchases.
- 31-405. Sale or exchange authorized.
- 31-406. Expense of textbooks and supplies.

§ 31-401. Textbooks and supplies furnished without charge.

The Board of Education of the District of Columbia shall provide pupils of the public elementary schools, public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 1.)

CROSS REFERENCE

School official not to profit from purchase of school supplies, see § 31-1104.

§ 31-402. Books—Property of District—Loaned to students.

All books purchased by the Board of Education shall be held as property of the District of Columbia and shall be loaned to pupils under such conditions as the Board of Education may prescribe. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 2.)

CROSS REFERENCE

Powers and duties of Superintendent, see § 31-105.

§ 31-403. Parents and guardians responsible for books—Liability.

Parents and guardians of pupils shall be responsible for all books loaned to the children in their charge and shall be held liable for the full price of every such book destroyed, lost, or so damaged as to be made unfit for use by other pupils. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 3.)

§ 31-404. Limitation on purchases.

The Board of Education shall purchase for use in the public schools only such books and supplies as shall have been duly recommended by the superintendent of schools and formally approved by the Board of Education. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 4.)

CROSS REFERENCE

Board of Education, powers and duties, see § 31-101.

§ 31-405. Sale or exchange authorized.

The Board of Education, in its discretion, is authorized to make exchange or to sell books or other educational supplies which are no longer desired for school use. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 5.)

§ 31-406. Expense of textbooks and supplies.

The Board of Education is authorized to provide for the necessary expenses of purchase, distribution, care, and preservation of said textbooks and educational supplies out of money appropriated under authority of this chapter. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 6.)

Chapter 5.—VOCATIONAL REHABILITATION OF RESIDENTS OF THE DISTRICT OF COLUMBIA

Sec.

31-501 to 31-507. Repealed.

§§ 31-501 to 31-507. Repealed. July 6, 1943, 57 Stat. 374, ch. 190, § 2.

Sections, act Feb. 23, 1929, 45 Stat. 1260, ch. 303, §§ 1-7, provided for the vocational rehabilitation of disabled residents of the District of Columbia, and are now covered by U.S. Code, title 29, ch. 4.

Section 31-506 amended by act Apr. 17, 1937, 50 Stat. 69, ch. 110.

EFFECTIVE DATE OF REPEAL

Section 2 of act July 6, 1943, provided that: "Effective July 1, 1943, the Act entitled 'An Act to provide for the vocational rehabilitation of disabled residents of the District of Columbia, and for other purposes,' approved February 23, 1929, as amended [this chapter], is hereby repealed."

Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

Sec.

31-601 to 31-607. Repealed.

31-608. No discrimination in salary because of sex—Deductions affecting salaries—Teacher not to be employed as clerk or librarian.

31-609. Commencement of Compensation—Installment payments.

31-609a. Installment payments of certain teachers.

31-610 to 31-613. Repealed.

31-614. Board of Education authorized to establish occupational schools, trade or vocational courses.

31-615. Repealed.

31-616. Salaries of public school librarians.

CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

31-617 to 31-622. Repealed.

31-622a. Head of department of military science and tactics—Salary.

31-623. Classification, and assignment of research assistants.

31-624. Appointment of instructor in automobile driving—Salary.

31-625. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker—Salary deductions.

METHOD OF PROMOTION OF EMPLOYEES

Sec.

31-626 to 31-629. Repealed.

31-630. Rules for division of time and computation of pay for services.

31-631. Double salaries—School teachers and employees in District of Columbia.

31-631a. Same—Custodial employees in District of Columbia.

SABBATICAL YEAR

31-632. Granting of leave authorized—Limitation on number.

31-633. Report of person on leave—Termination of leave.

31-634. Teacher's salary while on leave.

31-635. Administrative officers—Salary while on leave—Temporary employees.

31-636. Inclusion of sabbatical year for promotion and retirement purposes.

31-637. Masculine pronoun construed to include female employees.

31-638 to 31-658. Repealed.

TEACHERS' SALARY ACT OF 1947

31-659 to 31-679. Repealed, omitted or transferred.

ACCOMPANYING LEGISLATION

31-680. Only one person to be in charge of certain school departments—Rate of compensation.

31-681. Teachers in the Americanization schools—Custodial staff.

31-682. Teaching vacancies—Assignment of teachers.

SICK AND EMERGENCY LEAVES

31-691. Sick and emergency leaves authorized for teachers and attendance officers.

31-691a. Credit for cumulative leave on transfer or promotions.

31-691b. Reinstatement after leave without pay granted.

31-692. Additional leave credits for service prior to July 1, 1949.

31-693. Application of credits to maternity leaves authorized.

31-694. Additional leaves in emergencies.

31-694a. Days of leave with pay, defined.

31-695. Refund required for unearned advanced leave—Exceptions.

31-696. Employment of substitutes.

31-696a. Retired teachers may serve as substitutes—Continuance of annuities—Service not to be used to recompute annuities.

31-697. Rules and regulations—Definitions.

31-698. Regulation of vacation periods and annual leave by the Board of Education.

31-698a. Leave accrued prior to March 5, 1952—Authority of Board of Education to promulgate rules.

TEACHER FOREIGN EXCHANGE PROGRAM

31-699. Participation in teacher foreign exchange program authorized—Eligibility.

31-699a. Payment of salary during exchange.

31-699b. Assignment of foreign teachers—Waiver of loyalty oath.

§§ 31-601 to 31-606. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section 31-601, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 13, related to board of examiners, its constitution and designation of members.

Section 31-602, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 14, provided for appointment of chief examiners and for service of all members of boards of examiners without additional compensation.

Section 31-603, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 15, provided for annual substitute teachers; their appointment, qualification and assignment; pay deductions from absent teachers; and other substitutes.

Section 31-604, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 375, ch. 250, § 16, provided for temporary appointment of teachers, their term of service and salary assignments.

Section 31-605, acts June 20, 1906, 34 Stat. 320, ch. 3446, § 8; June 4, 1924, 43 Stat. 375, ch. 250, § 17, authorized the Board of Education to conduct a community center department, a department of school attendance and work permits, night schools, vacation schools, Americanization schools, and other activities and to prescribe the salaries of said department and activities.

Section 31-606, acts June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 375, ch. 250, § 18, provided for preparation of expenditures for operation of public-school system in conformity with classification of educational employees.

§ 31-607. Repealed. Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(c), eff. July 1, 1949.

Section, act Mar. 4, 1911, 36 Stat. 1395, ch. 285, provided for leave of absence of regularly employed teachers with salary deductions for payments made to substitute teachers, extended leaves of absence without compensation and leaves of absence of other employees of the Board of Education with salary deductions for payments made to substitutes. See sections 31-691, 31-694, 31-696, 31-698.

§ 31-608. No discrimination in salary because of sex—Deductions affecting salaries—Teacher not to be employed as clerk or librarian.

In assigning salaries to teachers no discrimination shall be made between male and female teachers employed in the same grade of school and performing a like class of duties; nor shall it be lawful to pay, or authorize or require to be paid, from any of the salaries of such teachers any portion or percentage thereof for the purpose of adding to salaries of higher or lower grades; and no such teacher shall be employed as, or required to discharge the duties of, a clerk or librarian. (Sept. 1, 1916, 39 Stat. 695, ch. 433, § 1.)

§ 31-609. Commencement of compensation—Installment payments.

The salaries of all teachers, and clerks and librarians in the high and manual-training schools, duly elected, whose services commence with the opening day of school and who shall perform their duties, shall begin on the first day of September and shall be paid in ten monthly installments, the first payment to be made on the 1st day of October, or as near that date as practicable, and the payment for the month of June to be made upon the completion of the school term in June; *Provided*, That the salaries of other teachers shall begin when they enter upon their duties. (May 26, 1908, 35 Stat. 291, ch. 198, § 1.)

CODIFICATION

Section is from the District of Columbia Appropriation Act, 1909.

§ 31-609a. Installment payments of certain teachers.

On and after July 1, 1943 the Board of Education is authorized to designate the months in which the ten salary payments shall be made to teachers assigned to instruction in elementary science and school gardening, and in health, physical education, and playground activities. (July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

1943—June 27, 1942, 56 Stat. 435, ch. 452, § 1.
 1942—July 1, 1941, 55 Stat. 512, ch. 271, § 1.
 1941—June 12, 1940, 54 Stat. 319, ch. 333, § 1.
 1940—July 15, 1939, 53 Stat. 1017, ch. 281, § 1.
 1939—Apr. 4, 1938, 52 Stat. 170, ch. 62, § 1.
 1938—June 29, 1937, 50 Stat. 371, ch. 403, § 1.
 1937—June 23, 1936, 49 Stat. 1869, ch. 726, § 1.
 1936—June 14, 1935, 49 Stat. 355, ch. 241, § 1.
 1935—June 4, 1934, 48 Stat. 860, ch. 389, § 1.
 1934—June 16, 1933, 48 Stat. 236, ch. 93, § 1.
 1933—June 29, 1932, 47 Stat. 360, ch. 308, § 1.
 1932—Feb. 23, 1931, 46 Stat. 1394, ch. 282, § 1.
 1931—July 3, 1930, 46 Stat. 969, ch. 848, § 1.
 1930—Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1.
 1929—May 21, 1928, 45 Stat. 662, ch. 659, § 1.
 1928—Mar. 2, 1927, 44 Stat. 1314, ch. 271, § 1.
 1927—May 10, 1926, 44 Stat. 433, ch. 276, § 1.
 1926—Mar. 3, 1925, 43 Stat. 1233, ch. 477, § 1.
 1925—June 7, 1924, 43 Stat. 557, ch. 302, § 1.
 1924—Feb. 28, 1923, 42 Stat. 1346, ch. 148, § 1.
 1923—June 29, 1922, 42 Stat. 638, ch. 249, § 1.
 1922—Feb. 22, 1921, 41 Stat. 1125, ch. 70, § 1.

§§ 31-610 to 31-613. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section 31-610, acts June 20, 1906, 34 Stat. 318, 320, 321, ch. 3446, §§ 4, 8, 9; June 4, 1924, 43 Stat. 367, ch. 250, § 1; Feb. 28, 1929, 45 Stat. 1343, ch. 357, § 1, prescribed the salaries of teachers, school officers and employees and is now covered by section 31-1501.

Section 31-611, act Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 1, stated the purpose of section 31-614 and former sections 31-611 to 31-613, 31-615 to be the raising of salary schedule of trade or vocational schools from elementary to junior high school level and to provide other legislation relating thereto.

Section 31-612, act Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 2, prescribed the salaries of teachers and principals of trade or vocational schools and is now covered by section 31-1501.

Section 31-613, act Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 3, authorized the Board of Education to classify and assign teachers and principals in trade or vocational schools and is now covered by section 31-1511.

§ 31-614. Board of Education authorized to establish occupational schools, trade or vocational courses.

The Board of Education is authorized and empowered to establish occupational schools on the elementary school level for pupils not prepared to pursue vocational courses in the trade or vocational schools; and also to carry on trade or vocational courses on the senior high school level or in senior high schools. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 4.)

CROSS REFERENCE

Classification and assignment of teachers, see § 31-660a.

§ 31-615. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section, act Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 5, provided that appointments, assignments and transfers under section 31-614 and former sections 31-611 to 31-613, 31-615 shall be made in accordance with act June 20, 1906, as amended.

§ 31-616. Salaries of public school librarians.

CODIFICATION

Section was from the District of Columbia Appropriation Act, 1941, act June 12, 1940, 54 Stat. 316, ch. 333, § 1, and was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions were contained in prior appropriation acts as follows:

1940—July 15, 1939, 53 Stat. 1014, ch. 281, § 1.

1939—Apr. 4, 1938, 52 Stat. 167, ch. 62, § 1.

1938—June 29, 1937, 50 Stat. 368, ch. 403, § 1.

CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§§ 31-617 to 31-621. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section 31-617, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 370, ch. 250, § 2, authorized the Board of Education to assign teachers, officers and employees to salary classes, to assign the director of intermediate instruction and supervisor of manual training, to abolish the titles of director and assistant director of penmanship and to transfer without examination former employees with such title. See section 31-1511.

Section 31-618, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 370, ch. 250, § 3, authorized the Board of Education to assign teachers, officers and employees to salary classes, prescribed the first year of service as the probationary period and provided for the receipt of the first longevity increase. See sections 31-1511, 31-1512, 31-1533(a).

Section 31-619, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 371, ch. 250, § 5, related to salary of teachers on probationary tenure. See sections 31-1501, 31-1533.

Section 31-620, act Feb. 28, 1929, 45 Stat. 1344, ch. 357, § 2, related to assignment and promotion of teachers in junior high schools. See section 31-1511(a).

Section 31-621, acts June 20, 1906, 34 Stat. 318, ch. 3446, § 4; June 4, 1924, 43 Stat. 372, ch. 250, § 6; Feb. 28, 1929, 45 Stat. 1344, ch. 357, § 4, related to assignment of teachers and employees in service on July 1, 1924. See section 31-1521.

§ 31-622. Repealed. July 29, 1946, 60 Stat. 709, ch. 693, § 2.

Section, act June 4, 1935, 49 Stat. 320, ch. 167, provided for appointment of retired Army officer as professor of military science and tactics.

§ 31-622a. Head of department of military science and tactics—Salary.

The Board of Education is hereby authorized to establish in the public schools of the District of Columbia two positions, each with a title "head of department of military science and tactics". Persons shall be appointed or promoted to such positions in accordance with the provisions of sections 31-638 to 31-658, and shall be entitled to receive salaries at the same rate as heads of departments assigned to salary class 17 of the salary schedules set forth in section 31-638. (July 29, 1946, 60 Stat. 708, ch. 693, § 1.)

§ 31-623. Classification of research assistants.

Research assistants shall be classified as teachers for pay-roll purposes and for retirement purposes. (Apr. 5, 1939, 53 Stat. 568, ch. 39, § 4.)

REPEALS

Sections 1-3, 5 of act Apr. 5, 1939, formerly set out as subsecs. (a) — (c), (e), were repealed by act July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945. The sections authorized the Board of Education to appoint research assistants and to assign them to salary class 2, authorized appointments to group A or C of salary class 2, authorized promotions to group B or D of salary class 2 and provided for appointments, assignments and transfers in accordance with provisions of act June 20, 1906, as amended, respectively.

§ 31-624. Appointment of instructor in automobile driving—Salary.

CODIFICATION

Section was from the District of Columbia Appropriation Act, 1942, act July 1, 1941, 55 Stat. 508, ch. 271,

§ 1, and was not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions were contained in prior appropriations acts as follows:

1941—June 12, 1940, 54 Stat. 316, ch. 333, § 1.
1940—July 15, 1939, 53 Stat. 1014, ch. 281, § 1.

§ 31-625. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker—Salary deductions.

In the event of the absence of any engineer, assistant engineer, janitor, assistant janitor, laborer, fireman, or caretaker at any time during school sessions the board of education is hereby authorized to appoint a substitute, who shall be paid the salary of the position in which employed, and the amount paid to such substitute shall be deducted from the salary of the absent employee. (Mar. 4, 1913, 37 Stat. 956, ch. 150, § 1.)

METHOD OF PROMOTION OF EMPLOYEES

§§ 31-626 to 31-629. Repealed. July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21, eff. July 1, 1945.

Section 31-626, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 7, provided for annual salary increases for satisfactory service without action of the Board of Education. See sections 31-1511(a), 31-1531, 31-1533(a).

Section 31-627, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 8, related to salaries upon promotion and the manner of computation. See section 31-1536.

Section 31-628, acts June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 9; Apr. 5, 1939, 53 Stat. 571, ch. 43, related to assignment of teachers in service on July 1, 1924, not otherwise provided for, assignment of new teachers, promotion without examination, restrictions on promotions to Groups B and D, and division of salaries between teachers in white and colored schools. See sections 31-1521, 31-1531, 31-1532.

Section 31-629, acts June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 374, ch. 250, § 10, prescribed the basis for promotions to teaching and administrative principals. See section 31-1511.

§ 31-630. Rules for division of time and computation of pay for services.

The following rules for division of time and computation of pay for services rendered are hereby established: Compensations of all teachers and librarians and clerks in the high and manual-training schools shall be divided into ten equal instalments, one of which shall be paid for each school month, and in making payments for a fractional part of a month one-thirtieth of one of such instalments shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with the compensation of all teachers and librarians and clerks in the high and manual-training schools, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the 31st day of any calendar month from the computation and treating February as if it actually had thirty days. Any person entering the service of the schools during a thirty-one day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the 30th day of said month,

both days inclusive; and any person entering said service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to the date of entry: *Provided*, That for one day's unauthorized absence on the 31st day of any calendar month one day's pay shall be forfeited. (May 26, 1908, 35 Stat. 291, ch. 198.)

§ 31-631. Double salaries—School teachers and employees in District of Columbia.

Section 6, of the Act of Congress approved May 10, 1916 (39 Stat. 120, ch. 117), providing that unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum, shall not apply to teachers of the public schools of the District of Columbia when employed by any of the executive departments or independent establishments of the United States government; nor to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vocation schools; nor to employees of the school garden department of the public schools of the District of Columbia; nor to employees of the community center department of the public schools of the District of Columbia. (Oct. 6, 1917, 40 Stat. 384, ch. 79, § 9; July 8, 1918, 40 Stat. 823, ch. 139, § 1; June 5, 1920, 41 Stat. 1017, ch. 253, § 1.)

REFERENCE IN TEXT

Section 6 of act May 10, 1916, 39 Stat. 120, ch. 117, referred to in the text, is classified to U.S. Code, title 5, §§ 58, 59.

CODIFICATION

Double salary restriction was made inapplicable to teachers employed as night school and vacation school teachers by Second Deficiency Appropriation Act, 1917, act Oct. 6, 1917; to teachers employed by executive departments or independent establishments of the United States government and employees of the community center by First Deficiency Appropriation Act, 1918, act July 8, 1918; and to employees of the school garden department by the Third Deficiency Appropriation Act, 1920, act June 5, 1920.

§ 31-631a. Same—Custodial employees in District of Columbia.

Section 6, of the Act of Congress approved May 10, 1916 (39 Stat. 120, ch. 117), and Acts amendatory thereto, shall not apply to the custodial employees who are in the employ of the Board of Education of the District of Columbia when such employees are performing work required of them in school buildings during the time these buildings are used for nonrecreational official purposes by any Federal agency or department of the District of Columbia government other than the Board of Education, in accordance with the rules of the Board of Education governing the use of school buildings and grounds, including their use for day or evening schools; and nothing therein contained shall be deemed to prevent any custodial employee from receiving in addition to his pay, salary, or compensation as an employee of the Board of Education of the District of Columbia any other pay, salary, or compensation at a rate not in excess of the rate of pay received as an employee of the Board of Education, for services which may have been rendered

subsequent to May 31, 1941, or which may on and after July 1, 1942 be rendered to any Federal agency or department of the District of Columbia government other than the Board of Education, during its use of school buildings under the jurisdiction of the Board of Education of the District of Columbia. (July 1, 1942, 56 Stat. 467, ch. 467.)

REFERENCE IN TEXT

Section 6 of act May 10, 1916, 39 Stat. 120, ch. 117, referred to in the text, is classified to U.S. Code, title 5, §§ 58, 59.

SABBATICAL YEAR

§ 31-632. Granting of leave authorized—Limitation on number.

The Board of Education, on recommendation of the superintendent of schools, may grant leave of absence with part pay to any employee of said Board of Education whose salary is fixed in sections 31-610, 31-612, who has served in the public schools of the District of Columbia not less than six years continuously prior to filing application for leave, for purposes of educational improvement for a period not exceeding one year at a time, under conditions not herein otherwise specified as the Board of Education may determine, and the place of said person to be filled by the appointment of a qualified temporary employee for the period of said leave: *Provided*, That not more than 2 per centum of the total number of the above-mentioned employees may be on leave with part pay at the same time. (June 12, 1940, 54 Stat. 349, ch. 342, § 1.)

CROSS REFERENCE

Teachers and librarians exempted from general law concerning annual and sick leave for District employees, see § 1-312.

§ 31-633. Report of person on leave—Termination of leave.

Any employee to whom such leave of absence may be granted shall report in writing to the superintendent, in such form as the Board of Education may determine, the manner in which said leave of absence is being employed, and for failure to comply with any requirement of the rules of the Board of Education or to pursue in a satisfactory manner the purpose for which said leave of absence was granted, the Board of Education, on recommendation of the superintendent, may terminate such leave of absence at any time. (June 12, 1940, 54 Stat. 349, ch. 342, § 2.)

§ 31-634. Teacher's salary while on leave.

Any teacher whose salary is fixed in section 31-610, classes 1 to 4, and § 31-612, who is granted leave of absence for educational purposes under the provisions of sections 31-632 to 31-637, shall receive compensation during the period of said leave, paid in the same manner as though on active duty, equal to the difference between the salary which the teacher would have received during the year he is on said leave of absence and the basic annual salary of group A or group C of his salary class, less the amount of his contribution to the retirement fund, in accordance with the provisions of sections 31-701 to 31-720. (June 12, 1940, 54 Stat. 349, ch. 342, § 3.)

§ 31-635. Administrative officers—Salary while on leave—Temporary employees.

Any administrative or supervisory officer mentioned in section 31-632 whose salary is fixed in section 31-610, classes 5 to 12, who is granted leave of absence for educational purposes under the provisions of sections 31-632 to 31-637, shall receive compensation during the period of said leave, paid in the manner as though on active duty, equal to the largest amount to which any teacher in the group B or group D salary class under his supervision would be entitled if given such education leave, less the amount of his contribution to the retirement fund in accordance with the provisions of sections 31-701 to 31-720: *Provided*, That during the period of the leave of said officer, the Board of Education on the recommendation of the superintendent of schools may authorize the temporary assignment to his position of any teacher or officer who serves under said officer on leave: *And provided further*, That the position of the teacher or officer so assigned may be filled during the period of such absence by a qualified temporary employee. (June 12, 1940, 54 Stat. 349, ch. 342, § 4.)

§ 31-636. Inclusion of sabbatical year for promotion and retirement purposes.

The teacher or officer who takes leave of absence with part pay for educational purposes under the provisions of sections 31-632 to 31-637 shall be construed as in active service, and periods of service for salary increment purposes and for retirement purposes, and the pay which the teacher or officer would have received had leave not been taken shall be used in computing retirement annuities. (June 12, 1940, 54 Stat. 350, ch. 342, § 5.)

§ 31-637. Masculine pronoun construed to include female employees.

Wherever the masculine pronoun occurs in sections 31-632 to 31-637 it shall be construed to mean both male and female employees. (June 12, 1940, 54 Stat. 350, ch. 342, § 6.)

EFFECTIVE DATE

Section 7 of the act of June 12, 1940, ch. 342, provided that the act should take effect on and after July 1, 1940.

§§ 31-638 to 31-658. Repealed. July 7, 1947, 61 Stat. 260, ch. 208, title V, § 20, eff. July 1, 1947.

Sections, act July 21, 1945, 59 Stat. 488, ch. 321, constituted the District of Columbia Teachers' Salary Act of 1945 and are now covered by the District of Columbia Teachers' Salary Act of 1955 which is classified to chapter 15 of this title.

Section 31-638, act July 21, 1945, 59 Stat. 488, ch. 321, title I, § 1, prescribed the salaries of teachers, school officers and other employees and defined "other employees" and is now covered by section 31-1501.

Section 31-639, act July 21, 1945, 59 Stat. 492, ch. 321, title II, § 2, authorized the Board of Education to establish eligibility requirements and prescribe methods of appointment and promotion, to assign teachers, school officers and other employees to salary classes and to dispense with examination for certain teachers employed on June 30, 1945.

Section 31-640, act July 21, 1945, 59 Stat. 492, ch. 321, title II, § 3, authorized the Board of Education to assign teachers, school officers and other employees to salary classes, prescribed the first year of service as the probationary period and provided for the receipt of the first longevity increase. See sections 31-1511, 31-1512, 31-1533(a).

Section 31-641, act July 21, 1945, 59 Stat. 492, ch. 321, title III, § 4, prescribed rules governing assignment of

teachers, school officers and other employees to salary classes, defined "annual compensation" and provided for increase in salary.

Section 31-642, act July 21, 1945, 59 Stat. 493, ch. 321, title III, § 5, provided for receipt of first longevity increase of probationary appointees.

Section 31-643, act July 21, 1945, 59 Stat. 493, ch. 321, title III, § 6, related to assignment of teachers, school officers and other employees in service on July 1, 1945 to salary classes.

Section 31-644, act July 21, 1945, 59 Stat. 497, ch. 321, title IV, § 7, provided for increase in salaries without action of Board of Education and credited, in the case of trade teachers, approved training and experience in the trades as though it were experience in and training for teaching. See sections 31-1531 to 31-1533.

Section 31-645, act July 21, 1945, 59 Stat. 497, ch. 321, title IV, § 8, related to salaries upon promotion and the manner of computation. See section 31-1536.

Section 31-646, act July 21, 1945, 59 Stat. 497, ch. 321, title IV, § 9, related to assignment of teachers and other employees in service on July 1, 1945 and thereafter, restrictions on promotions to Groups B and D, and division of salaries between teachers in white and colored schools. See sections 31-1521, 31-1531, 31-1532.

Section 31-647, act July 21, 1945, 59 Stat. 498, ch. 321, title IV, § 10, prescribed the basis for promotions to position of principal in the elementary schools.

Section 31-648, act July 21, 1945, 59 Stat. 498, ch. 321, title V, § 11, required the Board of Education to designate the number of classrooms in elementary school buildings for the purpose of determining the classification of elementary school principals.

Section 31-649, act July 21, 1945, 59 Stat. 498, ch. 321, title V, § 12, provided for two first assistant superintendents of schools, one for the white and one for the colored schools, and described their duties.

Section 31-650, act July 21, 1945, 59 Stat. 498, ch. 321, title V, § 13, related to board of examiners, its composition and designation of members.

Section 31-651, act July 21, 1945, 59 Stat. 498, ch. 321, title V, § 14, provided for appointment of chief examiners and for service of all members of boards of examiners without additional compensation.

Section 31-652, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 15, provided for annual substitute teachers; their appointment, qualification and assignment; pay deductions from absent teachers; and other substitutes.

Section 31-653, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 16, provided for appointment of temporary teachers, their term of service and salary assignments and is covered by section 31-1534.

Section 31-654, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 17, authorized the Board of Education to conduct a department of school attendance and work permits, night schools, vacation schools, Americanization schools, and other activities and to prescribe the salaries of said departments and activities.

Section 31-655, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 18, required classification of certain employees as teachers for pay-roll purposes and provided for payment of their salaries in ten monthly installments and is covered by section 31-1543.

Section 31-656, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 19, provided for sick leave of attendance officers in the department of school attendance and work permits and the appointment of substitutes in case of extended absence with provision for pay deductions from compensation of attendance officers absent longer than permitted by law and is covered by sections 31-691, 31-694.

Section 31-657, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 20, provided for the effective date of the salary rates and for preparation of expenditures for operation of public-school system in conformity with classification of educational employees and restricted salary increases during fiscal year ending June 30, 1946, to those provided in act July 21, 1945.

Section 31-658, act July 21, 1945, 59 Stat. 499, ch. 321, title V, § 22, made applicable the leave for educational improvement provisions to employees of the Board of Education with salaries fixed by act July 21, 1945, and is covered by section 31-1546.

TEACHERS' SALARY ACT OF 1947

§§ 31-659 to 31-679. Repealed, omitted or transferred.

The provisions of the District of Columbia Teachers' Salary Act of 1947, act July 7, 1947, 61 Stat. 248, ch. 208, as amended, formerly classified hereunder, were repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and are covered by the District of Columbia Teachers' Salary Act of 1955, which is classified to chapter 15 of this title.

The provisions of the District of Columbia Teachers' Salary Act of 1955, act Aug. 5, 1955, 69 Stat. 521, ch. 569, as amended, formerly classified hereunder, are transferred to chapter 15 of this title.

The disposition of the sections of these acts follows:

Section 31-659, acts July 7, 1947, 61 Stat. 248, ch. 208, title I, § 1; Oct. 6, 1949, 63 Stat. 706, ch. 618, § 1; Oct. 8, 1951, 65 Stat. 368, ch. 448, § 4; Oct. 24, 1951, 65 Stat. 603, ch. 541, § 1, prescribed the salary schedule of teachers, school officers and other employees of the Board of Education, defined "other employees" and provided for receipt of compensation in accordance with certain provisions of act July 7, 1947 during first year of service after July 1, 1947, and is covered by section 31-1501.

Section 31-659a, act Aug. 5, 1953, 67 Stat. 363, ch. 322, § 1(a), provided salary increases for teachers, school officers and other employees.

Section 31-659a-1 transferred to section 31-1501.

Section 31-660, acts July 7, 1947, 61 Stat. 252, ch. 208, title II, § 2; Oct. 24, 1951, 65 Stat. 603, ch. 541, § 2, authorized the Board of Education to establish eligibility requirements and methods of appointment, promotion and salary classification, prescribed the possession of a master's degree for certain appointments and promotions and defined "master's degree" and is covered by section 31-1511(a), (c) (1).

Section 31-660a transferred to section 31-1511.

Section 31-661, acts July 7, 1947, 61 Stat. 253, ch. 208, title II, § 3; Oct. 24, 1951, 65 Stat. 603, ch. 541, § 3, authorized and directed the Board of Education to assign teachers, school officers and other employees to salary classes at time of appointment and prescribed a two year probationary period for appointees and is covered by sections 31-1511(a), 31-1512.

Section 31-661a transferred to section 31-1512.

Section 31-662, acts July 7, 1947, 61 Stat. 253, ch. 208, title III, § 4; Oct. 24, 1951, 65 Stat. 603, ch. 541, § 4, prescribed rules governing assignment of teachers, school officers and other employees of Board of Education to salary classes for fiscal year ending June 30, 1948, including therein definition of "annual compensation" and increase in compensation.

Section 31-662a transferred to section 31-1521.

Section 31-663, act July 7, 1947, 61 Stat. 253, ch. 208, title III, § 5, provided for first annual increase in compensation on date of permanent appointment or promotion and is covered by section 31-1533(a), (b).

Section 31-663a transferred to section 31-1522.

Section 31-664, acts July 7, 1947, 61 Stat. 254, ch. 208, title III, § 6; Oct. 6, 1949, 63 Stat. 706, ch. 618, §§ 1-3; Oct. 24, 1951, 65 Stat. 604, ch. 541, § 5, related to assignment of teachers, school officers and other employees in service on and appointed after July 1, 1947 to salary classes, evaluation of past experience and absence because of military or naval service. See sections 31-1511(b), 31-1521, 31-1532.

Section 31-664a transferred to section 31-1531.

Section 31-665, acts July 7, 1947, 61 Stat. 257, ch. 208, title IV, § 7; Oct. 24, 1951, 604, ch. 541, § 6, provided for annual salary increases for satisfactory service without action of Board of Education and establishment of in-service training program. See sections 31-1511(a), 31-1531, 31-1533(a).

Section 31-665a transferred to section 31-1532.

Section 31-666, act July 7, 1947, 61 Stat. 258, ch. 208, title IV, § 8, prescribed the salary upon promotion to a higher class and is covered by section 31-1536.

Section 31-666a transferred to section 31-1533.

Section 31-667, acts July 7, 1947, 61 Stat. 258, ch. 208, title IV, § 9; Oct. 24, 1951, 65 Stat. 604, ch. 541, § 7 related

to assignment of teachers, and other employees in service on July 1, 1947, to appropriate groups. See sections 31-1511, 31-1535.

Section 31-667a transferred to section 31-1534.

Section 31-668, act July 7, 1947, 61 Stat. 258, ch. 208, title V, § 10, required the Board of Education to designate the number of classrooms in elementary school buildings for the purpose of determining the classification of elementary school principals.

Section 31-668a transferred to section 31-1535.

Section 31-669, act July 7, 1947, 61 Stat. 258, ch. 208, title V, § 11, provided for two first assistant superintendent of schools, one for the white and one for the colored schools, and described their duties.

Section 31-669a transferred to section 31-1536.

Section 31-670, act July 7, 1947, 61 Stat. 258, ch. 208, title V, § 12, related to board of examiners, its composition and designation of members.

Section 31-670a transferred to section 31-1541.

Section 31-671, acts July 7, 1947, 61 Stat. 258, ch. 208, title V, § 13; Oct. 24, 1951, 65 Stat. 605, ch. 541, § 8, provided for appointment of chief examiners and for service of all members of boards of examiners without additional compensations.

Section 31-671a transferred to section 31-1542.

Section 31-672, acts July 7, 1947, 61 Stat. 259, ch. 208, title V, § 14; Oct. 13, 1949, 63 Stat. 843, ch. 686, § 9(a), provided for annual substitute teachers; their appointment, qualification and assignment; pay deductions from absent teachers and other substitutes.

Section 31-672a transferred to section 31-1543.

Section 31-673, act July 7, 1947, 61 Stat. 259, ch. 208, title V, § 15, provided for appointment of temporary teachers, their term of service and salary assignments and is covered by section 31-1534.

Section 31-673a transferred to section 31-1544.

Section 31-674, acts July 7, 1947, 61 Stat. 259, ch. 208, title V, § 16; Mar. 3, 1952, 66 Stat. 11 ch. 73, § 1, authorized the Board of Education to conduct a department of school attendance and work permits, evening schools, vacation schools, Americanization schools and other activities and to prescribe the salaries of said departments and activities and to employ retired members of armed forces as teachers of military science and tactics and is covered by sections 31-1541, 31-1542. See, also, sections 31-211, 31-2122 with respect to creation of department of school attendance headed by a director.

Section 31-674a transferred to sections 31-1545, 31-1546.

Section 31-675, act July 7, 1947, 61 Stat. 259, ch. 208, title V, § 17, required classification of certain employees as teachers for payroll purposes and provided for payment of their salaries in ten monthly installments and is covered by section 31-1543.

Section 31-675a transferred to sections 31-1547, 31-1548.

Section 31-676, act July 7, 1947, 61 Stat. 259, ch. 208, title V, § 18, which provided for sick leave of attendance officers in the department of school attendance and work permits and the appointment of substitutes in case of extended absence with provisions for pay deductions from compensation of attendance officers absent longer than permitted by law, was repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(b), eff. July 1, 1949, and is covered by sections 31-691, 31-694.

Section 31-677, act July 7, 1947, 61 Stat. 259, ch. 208, title V, § 19, provided for the effective date of the salary rates and for preparation of expenditures for operation of public-school system in conformity with classification of educational employees and restricted salary increases during fiscal year ending June 30, 1948 to those provided in act July 7, 1947.

Section 31-678, acts July 7, 1947, 61 Stat. 260, ch. 208, title V, § 21; Oct. 6, 1949, 63 Stat. ch. 618, § 4, made applicable the leave for educational improvement provisions to employees of the Board of Education with salaries fixed by act July 7, 1947, and the teacher retirement provisions to permanent employees of the Board with salaries fixed by such act and is covered by sections 31-1546 and 31-1548.

Section 31-679, act June 30, 1949, 63 Stat. 376, ch. 287, § 3 (a), (b), provided salary increases for teachers, school officers and other employees.

ACCOMPANYING LEGISLATION

§ 31-680. Only one person to be in charge of certain school departments—Rate of compensation.

From and after ten days following the approval of this Act there shall be only one person in charge of the following departments in the public school system of the District of Columbia: Art, Business Education, English, Foreign Languages, Guidance and Placement, History, Home Economics, Industrial Arts, Mathematics, Military Science and Tactics, Music, Science, Trade and Industrial Education, and Health, Physical Education, Athletics, and Safety; except that in the case of persons reassigned pursuant to this section, nothing contained herein shall be construed to decrease the rate of compensation that any such person is receiving on the effective date of this section. If such person is placed in a lower salary class and the present salary of the incumbent falls between two step rates for the newly assigned class, he shall receive the higher of such rates. Whenever a department is established hereafter in the public school system of the District of Columbia there shall be but one person in charge of such department. (Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 3.)

REFERENCE IN TEXT

The approval of this Act, referred to in the text, means Aug. 28, 1958, the date of approval of act Aug. 28, 1958, which enacted this section, amended sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545, and enacted provisions set out as notes under section 31-1501.

CODIFICATION

A prior section 31-680, act Oct. 25, 1951, 65 Stat. 636, ch. 560, § 1(b), provided salary increases for teachers, school officers and other employees.

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§ 31-681. Teachers in the Americanization schools—Custodial staff.

Officers and teachers in the Americanization, evening, and summer schools may also be officers and teachers in the regular day schools.

Members of the custodial staff in the evening, summer, and Americanization schools may also be members of the custodial staff in the day schools. (July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

§ 31-682. Teaching vacancies—Assignment of teachers.

Teaching vacancies which occur during any school year may be filled by the assignment of teachers of special subjects and teachers not now assigned to classroom instruction, and such teachers are hereby made eligible for such assignment without further examination. (July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

SICK AND EMERGENCY LEAVES

§ 31-691. Sick and emergency leaves authorized for teachers and attendance officers.

All teachers and attendance officers in the employ of the Board of Education of the District of Columbia shall be entitled to cumulative leave with pay for personal illness, presence of contagious disease or death in the home, or pressing emergency, in ac-

cordance with such rules and regulations as the said Board of Education may prescribe. Such cumulative leave with pay shall be granted at the rate of one day for each month from September through June of each year, both inclusive. The total cumulation shall not exceed seventy-five days for probationary and permanent teachers and attendance officers, and the total cumulation shall not exceed twenty days for temporary teachers and attendance officers. Under such rules and regulations as the Board of Education may prescribe any teacher or attendance officer may use three days of such cumulative leave with pay in any school year for any purpose, upon giving timely notice of intended absence. (Oct. 13, 1949, 63 Stat. 842, ch. 686, § 1; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 1.)

AMENDMENT

1951—Act Oct. 29, 1951, increased cumulative leave for probationary and permanent teachers and attendance officers from sixty to seventy-five days and for temporary teachers and attendance officers from ten to twenty days and authorized three days of cumulative leave to be used for any purpose upon notice.

EFFECTIVE DATE OF 1951 AMENDMENT

Section 6 of act Oct. 29, 1951, provided that: "This Act [enacting sections 31-691a, 31-691b and amending sections 31-691, 31-692, 31-694] shall take effect on the first day of the second month following its enactment [Oct. 29, 1951]."

EFFECTIVE DATE

Section 11 of act Oct. 13, 1949, provided that: "This Act [enacting sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697, amending former section 31-622, repealing sections 31-607 and 31-676 and enacting provisions set out as a note under this section] shall become effective July 1, 1949."

SHORT TITLE

Section 10 of act Oct. 13, 1949, provided that: "This Act [enacting sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697, amending former section 31-622, repealing sections 31-607 and 31-676, and enacting provision set out as note under this section] may be cited as 'District of Columbia Teachers' Leave Act of 1949.'"

APPROPRIATIONS

Section 8 of act Oct. 13, 1949, provided that: "There is authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act, [sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697] and any appropriations for the public schools of the District of Columbia for personal services are hereby made available for the payment of the substitutes provided for in section 6 [31-696] of this Act."

CROSS REFERENCE

Teachers and librarians exempted from general law concerning annual and sick leave for District employees, see § 1-312.

§ 31-691a. Credit for cumulative leave on transfer or promotion.

When any person occupying a position, the salary of which position is fixed by classes 1 through 12 of section 31-659, or a position as attendance officer, the salary of which position is fixed in class 32, of section 31-659, is transferred or promoted to any position in the schedule in classes 13 through 34, of section 31-659 (other than a position in class 32) shall be entitled¹ to have credited to his account as accumulated sick leave as provided by the Act en-

¹ So in original. Probably should read: "such person shall be entitled."

titled "An Act to standardize sick leave and extend it to all civilian employees", approved March 14, 1936 (49 Stat. 1162) as amended, the same number of days as are credited to him as cumulative leave with pay under the provisions of sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697. (Oct. 29, 1951, 65 Stat. 660, ch. 601, § 4.)

REFERENCE IN TEXT

Section 31-659, referred to in the text, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955 and is covered by section 31-1501.

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Leave Act of 1949, classified to sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

Act to standardize sick leave and extend it to all civilian employees, approved March 14, 1936 (49 Stat. 1162), referred to in the text, formerly classified to U.S. Code title 5, §§ 30f to 30k, 30m, was repealed by act Oct. 30, 1951, 65 Stat. 682, ch. 631, title II, § 207(a)(2), and is now covered by the Annual and Sick Leave Act of 1951, which is classified to U.S. Code, title 5, chapter 23.

EFFECTIVE DATE

Section effective on first day of second month following Oct. 29, 1951, see section 6 of act Oct. 29, 1951, set out as a note under section 31-691.

§ 31-691b. Reinstatement after leave without pay granted.

Any teacher or attendance officer who after December 1, 1951 is granted leave without pay by the Superintendent of Schools or the Board of Education shall be reinstated to the position from which leave was granted or to an equivalent position when said employee is ready to resume his duties in accordance with the rules of the Board of Education existing at the time such leave was granted. (Oct. 29, 1951, 65 Stat. 661, ch. 601, § 5.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Leave Act of 1949, classified to sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

EFFECTIVE DATE

Section effective on first day of second month following Oct. 29, 1951, see section 6 of act Oct. 29, 1951, set out as a note under section 31-691.

§ 31-692. Additional leave credits for service prior to July 1, 1949.

In addition to the cumulative leave provided by section 31-691, each probationary and permanent teacher shall be credited on July 1, 1949, with one day of leave with pay for each complete year of service in the public schools of the District of Columbia prior to July 1, 1949: *Provided*, That the leave credited under the provisions of this section shall be granted for the same purposes as leave with pay is provided in section 31-691. Attendance officers shall be credited on July 1, 1949, with all cumulative leave with pay to which they are entitled on June 30, 1949, under the provisions of section 31-676. The total cumulation of leave with pay allowable under sections 31-691, 31-692 to 31-697 and the District of Columbia Teachers' Salary Act of 1947 shall not exceed seventy-five days, and no attendance officer shall be entitled to annual or sick leave with pay under the provisions of any other act. (Oct. 13, 1949, 63 Stat. 842, ch. 686, § 2; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 2.)

REFERENCES IN TEXT

Section 31-676, referred to in the text, was repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(b), eff. July 1, 1949 and is covered by sections 31-691, 31-694.

The District of Columbia Teachers' Salary Act of 1947, as amended, referred to in the text, formerly classified to sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by the District of Columbia Teachers' Salary Act of 1955, which is classified to chapter 15 of this title.

AMENDMENT

1951—Act Oct. 29, 1951, substituted the word "leave" for "total amount to be" and "seventy-five" for "sixty" and deleted from the proviso "shall not exceed twenty days and" which appeared between the words "section" and "shall".

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act Oct. 29, 1951, effective on first day of second month following Oct. 29, 1951, see section 6 of act Oct. 29, 1951, set out as a note under section 31-691.

§ 31-693. Application of credits to maternity leaves authorized.

Probationary and permanent teachers and attendance officers shall be entitled to use all leave to their credit when they are granted maternity leave by the Board of Education. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 3.)

§ 31-694. Additional leaves in emergencies.

In cases of serious disability or ailments, and when required by the exigencies of the situation, and in accordance with such rules and regulations as the Board of Education may prescribe, the superintendent of schools may advance additional leave with pay not to exceed twenty-five days to every probationary or permanent teacher or attendance officer who may apply for such advanced leave. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 4; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 3.)

AMENDMENT

1951—Act Oct. 29, 1951, substituted "twenty-five" for "twenty".

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act Oct. 29, 1951, effective on first day of second month following Oct. 29, 1951, see section 6 of act Oct. 29, 1951, set out as a note under section 31-691.

§ 31-694a. Days of leave with pay, defined.

The days of leave with pay provided for by sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697, shall mean days upon which teachers and attendance officers would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board of Education. (Dec. 20, 1950, 64 Stat. 1114, ch. 1141, § 1.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Leave Act of 1949, classified to sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

EFFECTIVE DATE

Section 1 of act Dec. 20, 1950, provided in part that this section should be effective July 1, 1949.

§ 31-695. Refund required for unearned advanced leave—Exceptions.

In the event of separation from the service of any teacher or attendance officer who is indebted

for unearned advanced leave, such teacher or attendance officer shall refund the amount of pay received for the period of such excess. If such teacher or attendance officer fails to make such refund, deductions therefor shall be made from any salary due him or from any amount standing to his credit under the provisions of subchapter II of chapter 7 of this title. The provisions of this section shall not apply in cases of death, retirement for disability, or in the event that the teacher or attendance officer to whom leave with pay has been advanced is unable to return to duty because of disability. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 5.)

§ 31-696. Employment of substitutes.

The Board of Education is hereby authorized to employ substitute teachers and attendance officers for service during the absence of any teacher or attendance officer on leave with pay or on leave without pay and to fix the rate of compensation to be paid such substitutes. Service rendered by such substitutes shall not be regarded as service within the meaning of the Civil Service Retirement Act of May 29, 1930, as amended. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 6; Aug. 5, 1953, 67 Stat. 362, ch. 319, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, § 22.)

REFERENCE IN TEXT

The Civil Service Retirement Act of May 29, 1930, as amended, referred to in the text, was redesignated the Civil Service Retirement Act by act May 29, 1930, ch. 349, § 18, as renumbered and amended by act July 31, 1956, 70 Stat. 760, ch. 804, title IV, § 401 and is classified to U.S. Code, title 5, chapter 30.

AMENDMENTS

1955—Act Aug. 5, 1955, excluded service of substitutes from service within Civil Service Retirement Act of May 29, 1930, as amended.

1953—Act Aug. 5, 1953, inserted "or on leave without pay".

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of section by act Aug. 5, 1955, effective on July 1, 1955, see section 25 of act Aug. 5, 1955, set out as a note under section 31-1501.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 2 of act Aug. 5, 1953, provided that: "This Act [amending this section] shall become effective as of July 1, 1949."

§ 31-696a. Retired teachers may serve as substitutes—Continuance of annuities—Service not to be used to recompute annuities.

Persons who have retired as teachers under the provisions of subchapter I of chapter 7 of this title; or subchapter II of chapter 7 of this title; or the Act entitled "An Act for the retirement of employees in the classified civil service, and for other purposes", approved May 22, 1920, as amended; may be employed as substitute teachers in the public schools of the District of Columbia when it is not practicable otherwise to secure qualified and competent persons. Any such persons granted temporary employment under authority of this section shall continue to receive their annuities during such employment and no deduction shall be made from the compensation of such persons for retirement benefits. The service rendered by such retired teachers employed as substitute teachers shall not be used to recompute their annuities. (Apr. 24, 1958, 72 Stat. 98, Pub. L. 85-385, § 1.)

REFERENCE IN TEXT

Act for retirement of employees in the classified civil service and for other purposes, approved May 22, 1920, as amended, referred to in the text, was designated the Civil Service Retirement Act by act May 29, 1930, ch. 349, § 18, as renumbered and amended by act July 31, 1956, 70 Stat. 760, ch. 804, title IV, § 401, and is classified to U.S. Code, title 5, chapter 30.

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Leave Act of 1949, classified to sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697.

§ 31-697. Rules and regulations—Definitions.

The Board of Education is hereby authorized to prescribe such rules and regulations as it may deem necessary to carry sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697, into effect. The term "teacher" used in such sections, shall include all employees whose salaries are fixed by classes 1 to 12 of section 31-659. The term "attendance officers" shall include all employees whose salaries are fixed by class 32 of section 31-659. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 7.)

REFERENCE IN TEXT

Section 31-659, referred to in the text, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by section 31-1501.

§ 31-698. Regulation of vacation periods and annual leave by the Board of Education.

The authority to regulate the vacation periods and annual leave of absence of all individuals employed by the Board of Education of the District of Columbia, whose positions are included in salary classes 13-23, inclusive, established by the District of Columbia Teachers' Salary Act of 1947, shall be vested solely in the Board of Education of the District of Columbia. The annual leave of absence granted by the Board of Education of the District of Columbia under the authority of this section and section 31-698a shall be in lieu of annual leave of absence granted under any other Act. (Mar. 5, 1952, 66 Stat. 14, ch. 81, § 1.)

REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act of 1947, as amended, referred to in the text, formerly classified to sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by the District of Columbia Teachers' Salary Act of 1955, which is classified to chapter 15 of this title.

Section 31-676 (section 18 of the District of Columbia Teachers' Salary Act of 1947, as amended) had previously been repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(b), eff. July 1, 1949, and is covered by sections 31-691, 31-694.

§ 31-698a. Leave accrued prior to March 5, 1952—Authority of Board of Education to promulgate rules.

Notwithstanding the provisions of any other law to the contrary, no individual whose position is within the purview of sections 31-698 and 31-698a shall, by virtue of the enactment of section 31-698 be entitled to lump-sum payment or payments for annual leave accrued or current as of March 5, 1952, but all such individual's annual leave, accrued or current as of March 5, 1952, shall be credited to him for his use and benefit, and to be used in accordance

with rules promulgated by the Board of Education. (Mar. 5, 1952, ch. 81, § 2, as added Aug. 5, 1953, 67 Stat. 362, ch. 320, § 1.)

TEACHER FOREIGN EXCHANGE PROGRAM

§ 31-699. Participation in teacher foreign exchange program authorized—Eligibility.

The Board of Education of the District of Columbia is authorized to participate in the teacher foreign exchange program in cooperation with the United States Office of Education.

Any employee of the Board of Education of the District of Columbia who is subject to the provisions of the District of Columbia Teachers' Salary Act of 1947 (Public Law 163) shall, with the approval of the Board of Education, be eligible to participate in such program, and shall if accepted for such foreign assignment serve for a period not to exceed one calendar year, and shall at the conclusion of such service be returned to the position which he held before the exchange was effected: *Provided*, That in any one calendar year not more than ten such employees shall participate in such program. (Sept. 28, 1950, 64 Stat. 1076, ch. 1091, § 1.)

REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act of 1947, as amended, referred to in the text, formerly classified to sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955 and is covered by the District of Columbia Teachers' Salary Act of 1955, which is classified to chapter 15 of this title.

Section 31-676 (section 18 of the District of Columbia Teachers' Salary Act of 1947, as amended) had previously been repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9(b), eff. July 1, 1949, and is covered by sections 31-691, 31-694.

CODIFICATION

Act July 1, 1943, 57 Stat. 322, ch. 184, § 1, relating to teachers in the Americanization school and custodial staff, formerly classified to this section, was renumbered and is now set out as section 31-681.

§ 31-699a. Payment of salary during exchange.

The Board of Education of the District of Columbia is authorized to pay the full salary of the educational employee of said Board during the time such employee is performing teaching duties in a foreign country under such exchange program, in the same manner and to the same extent as if such educational employee were actually performing his teaching duties in his regularly assigned position in the public schools of the District of Columbia, and any such educational employee participating in such program shall for purposes of promotion, computation of annual increment, computation of service for pension credit, including salary contributions to the pension fund, and leave of absence credits, be considered as performing teaching duties in the schools of the District of Columbia. (Sept. 28, 1950, 64 Stat. 1077, ch. 1091, § 2.)

CODIFICATION

Act July 1, 1943, 57 Stat. 322, ch. 184, § 1, relating to teaching vacancies, assignment of teachers, formerly classified to this section was renumbered and is now set out as section 31-682.

§ 31-699b. Assignment of foreign teachers—Waiver of loyalty oath.

(a) Each professionally qualified person from a foreign country exchanged under the provisions of sections 31-699 to 31-699b with an educational employee of the Board of Education of the District of Columbia shall during the period of such exchange serve as a substitute for the exchanged teacher and shall be assigned in the public schools of the District of Columbia as the Board of Education shall determine. Such exchange teacher shall serve without compensation for such service from the District of Columbia or any agency thereof: *Provided further*, That the term of such assignment or exchange shall not exceed one calendar year.

(b) Notwithstanding any other provision of law, any foreign teacher, instructor, or professor assigned to duties in the public schools of the District of Columbia under the provisions of sections 31-699 to 31-699c shall not be required to take an oath of office or any oath of allegiance or loyalty to the United States, but shall satisfy the Board of Education of the District of Columbia as to his personal, moral, and professional fitness to teach in the public schools of Washington, District of Columbia. (Sept. 28, 1950, 64 Stat. 1096, ch. 1077, § 3.)

Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

SUBCHAPTER I.—RETIREMENT BEFORE JUNE 30, 1946

Sec.

- 31-701. Deduction from pay to provide annuity—Basis of deductions—Certificate.
- 31-702. Deductions deposited in United States Treasury to credit of teacher—Income from investments.
- 31-703. Retirement age—Continuous-employment requirements.
- 31-704. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.
- 31-705. Annuity allowance.
- 31-706. Minimum-service credit in cases of disability retirement.
- 31-707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to Budget Bureau—Reserves held by Treasurer of United States—Interest.
- 31-708. Credit for public-school service outside District of Columbia—Deposit to cover period of service beyond District—Installment deposits allowed.
- 31-709. Refund on leaving service—Reinstatement.
- 31-710. Payments upon death of teacher—Beneficiary.
- 31-711. Precedence of payments upon death of teacher.
- 31-712. Continuance in service deemed consent to deductions.
- 31-713. Retirement provisions not to prevent discharge of teachers.
- 31-714. Definitions—"Teacher"—"Annual salary"—"His."
- 31-715. Records to be kept by Commissioners of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.
- 31-716. Annual estimates—No officer or employee receiving regular salary from Government shall receive additional compensation.
- 31-716a. Estimates of annual appropriations—Actuarial valuations.
- 31-717. Rules and regulations.
- 31-718. Funds not assignable, nor subject to execution or levy.
- 31-719. Subchapter not applicable to teachers receiving annuity from a State or other municipality.
- 31-720. Application of subchapter—Annuities under prior act.

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946
Sec.

- 31-721. Deductions—Interest bearing accounts—Optional deposits—Refunds.
- 31-722. Retirement and annuity fund—Income from investments—Separate accounts.
- 31-723. Voluntary retirement—Retirement at age 70—Minimum period of service.
- 31-724. Disability—Annual examination—Reappointment—Discontinued annuity—Voluntary deposits.
- 31-725. Computation of annuity—Options.
- 31-725a. Recomputation of benefits—Computation of average annual salary—Increase to be straight life annuity.
- 31-726. Annuity of teacher retired for disability.
- 31-727. Appropriations calculation.
- 31-728. Term of service—Reduction of annuity—Contributions on leave—Monthly deposits.
- 31-729. Deferred annuity—Refunds—Deposit of amount withdrawn—Annuity to survivors—Determination of dependency and disability.
- 31-730. Beneficiaries—Death before retirement—Death of retired teachers receiving reduced annuity with death benefits.
- 31-731. Consent to deductions.
- 31-732. Discharge of teacher.
- 31-733. Definitions.
- 31-734. Records and accounts—Report to Congress—Appropriation estimates.
- 31-735. Transfer of appropriations.
- 31-736. Rules and regulations.
- 31-737. Funds not assignable or subject to execution.
- 31-738. Applicability.
- 31-739. Prior retirements—Salary basis—Straight life annuity.
- 31-740. Waiver of annuity—Revocation.
- 31-741. Increased annuities for certain retired employees and survivors—Amount—Maximum.
- 31-742. Unremarried widow or widower entitled to annuity—Conditions—Amount—Termination.
- 31-743. Effective dates of annuities provided by sections 31-741 and 31-742—Computation.
- 31-744. Annuities under sections 31-741 to 31-743 to be paid from District of Columbia teachers retirement and annuity fund—Conditions under which annuities and increases terminate after July 1, 1960.
- 31-745. Crediting of certain authorized leave periods for retirement purposes—Conditions.

SUBCHAPTER I.—RETIREMENT BEFORE JUNE 30, 1946

§ 31-701. Deduction from pay to provide annuity—Basis of deductions—Certificate.

There shall be deducted and withheld from the annual salary of every teacher in the public schools of the District of Columbia an amount computed to the nearest tenth of a dollar that will be sufficient, with interest thereon at 4 per centum per annum, compounded annually, to purchase, under the provisions of this subchapter, an annuity equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement, for each year of his whole term of service rendered after June 30, 1926, payable monthly throughout life, for every such teacher who shall be retired, as herein provided.

The deductions herein provided for shall be based on such annuity table or tables as the commissioners of the District of Columbia shall direct: *Provided, however*, That said deductions shall in no case exceed 8 per centum of his annual salary: *And provided further*, That when the annual salary exceeds \$2,000 the deductions and benefits shall be made as on an annual salary of \$2,000.

The commissioners of the District of Columbia shall cause to be filed with the Board of Education on September 10 of each year a certificate showing the amount of deduction to be made from the salary of each teacher during the year, said deduction to be made in equal amounts, one to be deducted for each school month. A similar certificate shall be filed not later than the 15th day of each calendar month to cover cases of new entrants. No deduction shall be made from less than an entire month's salary. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 1; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, deleted the words "since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service" following the words "annual salary received" in the first paragraph and inserted in lieu thereof the words now contained down to the words "payable monthly, etc."; substituted the commissioners of the District of Columbia for the Secretary of the Treasury; deleted immediately preceding the first proviso and following the word "direct," the words "and shall be varied yearly to correspond to any change in the basic salary of the teacher" and changed the figure \$1,500 to \$2,000 in the second proviso.

CROSS REFERENCES

Civil Service Retirement Act not applicable to teachers, see § 1-217.

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-702. Deductions deposited in United States Treasury to credit of teacher—Income from investments.

The amount so deducted and withheld from the annual salary of every teacher shall be deposited in the Treasury of the United States and shall be credited, together with interest at 4 per centum per annum, compounded annually, to an individual account of the teacher from whose salary the deduction is made, which account shall be kept by the auditor of the District of Columbia. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 2; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, inserted the phrase "which account shall be kept by the auditor of the District of Columbia" and substituted "Treasurer of the United States" for "Secretary of the Treasury."

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-703. Retirement age—Continuous-employment requirements.

Any teacher who shall have reached the age of sixty-two may be retired by the Board of Education on its own motion, or shall be retired if application is made by the teacher. Any teacher who shall have reached the age of seventy shall be retired unless, in the judgment of two-thirds of the Board of Education, such teacher should be longer retained for the good of the service: *Provided*, That no sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been continuously employed as a teacher in the public schools of the District of Columbia from the time

of his attainment of the age of fifty-two years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 3; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, added the proviso.

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-704. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.

Any teacher who shall have reached the age of forty-five, and who shall have been continuously employed in the public schools of the District of Columbia for not less than ten years immediately prior to his retirement, or who shall have been continuously employed for not less than fifteen years prior to his retirement and who by reason of accident or illness not due to vicious habits has become physically or mentally disabled and incapable of satisfactorily performing the duties of his position, may be retired by the Board of Education under the provisions hereinafter stated: *Provided*, That absence of any teacher on authorized leave of absence without pay for a period not in excess of two years shall not constitute a break in continuous employment: *Provided further*, That no teacher shall be retired by the Board of Education under the provisions of this section until said teacher shall have been examined under the direction of the health officer of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 4; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, deleted the words "or shall have taught continuously for fifteen years in the public schools of the District of Columbia" following the words "forty-five" and inserted in lieu thereof the words which now follow the said words "forty-five" down to and including the words "to his retirement"; and, added the provisos.

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-705. Annuity allowance.

Every teacher who shall be retired under the provisions of section 31-703 or section 31-704 shall receive during the remainder of his life a combined annuity composed of (1) an annuity equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement for each year of his whole term of service after June 30, 1926; (2) a sum equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement for each year of his whole term of service prior to July 1, 1926, but not to exceed 40 years; and (3) an additional sum of \$15 for each year of said service, but in neither case to exceed forty years, such annuity to be fixed at the nearest multiple of 12 cents and to be payable monthly and to cease and determine at his death. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 5; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, deleted the words "(1) a sum equal to 1 per centum of his average basic salary received since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service, and (2) an additional sum of \$10 for each year of said service, such annuity to be payable monthly and to cease and determine at his death" following the words "composed of" and inserted in lieu thereof the present words.

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-706. Minimum-service credit in cases of disability retirement.

In calculating, as provided in section 31-705, the third part of the annuity of a teacher retired under the provisions of section 31-704, a minimum credit of twenty years shall be used in determining the sum allowable to a teacher with less than twenty years of service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 6; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, substituted the provisions set out in the text for: "The annuity of a teacher retired under the provisions of section 31-703 shall not be less than \$480, and the annuity of a teacher retired under section 31-704 shall not be less than \$420."

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to budget bureau—Reserves held by treasurer of United States—Interest.

The second and third parts of the annuity provided for by section 31-705 shall be paid by appropriations from the same fund as the current expenses of the District of Columbia were paid on June 11, 1926, or may thereafter be paid. The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay-roll of all participants which shall be adequate to cover the liability normally accrued plus a further level percentage of the pay-roll computed to be sufficient to liquidate, within a period of approximately thirty years after July 1, 1926, the amount of the accrued liability as of that date. The amount of the necessary appropriations shall be certified each year by the commissioners of the District of Columbia to the Bureau of the Budget, and shall be transmitted by it to Congress.

The reserves created as the result of such annual appropriations shall be held by the treasurer of the United States separate from the fund created by the contributions of the teachers, and the fund shall be credited with interest at four per centum per annum, compounded annually. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 7; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, substituted the provisions set out in the text for: "The second part of the annuity provided for by section 5 hereof shall be paid by appropriations from the same fund as the current expenses of the District; and if the deductions from a teacher's salary with

accumulated interest shall be insufficient to pay the first part of the annuity provided for, the deficiency shall be paid by appropriations from the same fund as the current expenses of the District of Columbia are now paid or may hereafter be paid."

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-708. Credit for public-school service outside District of Columbia—Deposit to cover period of service beyond District—Installment deposits allowed.

In computing length of service of retiring teachers credit may be given, year for year, but not to exceed ten years, for public-school service or its equivalent outside the District of Columbia: *Provided*, That no credit for service outside of the public schools of the District of Columbia shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement fund of the District of Columbia a sum equal to the contributions that would have been required of the teacher if such service had been rendered in the public schools of the District of Columbia, with interest thereon at 4 per centum per annum, compounded annually, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further*, That when the average annual salary of the class exceeds \$2,000 the contributions shall be based on a salary of \$2,000: *Provided further*, That if the teacher so elects he may deposit the required sum in the fund in any number of monthly instalments not exceeding one hundred, with interest at 4 per centum per annum, compounded annually: *And provided further*, That the provisions of this subchapter shall not apply to any teacher who receives an annuity from any state or municipality other than the District of Columbia, nor to allow any teacher more than one year's credit for all services rendered in any one fiscal year. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 8; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, deleted the second, third, and fourth paragraphs of the section and added the provisos. The deleted paragraphs were as follows:

"No sum shall be paid to any teacher upon his retirement under the provisions of section 31-703 unless he shall have been employed as a public-school teacher continuously in the District of Columbia from the time of his attainment of the age of fifty-two years.

"No sum shall be paid to any teacher upon his retirement under the provisions of section 31-704 unless he shall have been employed continuously as a teacher in the public schools of the District of Columbia for ten years immediately prior to his retirement.

"When the average basic salary exceeds \$1,500, the first part of the annuity provided for in section 31-705 shall be based on an average basic salary of \$1,500."

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-709. Refund on leaving service—Reinstatement.

Upon separation of any teacher from the service of the public schools of the District of Columbia, except for retirement under section 31-703 or section 31-704, he shall receive the amount of his deductions, together with the interest then credited thereon.

No teacher who shall withdraw the amount of his deductions under this section shall, after reinstatement, be entitled to credit for previous service

unless he shall deposit in the fund the amount so withdrawn by him: *Provided*, That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 4 per centum compounded annually, but no credit for previous service shall be given in any case of retirement where the teacher has been separated from teaching service in any public-school system for more than five years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 9; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, deleted in the first par. the words "prior to the age of sixty-two years, except for disability, as provided in section 31-704" and inserted in lieu thereof the words "except for retirement under section 31-703 or section 31-704" and deleted the words "as provided in section 31-702 hereof" which followed the present last word of the first paragraph; in the second par. deleted the words "the benefits under section 31-706 unless he shall have served at least ten years after such reinstatement. In case of his reinstatement in the service of the public schools of the District of Columbia, the monthly deductions thereafter from his salary shall be computed as herein provided and from his age at the date of such reinstatement" which followed the words "be entitled to" and inserted in lieu thereof the words which now conclude the section.

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-710. Payments upon death of teacher—Beneficiary.

Every teacher from whose salary retirement deductions are made in accordance with this subchapter shall be required to designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable in the event of the death of such teacher. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 10; June 11, 1926, 44 Stat. 729, ch. 556, § 1; Apr. 5, 1939, 53 Stat. 571, ch. 42, § 1.)

AMENDMENTS

1939—Act Apr. 5, 1939, amended section to read as set out in the text. For provisions of section prior to 1939 Amendment, see 1926 Amendment note hereunder.

1926—Act June 11, 1926, provided as follows: "In case of the death of a teacher while in the service the amount of his deductions, together with the interest then credited thereon, as provided in section 31-702, shall be paid to his legal representatives.

"In the case of the death of an annuitant no part of the deductions made from his salary, with the interest thereon to the credit of his account, shall be returned to his estate unless prior to his retirement he shall have selected, under the provisions of such rules and regulations as the commissioners of the District of Columbia shall prescribe, an annuity which shall carry with it a provision for the return of the unpaid principal or for the continuance of all or part of the annuity as a survivorship annuity."

Prior to 1926 amendment, the second paragraph provided: "In case of the death of an annuitant before he shall have received annuity payments equal to the amount of his deductions, together with the interest credited thereon, as hereinbefore provided, the balance thereof remaining to his credit at the date of his death shall be paid to his legal representative."

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-711. Precedence of payments upon death of teacher.

In the event of death of any such teacher the order of precedence of payments shall be as follows:

First, to the beneficiary, or beneficiaries, designated in writing by the teacher and recorded on his or her individual account; second, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor, or administrator, of the estate; third, if there be no such beneficiary, or if an executor or administrator be not appointed within six months after the death of such teacher, payment shall be made into the registry of the United States District Court for the District of Columbia. (Apr. 5, 1939, 53 Stat. 571, ch. 42, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-712. Continuance in service deemed consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after January 15, 1920, as well as every person who on and after January 15, 1920, may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for in this subchapter; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this subchapter, notwithstanding the provisions of said Public Act Numbered 254 approved June 20, 1906, and of any other law, rule or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 11, formerly § 12; renumbered June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

REFERENCE IN TEXT

Public Act Numbered 254 approved June 20, 1906, refers to act June 20, 1906, 34 Stat. 316, ch. 3446. See Distribution Tables.

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-713. Retirement provisions not to prevent discharge of teachers.

Nothing in this subchapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 12, formerly § 13; renumbered June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-714. Definitions—"Teacher"—"Annual salary"—"His."

The term "teacher," under this subchapter, shall include all teachers permanently employed by the Board of Education in the public day schools of the

District of Columbia, including other educational employees whose salaries are established in the Act approved June 20, 1906, and Acts amendatory thereof, except the employees of the community center department and the department of school attendance and work permits; the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for services rendered in the public day schools of the District of Columbia, including basic salary, longevity allowance, session room allowance, and increase of compensation (bonus); and whenever the pronoun "his" occurs in this subchapter it shall be construed to mean both male and female teachers. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 13, formerly § 14; renumbered and amended June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

REFERENCE IN TEXT

Act June 20, 1906, referred to in the text, refers to act June 20, 1906, 34 Stat. 316, ch. 3446. See Distribution Tables.

AMENDMENT

1926—Act June 11, 1926, deleted, following the words "District of Columbia" the first time they are used, the words "including the superintendent of public schools, the assistant superintendents, all supervisors and directors of instruction, group principals, principals, special teachers, and librarians therein; the term 'basic salary' shall be construed to mean the lowest salary of the class in which the teacher is placed," and inserted in lieu thereof the words which now follow the said words "District of Columbia" down to the last semicolon.

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-715. Records to be kept by Commissioners of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.

The Commissioners of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. The Commissioners of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this subchapter, together with the total number of persons receiving annuities and the amounts paid them. And the Commissioners of the District of Columbia shall have made each year an actual valuation of this retirement fund and the operation thereof, which shall show the financial condition of the fund, and shall report the findings of such investigations to Congress at the opening of the following session. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 14, formerly § 15; renumbered and amended June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, substituted the Commissioners of the District of Columbia for the Secretary of the Treasury, and changed the requirement that "an actual valuation" be made "every third year" to "each year."

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-716. Annual estimates—No officer or employee receiving regular salary from government shall receive additional compensation.

The Commissioners of the District of Columbia shall include in their annual estimates of appropriations a sum sufficient to carry out the provisions of this subchapter and acts amendatory thereof. No officer or employee receiving a regular salary or compensation from the Government shall receive any additional salary or compensation for any service rendered in connection with the system of retiring teachers provided for by this subchapter. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 15, formerly § 16; renumbered and amended June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, substituted the Commissioners of the District of Columbia for the Secretary of the Treasury.

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-716a. Estimates of annual appropriations—Actuarial valuations.

On and after July 31, 1953, the Treasury Department shall prepare the estimates of the annual appropriations required to be made to the teachers' retirement fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury, and the Commissioners are authorized to expend from money to the credit of the teachers' retirement fund not exceeding \$5,000 per annum for this purpose, including personal services. (July 31, 1953, 67 Stat. 279, ch. 299, § 1.)

SIMILAR PROVISIONS

1953—July 5, 1952, 66 Stat. 375, ch. 576, § 1.
1952—Aug. 3, 1951, 65 Stat. 156, ch. 292, § 1.
1951—July 18, 1950, 64 Stat. 347, ch. 467, § 1.
1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 540.
1948—July 25, 1947, 61 Stat. 428, ch. 324, § 1.
1947—July 9, 1946, 60 Stat. 505, ch. 544, § 1.
1946—June 30, 1945, 59 Stat. 275, ch. 209, § 1.
1945—June 28, 1944, 58 Stat. 513, ch. 300, § 1.
1944—July 1, 1943, 57 Stat. 323, ch. 184, § 1.
1943—June 27, 1942, 56 Stat. 434, ch. 452, § 1.
1942—July 1, 1941, 55 Stat. 511, ch. 271, § 1.

§ 31-717. Rules and regulations.

The Commissioners of the District of Columbia are hereby authorized to perform, or cause to be performed, any or all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this subchapter into full force and effect. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 16, formerly § 17; renumbered and amended June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, substituted the Commissioners of the District of Columbia for the Secretary of the Treasury.

CROSS REFERENCES

Retirement after June 30, 1946, see §§ 31-721 to 31-739.
Rules and regulations generally, see § 1-226.

§ 31-718. Funds not assignable, nor subject to execution or levy.

None of the money mentioned in this subchapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnish-

ment, or other legal process. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 17, formerly § 18; renumbered June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-719. Subchapter not applicable to teachers receiving annuity from State or other municipality.

The provisions of this subchapter shall not apply to any teacher who receives an annuity from any State or municipality other than the District of Columbia. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 18, formerly § 19; renumbered June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

§ 31-720. Application of subchapter—Annuities under prior act.

The provisions of this subchapter shall apply to (A) all teachers who were on the rolls of the public schools of the District of Columbia for the month of June, 1926, if otherwise eligible; and (B) all teachers who, on June 30, 1926, were receiving an annuity under the provisions of this subchapter, the annuity to be paid each such teacher after June 30, 1926, to be computed in the manner provided herein: *Provided*, That nothing in this subchapter shall be construed to require a reduction in the amount of the annuity being paid to any teacher on July 1, 1926. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 19, formerly § 11; renumbered and amended June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

AMENDMENT

1926—Act June 11, 1926, designated existing provisions as clause A, changing "June, 1919" to "June, 1926," and added clause (B) and the proviso.

CROSS REFERENCE

Retirement after June 30, 1946, see §§ 31-721 to 31-739.

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

§ 31-721. Deductions—Interest bearing accounts—Optional deposits—Refunds.

Beginning on the first day of the second month following June 4, 1957, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 6½ per centum of the teacher's annual salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and withheld prior to the effective date of this subchapter under subchapter I of this chapter, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4 per centum per annum, compounded annually up to the effective date of this subchapter and thereafter at 3 per centum per annum, compounded annually from December 31 of the year in which the deductions are made: *Provided*, That such interest shall not be credited after December 31, 1956, except that in the case of a teacher separated before he has completed five years of teaching service interest shall be credited to the date of separation. These individual interest-bearing accounts shall be kept by the Auditor of the District of Columbia.

Any teacher may at his option and under such regulations as may be prescribed by the Commissioners of the District of Columbia deposit with the Collector of Taxes, District of Columbia, additional sums in multiples of \$25 but not to exceed 10 per centum per annum of his annual salary, pay, or compensation for services rendered since March 1, 1920, which amount together with interest thereon at 3 per centum per annum compounded as of December 31 of each year, shall, at the date of his retirement, be available to purchase an annuity as he shall elect in accordance with such rules and regulations as may be prescribed by the Commissioners of the District of Columbia, in addition to the annuity provided by this subchapter; the purchase price of such annuity shall be based upon an interest rate of 3 per centum per annum compounded annually and upon such table of mortality as shall from time to time be prescribed by the Commissioners of the District of Columbia. In the event of death or separation from the service of such teacher before becoming eligible for retirement on annuity, the amounts so deposited with interest at 3 per centum compounded annually from December 31 of the year in which the deposits are made shall be refunded in accordance with the provisions of sections 31-721 and 31-730, respectively. A separate individual account shall be kept by the Auditor of the District of Columbia with respect to the voluntary deposits and interest of each teacher. (Aug. 7, 1946, 60 Stat. 875, ch. 779, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, § 21; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Act June 4, 1957, substituted "Beginning on the first day of the second month following June 4, 1957, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 6½ per centum of the teacher's annual salary" for "There shall be deducted and withheld from the annual salary of every teacher in the public schools of the District of Columbia an amount equal to 6 per centum of the teacher's annual salary" and inserted the proviso in the second sentence.

1955—Act Aug. 5, 1955, substituted "December 31" for "June 30" wherever appearing.

1952—Act Mar. 6, 1952, deleted from the first sentence the introductory words "Beginning as the 1st day of the September following the effective date of this subchapter"; substituted in the first sentence "amount" for "annual amount computed to the nearest tenth of a dollar" "5" and "6" for; and deleted the second, third, and fourth sentences which provided that certificates showing deductions be filed by the Commissioners with the Board of Education.

EFFECTIVE DATE OF 1957 AMENDMENT

Section 4 of act June 4, 1957, provided that: "The effective date of this Act [amending sections 31-721, 31-723 to 31-725, 31-726, 31-728, 31-729 and 31-733 and enacting provisions set out as notes under sections 31-721 and 31-725] shall be October 1, 1956".

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of section by act Aug. 5, 1955, effective on July 1, 1955, see section 25 of act Aug. 5, 1955, set out as a note under section 31-1501.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 11 of act Mar. 6, 1952, provided that: "This Act [enacting section 31-725a and amending sections 31-721, 31-723 to 31-725, and 31-726 to 31-730] shall take effect on the first day of the second month following its enactment [Mar. 6, 1952]."

EFFECTIVE DATE

Section 20 of act Aug. 7, 1946, provided that: "The provisions of this Act [this subchapter] shall take effect July 1, 1946."

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The order was issued by the Board of Commissioners pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

NONAPPLICATION TO TEACHERS RETIRED OR SEPARATED PRIOR TO OCT. 1, 1956

Section 2 of act June 4, 1957, provided that: "The amendments made by this Act [amending sections 31-721, 31-723 to 31-725, 31-726, 31-728, 31-729 and 31-733] shall not apply in the case of teachers retired or otherwise separated prior to its effective date [see Effective Date of 1957 Amendment note hereunder], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if this Act [said amendments, this note and note set out under section 31-725] had not been enacted."

COMPOUND INTEREST

Section 21 of act Aug. 5, 1955, provided in part that: "Interest shall not be compounded as of December 31, 1955."

§ 31-722. Retirement and annuity fund—Income from investments—Separate accounts.

The amounts so deducted and withheld from the annual salary of every teacher, and the amounts of additional voluntary deposits, shall be deposited in the Treasury of the United States to the credit of the teachers' retirement and annuity fund. As of the effective date of this subchapter, there shall be transferred and credited to such fund the balances of funds held for the retirement of teachers under the provisions of sections 31-702 and 31-707. The fund thus created shall be held and invested by the Secretary of the Treasury until paid out as hereinafter provided, and the income derived from such investment shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter. Separate accounts shall be maintained by the Treasury with respect to (1) the regular operations of the retirement system, exclusive of those incident to the voluntary deposits; and (2) the voluntary deposits and the supplementary annuities and refunds resulting from such deposits. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 2.)

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-723. Voluntary retirement—Retirement at age 70—Minimum period of service.

(a) Any teacher to whom this subchapter applies who shall have attained or shall hereafter attain the age of sixty years and has rendered at least thirty years of service computed as prescribed in section 31-728, or shall hereafter attain the age of sixty-two years and has rendered at least five years of service computed as prescribed in section 31-728, may voluntarily retire and shall be eligible for retirement on an annuity computed as provided in section 31-725.

(b) Any teacher to whom this subchapter applies who shall have attained or shall hereafter

attain the age of fifty-five years and shall have rendered at least thirty years of service, computed as prescribed in section 31-728, may voluntarily retire and shall be paid an immediate life annuity beginning on the first day of the month following the date of separation from the service, computed as prescribed in section 31-725, reduced by one-twelfth of 1 per centum for each full month such teacher is under sixty years of age.

(c) Any teacher who shall have attained or shall hereafter attain the age of sixty-two years and is eligible for retirement under the provisions of this subchapter, may be retired by the Board of Education upon written recommendation of the Superintendent of schools. Any teacher who shall have attained, or shall hereafter attain the age of seventy years, shall be retired unless upon written recommendation of the Superintendent of Schools two-thirds of the members of the Board of Education vote to retain such teacher in the public schools for the good of the service. No sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been employed as a teacher on active duty in the public schools of the District of Columbia for a total period of not less than five years.

(d) Any teacher who completes twenty-five years of service or who attains the age of fifty years and completes twenty years of service shall upon involuntary separation from the service not by removal for cause on charges of misconduct or delinquency, be paid a reduced annuity computed as provided in section 31-725 (a) reduced by one-twelfth of 1 per centum for each full month not in excess of sixty and by one-sixth of 1 per centum for each full month in excess of sixty such teacher is under the age of sixty years at date of separation. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 3; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 2; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Subsec. (a) amended by act June 4, 1957, which substituted "five" for "fifteen."

Subsec. (b) amended by act June 4, 1957, which substituted "one-twelfth" for "one-fourth."

Subsec. (c) amended by act June 4, 1957, which substituted "five" for "ten" in the last sentence.

Subsec. (d) added by act June 4, 1957.

1952—Subsec. (b) amended by act Mar. 6, 1952, which substituted "computed as prescribed in section 31-725, reduced by one-twelfth of 1 per centum for each full month such teacher is under sixty years of age" for "having a value equal to the present worth of a deferred annuity at the age of sixty years computed as prescribed in section 31-725 or may elect to receive a deferred annuity beginning at the age of sixty years computed as prescribed in section 31-725."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act June 4, 1957, effective Oct. 1, 1956, see section 4 of act June 4, 1957, set out as a note under section 31-721.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act Mar. 6, 1952, effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-724. Disability—Annual examination—Reappointment—Discontinued annuity—Voluntary deposits.

Any teacher to whom this subchapter applies who shall have served on active duty in the public schools of the District of Columbia for a total period of not less than five years, and who, before becoming eligible for retirement under the conditions defined in sections 31-721 to 31-723, becomes physically or mentally disabled and incapable of satisfactorily performing the duties of his position, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of sections 31-725 and 31-726 hereof: *Provided*, That proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than five years next prior to becoming so disabled for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within six months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Director of Public Health of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

Every annuitant retired under the provisions of this section, unless the disability for which retired be permanent in character, shall at the expiration of one year from the date of such retirement and annually thereafter, until reaching retirement age as defined in section 31-723 hereof, be examined under the direction of the Director of Public Health of the District of Columbia in order to ascertain the nature and degree of the annuitant's disability, if any. If an annuitant shall recover before reaching retirement age he shall be reappointed by the Board of Education in accordance with such rules and regulations as the said Board may prescribe to the first position, equal or similar to any position in the public schools occupied by the annuitant before retirement, which becomes vacant after the date the Board of Education receives written notification from the Director of Public Health of the District of Columbia that the annuitant has recovered and is able to discharge his duties as a teacher in the public schools of the District of Columbia. Payment of the annuity shall be continued until the date of reappointment by the Board of Education. In the event that the annuitant refuses to accept the employment prescribed in this section no annuity shall be paid after the date of such refusal. Should the annuitant fail to appear for examination as required under this section payment of the annuity shall be suspended until continuance of the disability shall have been satisfactorily established. Upon written recommendation of the Superintendent of Schools the Board of Education may order or direct at any

time such medical or other examination as it shall deem necessary to determine the facts relative to the nature and degree of disability of any teacher retired on an annuity under this section.

In all cases where the annuity is discontinued under the provisions of this section, so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest shall be charged against his individual account and, unless he shall become reemployed in a position under the purview of this subchapter, he shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits of section 31-729 hereof: *Provided, however*, That if such teacher were also receiving an annuity because of voluntary deposits made under the provisions of section 31-721, such annuity may be continued or, at the option of the teacher, the actuarial reserve value of such annuity may be withdrawn in cash unless the teacher is reemployed in a position within the purview of this subchapter, in which case the amount of such reserve value shall be treated as a voluntary deposit under the provisions of section 31-721. (Aug. 7, 1946, 60 Stat. 877, ch. 779, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 3; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—First par. amended by act June 4, 1957, which substituted "five" for "ten".

1952—Third par. amended by act Mar. 6, 1952, which substituted "so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest" for "the annuity payments made under (1) of section 31-725 hereof".

CHANGE OF NAME

"Director of Public Health" substituted for "Health Officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act June 4, 1957, effective Oct. 1, 1956, see section 4 of act June 4, 1957, set out as a note under section 31-721.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act Mar. 6, 1952, effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-725. Compensation of annuity—Options.

(a) Except as otherwise provided in this subchapter, every teacher who shall be retired under the provisions of section 31-723 or section 31-724 shall receive an annuity composed of (1) the larger of (A) 1½ per centum of the average salary as defined in section 31-733, multiplied by so much of the total service as does not exceed five years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as does not exceed five years, plus (2) the larger of (A) 1¾ per centum of the average salary multiplied by so much of the total service as exceeds five years but does not exceed ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of

the total service as exceeds five years but does not exceed ten years, plus (3) the larger of (A) 2 per centum of the average salary multiplied by so much of the total service as exceeds ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds ten years. Annuities granted under the terms of this subchapter shall accrue monthly and shall be due and payable in monthly installments at the beginning of the month following the month for which the annuity shall have accrued, such monthly installments being computed to the nearest dollar. Annuities payable to any retired teacher who has become eligible for retirement because of age as defined in section 31-723 shall be payable during the lifetime of the annuitant. Annuities payable to any teacher retired on account of disability shall be subject to the conditions set forth under section 31-724.

(b) Any teacher retiring under the provisions of section 31-723 or 31-724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following:

(1) A reduced annuity and an annuity after death payable to his or her surviving widow or widower designated by such teacher at time of retirement equal to 50 per centum of such life annuity. The life annuity of the teacher making such election, excluding any increase because of retirement under section 31-724, shall be reduced by 2½ per centum of so much thereof as does not exceed \$2,400 and by 10 per centum of so much thereof as exceeds \$2,400. The annuity of such widow or widower shall begin on the first day of the month immediately following the month in which the death of the retired teacher occurs or the first day of the month following the widow's or widower's attainment of age fifty, whichever is the later, and such annuity or any right thereto shall terminate upon his or her death or remarriage.

(2) If unmarried and in good health, a reduced annuity payable to him during his life, and an annuity after his death payable to a survivor annuitant having an insurable interest in such teacher, duly designated in writing and filed with the Auditor of the District of Columbia at the time of retirement, during the life of such survivor annuitant equal to 50 per centum of such reduced annuity and upon the death of such survivor annuitant all payments shall cease and no further annuity shall be due and payable. The annuity hereunder payable to the teacher shall be 90 per centum of the life annuity otherwise payable if the survivor annuitant is the same age or older than the annuitant, or is less than five years younger than the annuitant; 85 per centum if the survivor annuitant is five but less than ten years younger; 80 per centum if the survivor annuitant is ten but less than fifteen years younger; 75 per centum if the survivor annuitant is fifteen but less than twenty years younger; 70 per centum if the survivor annuitant is twenty but less than twenty-five years younger; and 60 per centum if the survivor annuitant is twenty-five or more years younger. No such election shall be valid until

the retiring teacher shall have satisfactorily passed a physical examination under the direction of the Director of Public Health of the District of Columbia, as prescribed by the Board of Education. No person shall be eligible to receive an annuity under subsection (b) of section 31-729 based upon the service of the same teacher covering the same period of time.

(3) A reduced annuity of equivalent value providing for a life-insurance benefit payable in a lump sum at the time of the annuitant's death. The face amount of such life insurance may be in any amount which the retiring teacher shall designate at the time of retirement but shall not exceed his contributions accumulated with interest to the date of retirement. Payment of such insurance shall be made in accordance with the provisions of section 31-730. Any annuitant who elects to receive the reduced annuity with fixed life-insurance benefits may reconvert the value of the life insurance to an additional annuity of equivalent value on any anniversary of the retirement date of said annuitant prior to reaching age seventy.

(c) (1) The annuity of any person who now or hereafter is receiving or entitled to receive an annuity from the teachers' retirement and annuity fund shall be increased, effective on October 1, 1955, or on the commencing date of the annuity, whichever is later, in accordance with the following schedule:

If annuity commences between—	Annuity not in excess of \$1,500 shall be increased by—	Annuity in excess of \$1,500 shall be increased by—
August 20, 1920, and June 30, 1955...	12 per centum...	8 per centum
July 1, 1955, and December 31, 1955...	10 per centum...	7 per centum
January 1, 1956, and June 30, 1956...	8 per centum...	6 per centum
July 1, 1956, and December 31, 1956...	6 per centum...	4 per centum
January 1, 1957, and June 30, 1957...	4 per centum...	2 per centum
July 1, 1957, and December 31, 1957...	2 per centum...	1 per centum

Such increase in annuity shall not exceed the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under this section, to \$4,104. The monthly installment of each annuity so increased shall be fixed at the nearest dollar.

(2) The increases provided by this subsection, when added to the annuities of retired employees, shall not operate to increase the annuities of their survivors, except that the annuity of any such survivor who becomes entitled to annuity shall be increased by the per centum provided in subsection (c) (1) of this section appropriate to the commencing date of such survivors annuity. (Aug. 7, 1946, 60 Stat. 878, ch. 779, §5; Aug. 1, 1950, 64 Stat. 393, ch. 513, §1; Mar. 6, 1952, 66 Stat. 17, ch. 95, §4; Aug. 5, 1955, 69 Stat. 530, ch. 569, §23; July 2, 1956, 70 Stat. 487, ch. 497, §1; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, §1.)

AMENDMENTS

1957—Subsec. (a) amended by act June 6, 1957, which inserted "except as otherwise provided in this subchapter" and substituted:

"(1) the larger of (A) 1½ per centum of the average salary as defined in section 31-733, multiplied by so much of the total service as does not exceed five years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as does not exceed five years, plus

"(2) the larger of (A) 1½ per centum of the average salary multiplied by so much of the total service as exceeds five years but does not exceed ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds five years but does not exceed ten years, plus

"(3) the larger of (A) 2 per centum of the average salary multiplied by so much of the total service as exceeds ten years, or (B) 1 per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds ten years for "(1) a sum equal to 1 per centum of his average annual salary received during any five consecutive years of allowable service in the public schools of the District of Columbia, at the option of the teacher, multiplied by the years of service, plus a sum equal to \$25 for each year of service or (2) a sum equal to 1½ per centum of his average annual salary received during any five consecutive years of allowable service in the public schools of the District of Columbia, at the option of the teacher, multiplied by the years of service."

Subsec. (b)(1) amended by act June 1, 1957, which substituted "The life annuity of the teacher making such election, excluding any increase because of retirement under section 31-724, shall be reduced by 2½ per centum of so much thereof as does not exceed \$2,400 and by 10 per centum of so much thereof as exceeds \$2,400." for "The life annuity of the teacher making such election shall be reduced by 5 per centum of so much thereof as does not exceed \$1,500, plus 10 per centum of the balance of such life annuity, and shall be further reduced by three-fourths of 1 per centum of such life annuity for each full year, if any, the designated wife or husband is under age of sixty at time of retirement, but the total reduction shall in no case be more than 25 per centum of such life annuity."

1956—Subsec. (c) added by act July 2, 1956.

1955—Subsec. (a) amended by act Aug. 5, 1955, which deleted from clause (2) the proviso reading "Provided, That with the exception of the computation of deferred annuities provided in section 31-729 no annual salary used in the computation of the average annual salary received during any five consecutive years of allowable service shall be less than the maximum salary for class 1, group A (established by the District of Columbia Teachers' Salary Act of 1947, as amended), as it was in the year the salary was received, or \$4,330, whichever is greater."

1952—Subsec. (a), formerly the first paragraph, so designated and amended by act Mar. 6, 1952, which substituted in clause (1) "multiplied by the years of service, plus a sum equal to \$25 for each year of service or" for "for each year of his whole term of service, but in no event shall the amount of the average annual salary used to determine this portion of the annuity be less than the maximum salary for class 1, group A, established by the District of Columbia Teachers' Salary Act of 1945, as amended; and", substituted clause (2) for former clause (2) which read "an additional sum of \$20 for each year of his whole term of service, not exceeding forty", and substituted "Annuities granted under the terms of this subchapter shall accrue monthly and shall be due and payable in monthly installments at the beginning of the month following the month for which the annuity shall have accrued, such monthly installments being computed to the nearest dollar" for "The total annuity shall be fixed at the nearest multiple of 12 cents, and shall be payable monthly."

Subsec. (b), formerly the second paragraph, so designated and amended by act Mar. 6, 1952, which substituted the introductory paragraph reading "Any teacher retiring under the provisions of section 31-723 or 31-724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following" for "Any teacher retiring under the provisions of this subchapter may, at the time of his retirement elect one of the following options", substituted clauses (1) and (2) for former clause (1) which read "He may elect to receive in lieu of the life annuity described herein a reduced annuity of equivalent value providing that, in the event the annuitant shall die without having received in annuities purchased by his contributions accumulated with interest to the date of his retirement an aggregate sum

equal to the total amount to his credit at time of retirement, the difference shall be paid in accordance with the provisions of section 31-730" and designated as clause (3) the provisions of former clause (2).

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act June 4, 1957, effective Oct. 1, 1956, see section 4 of act June 4, 1957, set out as a note under section 31-721.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of section by act Aug. 5, 1955, effective on July 1, 1955, see section 25 of act Aug. 5, 1955, set out as a note under section 31-1501.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act Mar. 6, 1952, effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3, of the Board of Commissioners dated Aug. 28, 1952 and effective Sept. 2, 1952. The order was issued by the Board of Commissioners pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

RESTRICTIONS ON BENEFITS TO PERSONS RETIRING AFTER OCT. 1, 1956

Section 3 of act June 4, 1957, provided that:

"No person retiring subsequent to the effective date [see Effective Date of 1957 Amendment note under section 31-721] of this Act [amending sections 31-721, 31-723 to 31-725, 31-726, 31-728, 31-729 and 31-733 and note under section 31-721 and this note] and pursuant to its provisions shall be entitled to any benefits accruing by reason of the provisions of Public Law 648, Eighty-fourth Congress, approved July 2, 1956 (70 Stat. 487) [this section and section 31-740]."

§ 31-725a. Recomputation of benefits—Computation of average annual salary—Increase to be straight life annuity.

The annuities of all teachers retired prior to the effective date of this Act shall be recomputed in accordance with the provisions of section 31-724 within ninety days after Mar 6, 1952, retroactive to the effective date of this Act, and no recomputation shall be made which will reduce the annuity received by any retired teacher: *Provided*, That the average annual salary during any five consecutive years, specified in section 31-724, upon which the annuity is based shall be within the last ten years of allowable service in the public schools of the District of Columbia: *Provided further*, That the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind. (Mar. 6, 1952, 66 Stat. 22, ch. 95, § 10.)

REFERENCE IN TEXT

This Act, referred to in the text, refers to act Mar. 6, 1952, which enacted this section and amended sections 31-721, 31-723 to 31-725, and 31-726 to 31-730.

EFFECTIVE DATE

Section effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

§ 31-726. Annuity of teachers retired for disability.

The annuity of a teacher retiring under section 31-724 shall be at least (1) 40 per centum of the average salary or (2) the sum obtained under section 31-725 after increasing his total service by the period elapsing between the date of separation and the date he attains the age of sixty years, whichever is the lesser. (Aug. 7, 1946, 60 Stat. 878, ch. 779, § 6; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 5; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Act June 4, 1957, substituted the provision set out in the text for "In calculating, as provided in section 31-726, the second part of the annuity of a teacher retired under the provisions of section 31-724, a minimum credit of twenty years shall be used in determining the sum allowable to a teacher with less than twenty years of service: *Provided*, That such minimum credit shall not exceed the total number of years of service which the teacher might have served if continuously employed as a teacher in the public schools of the District of Columbia to age sixty."

1952—Act Mar. 6, 1952, substituted "sixty-two" for "sixty".

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act June 4, 1957, effective Oct. 1, 1956, see section 4 of act June 4, 1957, set out as a note under section 31-721.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act Mar. 6, 1952, effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-727. Appropriations calculation.

The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay roll of all participants which shall be adequate to cover the liability normally accrued plus a further amount equal to the interest on the unfounded accrued liability. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 7; Aug. 4, 1947, 61 Stat. 750, ch. 476; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 6.)

AMENDMENTS

1952—Act Mar. 6, 1952, substituted "amount equal to the interest on the unfounded accrued liability" for "level amount computed to be sufficient to liquidate the unfounded accrued liability within a period of approximately fifty years after the effective date of this subchapter."

1947—Act Aug. 4, 1947, substituted "fifty" for "twenty" years.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act Mar. 6, 1952, effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-728. Term of service—Reduction of annuity—Contributions on leave—Monthly deposits.

The years of service which form the basis for determining the amount of the annuity provided in section 31-725(a) shall be computed from the date of original probationary appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on the effective date of this

amendatory Act, as does not exceed six months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section: *Provided*, That the total credit granted for leaves of absence without pay shall not exceed one year: *Provided further*, That deposits equal to 5 per centum of those portions of salary received between July 1, 1949, and the effective date of this amendatory Act for which service credit was not earned may be made, and service credit received accordingly. In computing the length of service of retiring teachers credit may be given, year for year, for (a) public-school service or its equivalent outside the District of Columbia but not to exceed ten years; (b) continuous temporary service in the public schools of the District of Columbia immediately prior to probationary appointment; (c) service in the government of the District of Columbia or the Government of the United States allowable under the Civil Service Act of 1920, as amended; (d) periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United States) prior to the date of the separation upon which title to annuity is based; except that, if a teacher is awarded retired pay on account of military service, his military service shall not be included, unless such retired pay is awarded on account of a service-connected disability (1) incurred in combat with an enemy of the United States or (2) caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part 1, paragraph 1, or is awarded under title III of Public Law 810, Eightieth Congress; (e) all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31-632 to 31-637; and (f) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to probationary appointment as a teacher in the public schools of the District of Columbia: *Provided, however*, That that portion of the annuity which results from credit for service allowable under (a) and (c) of this section shall be reduced by the amount of any annuity which the retired teacher is entitled to receive under any Federal, State, or municipal retirement or pension system in respect to such service, except that such portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit which the teacher is required to make under the provisions of this section in order to obtain credit for such service: *Provided further*, That no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31-632 to 31-637, shall be given to any teacher enter-

ing the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement and annuity fund of the District of Columbia a sum equal to the accumulated contributions and interest which he would have had credited to his individual account if such service had been rendered on active duty in the public schools of the District of Columbia, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further*, That all contributions to the retirement fund made by any teacher on educational leave with part pay shall be determined in accordance with the provisions of section 31-721, but otherwise no provision of this subchapter shall be interpreted to deprive any teacher employed by the Board of Education of any rights or benefits allowable under sections 31-632 to 31-637: *Provided further*, That if the teacher so elects, he may deposit the required sum in the fund in any number of monthly installments not exceeding fifty with interest at 3 per centum per annum compounded annually, upon making claim with the Auditor, District of Columbia, within one year of the effective date of this subchapter, or within one year after the original probational appointment or reinstatement in the school service, or within two years after the date of honorable discharge from the military service: *And provided further*, That nothing contained herein shall be construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

A teacher who during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service, as defined in this section, shall not be considered, for the purposes of this subchapter, as separated from his teaching position by reason of such military service, unless he shall apply for and receive a lump-sum benefit under this subchapter, except that such teacher shall not be considered as retaining his teaching position beyond six months after the date of the approval of this Act or the expiration of five years of such military service, whichever is later.

Nothing in this subchapter shall affect the right of a teacher to retired pay, pension, or compensation in addition to the annuity herein provided. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 7; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 2; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1.)

REFERENCES IN TEXT

Effective date of this amendatory Act, referred to in the text, refers to effective date of act Mar. 6, 1952. See Effective Date of 1952 Amendment note hereunder.

Civil Service Act of 1920, as amended, referred to in the text, refers to act May 22, 1920, 41 Stat. 614, ch. 195, which was superseded by act May 29, 1930, ch. 349, as renumbered July 31, 1956, 70 Stat. 743, ch. 804, title IV, § 401. See U.S. Code, title 5, ch. 30.

Veterans Regulation Numbered 1(a), part 1, paragraph 1, referred to in the text, provided for pensions to veterans and dependents of veterans for disability or death resulting from service during Spanish-American War, Boxer Rebellion, Philippine Insurrection and World War I and II and was repealed by act June 17, 1957, 71 Stat. 167, Pub. L. 85-56, title XXII, § 2202 (129), (217), eff. Jan. 1, 1958.

Title III of Public Law 810, Eightieth Congress, referred to in the text, refers to act June 29, 1948, 62 Stat. 1087,

ch. 708, title III, §§ 301-313, which was repealed by acts Aug. 10, 1956, 70A Stat. 64, ch. 1041, § 53, and Sept. 2, 1958, 72 Stat. 1569, Pub. L. 85-861, § 86A and is now covered by U.S. Code, title 10, §§ 101, 676, 1001, 1331-1337, 1401, 3966, 6017, 6034, 6323, 8966.

Six months after the date of the approval of this Act, referred to in the text, probably refers to the date of enactment of act June 4, 1957.

AMENDMENTS

1957—Act June 4, 1957, substituted provisions set out as clause (d) for former provisions which read: "periods of honorable service in the Army, Navy, Marine Corps, or Coast Guard of the United States in time of war", deleted "in time of war" in the fourth proviso and inserted the words "Air Force" after the word "Navy" in the same proviso and added provisions relating to separation from teaching position and affect on additional benefits.

1955—Act Aug. 5, 1955, inserted clause (f) reading: "and (f) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to probationary appointment as a teacher in the public schools of the District of Columbia."

1952—Act Mar. 6, 1952, substituted "The years of service which form the basis for determining the amount of the annuity provided in section 31-725(a) shall be computed from the date of original probationary appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on the effective date of this amendatory Act as does not exceed six months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section: *Provided*, That the total credit granted for leaves of absence without pay shall not exceed one year: *Provided further*, That deposits equal to 5 per centum of those portions of salary received between July 1, 1949, and the effective date of this amendatory Act for which service credit was not earned may be made, and service credit received accordingly." for "The whole term of service which forms the basis for determining the amount of the annuity provided in section 31-725 shall be computed from the date of original employment as a teacher, other than temporary, in the public schools of the District of Columbia, plus any service credit that may be allowed under the provisions of this section" and deleted from the act of Mar. 6, 1952, amended the second sentence preceding the first proviso: "and the first ten-year period to begin on the date of the first probationary appointment as a teacher in the public schools of the District of Columbia."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act June 4, 1957, effective Oct. 1, 1956, see section 4 of act June 4, 1957, set out as a note under section 31-721.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act Mar. 6, 1952, effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The order was issued by the Board of Commissioners pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

§ 31-729. Deferred annuity — Refunds — Deposit of amount withdrawn—Annuity to survivors—Determination of dependency and disability.

(a) Should any teacher to whom this subchapter applies, after having served in the public schools of the District of Columbia for a total period of not less than five years and before becoming eligible for retirement, become separated from the service, such teacher may elect to receive a deferred annuity beginning at the age of sixty-two years computed as provided in section 31-725: *Provided*, That any teacher who becomes separated from the public schools of the District of Columbia for other than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section, shall receive as soon as practicable after separation the refund of deductions, deposits, or re-deposits with interest thereon, or any voluntary contributions made under the provisions of section 31-721, with interest: *Provided further*, That no teacher who shall withdraw the amount of his deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him: *And provided further*, That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 3 per centum compounded annually.

(b)(1) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia and is survived by a widow, or dependent widower, such widow or dependent widower shall be paid an annuity beginning the first day of the month following the death of the teacher, equal to one-half the amount of an annuity computed as provided in section 31-725(a) with respect to such teacher: *Provided*, That such payments or any right thereto shall cease upon the death or remarriage of the widow, or dependent widower, or upon the widower's becoming capable of self-support.

(2) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia, or after having retired subsequent to March 6, 1952 under section 31-723 or section 31-724, and is survived by a widow or dependent widower and a child or children, such widow or dependent widower shall be paid an immediate annuity terminable upon death, remarriage, or attainment of age fifty. The annuity payable to the widow or dependent widower of such teacher shall be equal to one-half the amount of an annuity computed as provided in section 31-725 (a) with respect to such teacher. The annuity payable to the widow or dependent widower of such annuitant shall be equal to one-half the amount of the annuity, which such annuitant was receiving at the time of his death, excluding any portion thereof purchased by voluntary contributions under section 31-721, or, if such annuitant had elected a reduced annuity under the provisions of section 31-725(b), one-half of the annuity which such annuitant would have received if he had not made such election.

(3) If any teacher to whom this subchapter applies shall die after completing five years of service in the public schools of the District of Columbia or after having retired under the provisions of section 31-723 or section 31-724 and is survived by a wife or husband, each surviving child who received more than one-half of his support from the teacher shall be paid an annuity equal to the smallest of (a) 40 per centum of the teacher's average salary divided by the number of children, (b) \$600, or (c) \$1,800 divided by the number of children. If such teacher is not survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (a) 50 per centum of the teacher's average salary divided by the number of children, (b) \$720, or (c) \$2,160 divided by the number of children. The child's annuity shall begin on the first day of the month after the teacher dies and such annuity or any right thereto shall terminate upon (a) his attaining age eighteen unless incapable of self-support after age eighteen, (b) his becoming capable of self-support after age eighteen, (c) his marriage, or (d) his death. Upon the death of the surviving wife or husband or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband, or child had not survived the teacher.

(4) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia, and is not survived by a widow, a dependent widower, and or children, but is survived by dependent parents or a dependent father or a dependent mother, such surviving dependent parents or parent shall be paid an annuity, beginning the first day of the month following the death of the teacher, equal to one-half the amount of an annuity computed as provided in section 31-725(a) with respect to such teacher: *Provided*, That such payments shall be made jointly to surviving dependent parents and payment of said annuity shall continue after the death of either dependent parent: *Provided further*, That all such payments or any right thereto shall cease upon the death of both dependent parents.

(c) As used in this section—

(1) The term "widow" means a surviving wife of an individual, who either shall have been married to such individual for at least two years immediately preceding his death, or is the mother of issue by such marriage.

(2) The term "child" means an unmarried child, including a dependent stepchild or an adopted child, under the age of eighteen years, or such unmarried child who because of physical or mental disability is incapable of self-support.

(3) The term "dependent parents" means the natural parents of a teacher who were receiving one-half or more of their total income from said teacher immediately preceding the death of said teacher.

(4) The term "dependent father" or "dependent mother" means the natural father or natural mother of a teacher who was receiving one-half or more of his or her total income from said

teacher immediately preceding the death of said teacher.

(5) The term "widower" means the surviving husband of a teacher who was married to such teacher for at least two years immediately preceding her death or is the father of issue by such marriage. The term "dependent widower" means a "widower" who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such teacher.

(6) Questions of dependency and disability arising under this section shall be determined by the Board of Education and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1.)

AMENDMENTS

1957—Subsec. (a) amended by act June 4, 1957, which substituted "five" for "ten."

Subsec. (b) (1) amended by act June 4, 1957, which inserted "or dependent widower" following "widow", wherever appearing, added the concluding words "or upon the widower's becoming capable of self-support" and deleted "or following the widow's attainment of age fifty, whichever is later" following "death of the teacher."

Subsec. (b) (2) amended by act June 4, 1957, which inserted "or dependent widower" following "widow", wherever appearing, and deleted the concluding sentences reading "There shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed \$900 divided by the number of such children or \$360, whichever is lesser. Upon the death of such widow, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection."

Subsec. (b) (3) added by act June 4, 1957. Former subsec. (b) (3) had provided "In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952 after having rendered at least five years of service in the public schools of the District of Columbia, or after having retired under the provisions of section 31-723 or 31-724 subsequent to March 6, 1952 and leaves no surviving widow or widower but leaves a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed \$1,200 divided by the number of such children or \$480, whichever is lesser."

Subsec. (b) (4), formerly (b) (5), so redesignated by act June 4, 1957 and amended by substituting "by a widow, a dependent widower, and or children" for "by a widow, widow and children or children." Former subsec. (b) (4) had provided "The annuity payable to a child under this subsection shall be terminable upon his attaining the age of eighteen years, or his marriage, or his death, whichever occurs first, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage or recovery from such disability. In any case in which the annuity of a child, under this subsection, is terminated, the annuities of any other child or children, based upon the service of the same teacher, shall be recomputed and paid as though the child whose annuity was so terminated had not survived the teacher."

Subsec. (c) amended by act June 4, 1957, which added par. (5) and redesignated former par. (5) as par. (6).

1952—Act Mar. 6, 1952, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act June 4, 1957, effective Oct. 1, 1956, see section 4 of act June 4, 1957, set out as a note under section 31-721.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act Mar. 6, 1952, effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-730. Beneficiaries — Death before retirement — Death of retired teachers receiving reduced annuity with death benefits.

(a) Any teacher from whose salary retirement deductions are made in accordance with this subchapter 739 may designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable, as hereinafter provided, in the event of the death of the teacher before or after retirement.

(b) In the event any teacher shall die before retirement leaving no survivor entitled to annuity benefits under the provisions of this subchapter the total amount of his deductions with interest thereon shall be paid, upon the establishment of a valid claim therefor, provided the claim be filed with the Auditor of the District of Columbia within three years after the death of such teacher, to the beneficiary or beneficiaries, if a beneficiary or beneficiaries be designated in writing by the teacher and recorded on his individual account, or, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor or administrator of the estate of the teacher, or, if the amount payable be less than \$1,000 and no executor or administrator is appointed, to such person or persons as the Auditor, in his judgment, may determine is or are legally entitled thereto.

(c) On the death of a retired teacher who elected to receive a reduced annuity with death benefits, the amount payable, if any, shall be determined according to the terms of the option so elected, and such amount shall be paid upon the establishment of a valid claim therefor, provided the claim be filed with the Auditor of the District of Columbia within three years after the death of such teacher, to the beneficiary or beneficiaries, if a beneficiary or beneficiaries be designated in writing by the teacher and recorded on his individual account, or, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor or administrator of the estate of the teacher, or, if the amount payable be less than \$1,000 and no executor or administrator is appointed, to such person or persons as the Auditor, in his judgment, may determine is or are legally entitled thereto.

(d) In the event that—

(1) a retired teacher shall die without a survivor entitled to benefits by subsection (b) of section 31-725 or subsection (b) of section 31-729, or

(2) a retired teacher shall die leaving a survivor or survivors entitled to such benefits and the right to benefits of all such survivors shall terminate before a valid claim therefor shall have been established, or

(3) the benefits of all persons entitled to benefits based upon the service of a teacher shall

terminate, before the aggregate amount of the benefits paid equals the total amount credited to the individual account of such teacher with interest, to date of death or retirement of such teacher, whichever occurs first, the difference shall be paid, upon the establishment of a valid claim therefor, provided the claim be filed with the Auditor of the District of Columbia within three years after the death or retirement of such teacher, to the beneficiary or beneficiaries, if a beneficiary or beneficiaries be designated in writing by the teacher and recorded on his individual account, or, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor or administrator of the estate of the teacher, or, if the amount payable be less than \$1,000 and no executor or administrator is appointed, to such persons or persons as the Auditor, in his judgment, may determine is or are legally entitled thereto. Any payment made by the Auditor under this section shall be a bar to a recovery by any other person.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 10; Mar. 6, 1952, 66 Stat. 21, ch. 95, § 9.)

AMENDMENT

1952—Act Mar. 6, 1952, designated existing provisions as subsecs. (a)—(c), inserted in such subsec. (b) the words "leaving no survivor entitled to annuity benefits under the provisions of this subchapter" and added subsec. (d).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act Mar. 6, 1952, effective on first day of second month following Mar. 6, 1952, see section 11 of act Mar. 6, 1952, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The order was issued by the Board of Commissioners pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

§ 31-731. Consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after the passage of this subchapter, as well as every person who hereafter may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for herein; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this subchapter, notwithstanding the provisions of the Act of June 20, 1906 (34 Stat. 316), and of any other law, rule, or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 11.)

REFERENCES IN TEXT

See Distribution Tables for Act June 20, 1906, 34 Stat. 316, referred to in the text.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-732. Discharge of teacher.

Nothing in this subchapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 12.)

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-733. Definitions.

The term "teacher," under this subchapter, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in the District of Columbia Teachers' Salary Act of 1945, as amended, except the employees of the Department of School Attendance and Work Permits; whenever the pronoun "his" occurs in this subchapter it shall be construed to mean both male and female; and the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for service rendered in the public day schools (not including summer schools) of the District of Columbia, including basic salary, automatic increases, and longevity allowances, provided for in the District of Columbia Teachers' Salary Act of 1945, as amended, and all wartime additional compensation or bonus, and this definition of "annual salary" shall not be construed to affect any deductions which have been made prior to the effective date of this subchapter from any teacher's "annual salary" as defined in subchapter I of this chapter.

The term "average salary" shall mean the largest annual rate resulting from averaging, over any period of five consecutive years of creditable service in the public schools of the District of Columbia, a teacher's rates of annual salary in effect during such period, with each rate weighted by the time it was in effect. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 13; June 4, 1957, 71 Stat. 48, Pub. L. 85-46, § 1.)

REFERENCE IN TEXT

The District of Columbia Teachers' Salary Act of 1945, as amended, referred to in the text, refers to act July 21, 1945, 59 Stat. 488, ch. 321, which was repealed by act July 7, 1947, 61 Stat. 260, ch. 208, title V, § 20, eff. July 1, 1947. See District of Columbia Teachers' Salary Act of 1955, set out as chapter 15 of this title.

AMENDMENT

1957—Act June 4, 1957, defined "average salary."

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act June 4, 1957, effective Oct. 1, 1956, see section 4 of act June 4, 1957, set out as a note under section 31-721.

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-734. Records and accounts—Report to Congress—Appropriation estimates.

The Commissioners of the District of Columbia shall prepare and keep all needful tables, records,

and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. The Commissioners of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this subchapter, together with the total number of persons receiving annuities and the amounts paid them. And the Treasury Department shall prepare the estimates of the annual appropriations required to be made to the teachers' retirement and annuity fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 14.)

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-735. Transfer of appropriations.

The Commissioners of the District of Columbia shall include in their annual estimates of appropriations a sum sufficient to carry out the provisions of this subchapter. Appropriations made for the purposes of this subchapter shall be transferred to the credit of the teachers' retirement and annuity fund established under section 31-722. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 15.)

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-736. Rules and regulations.

The Commissioners of the District of Columbia are hereby authorized to perform, or cause to be performed, any or all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this subchapter into full force and effect. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 16.)

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-737. Funds not assignable or subject to execution.

None of the money mentioned in this subchapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 17.)

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-738. Applicability.

The provisions of this subchapter shall apply to all teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, if otherwise eligible: *Provided*, That nothing in this subchapter shall require the reduction of any annuity of any teacher on the rolls of the public schools of the District of Columbia for

the month of June 1946, would be entitled to receive, under the provisions of subchapter I of this chapter, upon retirement. The said subchapter I of this chapter shall not otherwise apply to teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, but such subchapter I of this chapter shall remain in force and effect with respect to teachers retired prior to the effective date of this subchapter, subject to the provisions of section 31-739. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 18.)

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-739. Prior retirements—Salary basis—Straight life annuity.

The annuities of all teachers retired prior to the effective date of this subchapter shall be recomputed in accordance with the provisions of section 31-725 within ninety days after the approval of this subchapter retroactive to the effective date of this subchapter, and no recomputation shall be made which will reduce the annuity received by any retired teacher: *Provided*, That the average annual salary during any five consecutive years, specified in section 31-725, upon which the annuity is based shall be within the last ten years of allowable service in the public schools of the District of Columbia: *Provided further*, That the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 19.)

EFFECTIVE DATE

Section effective July 1, 1946, see note under section 31-721.

§ 31-740. Waiver of annuity—Revocation.

Any person entitled to annuity pursuant to the provisions of subchapter I of this chapter or this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the Commissioners of the District of Columbia or their designated agent. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. (July 2, 1956, 70 Stat. 487, ch. 497, § 2.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

§ 31-741. Increased annuities for certain retired employees and survivors—Amount—Maximum.

(a) The annuity of each retired employee who, on August 1, 1958, is receiving or is entitled to receive an annuity from the District of Columbia teachers' retirement and annuity fund based on service which terminated prior to October 1, 1956, shall be increased by 10 per centum, but no such increase shall exceed \$500 per annum.

(b) The annuity otherwise payable from the District of Columbia teachers' retirement and annuity fund to—

(1) each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on

service which terminated prior to October 1, 1956, and

(2) each survivor of a retired employee described in subsection (a) of this section, shall be increased by 10 per centum. No increase provided by this subsection shall exceed \$250 per annum.

(c) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions. (Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 1.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

§ 31-742. Unremarried widow or widower entitled to annuity—Conditions—Amount—Termination.

The unremarried widow or widower of an employee—

(1) who had completed at least ten years of service creditable for retirement purposes under this subchapter,

(2) who died before May 1, 1952, and

(3) who was at the time of his death (A) subject to an Act under which annuities granted before May 1, 1952, were or are now payable from the District of Columbia teachers retirement and annuity fund or (B) retired under such Act, shall be entitled to receive an annuity. In order to qualify for such annuity, the widow or widower shall have been married to the employee for at least five years immediately prior to his death and must be not entitled to any other annuity from the District of Columbia teachers retirement and annuity fund based on the service of such employee. Such annuity shall be equal to one-half of the annuity which the employee was receiving on the date of his death if retired, or would have been receiving if he had been retired for disability on the date of his death, but shall not exceed \$750 per annum and shall not be increased by the provisions of this or any other prior law. Any annuity granted under this section shall cease upon the death or remarriage of the widow or widower. (Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 2.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

§ 31-743. Effective dates of annuities provided by sections 31-741 and 31-742—Computation.

(a) An increase in annuity provided by subsection (a), or clause (1) of subsection (b), of section 31-741 shall take effect on August 1, 1958. An increase in annuity provided by clause (2) of such subsection (b) shall take effect on the commencing date of the survivor annuity.

(b) An annuity provided by section 31-742 shall commence on August 1, 1958, or on the first day of the month in which application for such annuity is received by the Commissioners of the District of Columbia or their designated agent, whichever occurs later.

(c) The monthly installment of each annuity increased or provided by sections 31-741 to 31-744

shall be fixed at the nearest dollar. (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 3.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

§ 31-744. Annuities under sections 31-741 to 31-743 to be paid from District of Columbia teachers retirement and annuity fund—Conditions under which annuities and increases terminate after July 1, 1960.

The annuities and increases in annuities provided by sections 31-741 to 31-743 shall be paid from the District of Columbia teachers retirement and annuity fund. Such annuities and increases in annuities shall terminate for each fiscal year beginning on or after July 1, 1960, for which the Congress has failed to make provision for the payment of like annuities and increases in annuities under the Act approved June 25, 1958 (72 Stat. 218), for such fiscal year. For any fiscal year for which such annuities and increases in annuities shall terminate for the reason set forth in this section, sections 31-741 to 31-743 shall not be in effect and annuities and increases in annuities shall be determined and paid as though such sections had not been enacted. Nothing contained in this section shall be held or considered to prevent the payment of annuities and increases in annuities provided by sections 31-741 to 31-743 for any fiscal year for which the Congress shall have made provisions for the payment of like annuities and increases in annuities under such Act approved June 25, 1958 (72 Stat. 218). (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 4.)

REFERENCE IN TEXT

Act June 25, 1958, 72 Stat. 218, Pub. L. 85-465, referred to in the text, is set out as a note under U.S. Code, title 5, § 2259.

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

§ 31-745. Crediting of certain authorized leave periods for retirement purposes—Conditions.

Any teacher who, on or after June 27, 1960, retires pursuant to this subchapter, shall be entitled to have included in the years of service creditable to him for retirement purposes any period of authorized leave of absence which was taken by him without pay, and for educational purposes; except that credit for any such period shall be conditioned upon the deposit by such teacher to the credit of the teachers' retirement and annuity fund of the District of Columbia of a sum equal to the accumulated contributions and interest which would have been credited to his individual account if he had remained on active duty in the public schools of the District of Columbia during any such period: *Provided*, That in order to receive such retirement credit a teacher must produce evidence satisfactory to the Superintendent of Schools of the District of Columbia that the authorized leave of absence without pay was taken for educational purposes. (June 27, 1960, 74 Stat. 222, Pub. L. 86-525.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

Chapter 8.—USE OF SCHOOL BUILDINGS

Sec.

- § 31-801. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.
- § 31-802. Board of Education authorized to accept free services—Teachers shall not be required or solicited to give—Use of school buildings and grounds.
- § 31-803. Inspector of buildings to control and supervise construction and repairs of school buildings.
- § 31-804. Board of Education may use Franklin School for office purposes.
- § 31-805. Restriction on lot 14 in square 263.
- § 31-806. Sale of part of lot 14 in square 263 authorized—Proceeds, how invested.
- § 31-807. Certain land granted for colored schools to revert to United States.
- § 31-808. Certain property set apart exclusively for school purposes.
- § 31-809. Business High School used for senior high and elementary school purposes.
- § 31-810, § 31-811. Repealed.
- § 31-812. Entrances to school buildings.

§ 31-801. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.

The control of the public schools in the District of Columbia by the Board of Education shall extend to, include, and comprise the use of the public-school buildings and grounds by pupils of the public schools, other children and adults, for supplementary educational purposes, civic meetings for the free discussion of public questions, social centers, centers of recreation, playgrounds. The privilege of using said buildings and grounds for any of said purposes may be granted by the board upon such terms and conditions and under such rules and regulations as the board may prescribe. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 1.)

CROSS REFERENCES

Authority of Recreation Board, see § 8-216.
Board of Education, general provisions, see § 31-101.

§ 31-802. Board of Education authorized to accept free services—Teachers shall not be required or solicited to give—Use of school buildings and grounds.

The Board of Education is authorized to accept, upon written recommendation of the superintendent of schools, free and voluntary services of the teachers of the public schools, other educators, lecturers, and social workers and public officers of the United States and the District of Columbia: *Provided*, That teachers of the public schools shall not be required or compelled to perform any such services or solicited to make any contribution for such purposes: *Provided further*, That the public-school buildings and grounds of the District of Columbia shall be used for no purpose whatsoever other than those directly connected with the public-school system and as further provided for in this section and section 31-801. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 2.)

CROSS REFERENCES

Authority of Recreation Board, see § 8-216.
General provision forbidding acceptance of voluntary services, see § 1-215.

§ 31-803. Inspector of buildings to control and supervise construction and repairs of school buildings.

The inspector of buildings of the District shall have authority and control over and supervision of the construction and repairs of all school buildings

if the commissioners deem best to delegate the same to him. (Mar. 3, 1879, 20 Stat. 408, ch. 182.)

TRANSFER OF FUNCTIONS

Department of Licenses and Inspections headed by a Director established under provisions of Reorg. Ord. No. 55, June 30, 1953, as amended, see note under section 1-246.

Transfer of powers and duties from Inspector of Buildings to Director of Inspection, see act Dec. 20, 1944, 58 Stat. 822, ch. 611, § 3, set out as section 1-246.

CROSS REFERENCES

Janitors to make minor repairs, see § 31-1105.
Testing building materials, see §§ 1-813, 1-814.

NOTES TO DECISIONS

1. Judicial notice

The court will take judicial notice that there is an executive officer, subject to the authority of the commissioners, designated as the Inspector of Buildings, and the appropriation bills of Congress for the District of Columbia have heretofore made provision for the payment of his salary from time to time, and his office and duties have been recognized by other acts. *McBride v. Ross* (13 App. D. C. 576).

§ 31-804. Board of Education may use Franklin School for office purposes.

The Board of Education is authorized to use all necessary floor and room space in the Franklin School Building for office purposes. (Mar. 3, 1917, 39 Stat. 1026, ch. 160; June 5, 1920, 41 Stat. 855, ch. 234; Feb. 26, 1925, 43 Stat. 993, ch. 342, § 5.)

CODIFICATION

Act Feb. 26, 1925, provided for use of all space, including rooms occupied by grades one through four.

Act June 5, 1920, provided for use of all space except rooms occupied by grades one, two, three, and four.

Act Mar. 3, 1917, provided for use of top floor.

§ 31-805. Restriction on lot 14 in square 263.

The lot of land marked upon the plan of the city of Washington as lot number fourteen, in square number two hundred and sixty-three, which was conveyed to said city by the Commissioner of Public Buildings, under authority of an Act of Congress dated June fifth, eighteen hundred and sixty, for the use of the public schools in said city, shall not be sold, assigned or conveyed or diverted, for any other purpose except as provided in section 31-806. (R. S., D. C., § 317.)

CROSS REFERENCE

Sale of public lands and buildings, see §§ 9-301 to 9-306 and notes.

§ 31-806. Sale of part of lot 14 in square 263 authorized—Proceeds, how invested.

The proceeds of that portion of lot number fourteen, in square number two hundred and fifty-three, which was authorized to be sold by an Act of Congress dated June fourth, eighteen hundred and seventy-two, shall be invested by the authorities of the District in another lot or part of a lot in the city of Washington, and in improvements thereon; and the property so purchased shall be used for the purpose of the public schools, and for no other purpose. (R. S., D. C., § 318.)

CODIFICATION

The words "two hundred and fifty-three" are probably a misprint in the original statute for "two hundred and sixty-three" (see 12 Stat. 27, ch. 77).

§ 31-807. Certain land granted for colored schools to revert to United States.

The lots of land numbered one, two, and eighteen, in square number nine hundred and eighty-five, in the city of Washington, which were designated and set apart by the Secretary of the Interior to be used for colored schools, and conveyed to the trustees of colored schools for the cities of Washington and Georgetown, by the Commissioner of Public Buildings, under authority of an act of Congress dated July 28, 1866, for the sole use of schools for colored children in the District of Columbia, shall, if converted to other uses, revert to the United States. (R. S., D. C., § 319.)

CROSS REFERENCE

Duty to furnish school rooms for colored children, § 31-1113.

§ 31-808. Certain property set apart exclusively for school purposes.

That parcel of land marked and designated upon the map of the city of Washington as part of lot number eleven, in square number one hundred and forty-one, beginning at the northwest corner of said lot, and running thence due south on the west line of said square, fifty feet; thence due east, thirty feet; thence due north, fifty feet; thence due west on the north line of said square, to the point of beginning, and also that piece of land marked and designated upon said map as a public reservation, located between Eighth and Ninth Streets and K Street and Virginia Avenue Southeast, known as the Anacostia engine house, together with the buildings and improvements thereon, are severally set apart and appropriated for the use of the public schools in the city of Washington, so long as they shall be occupied for that purpose, and no longer. (R. S., D. C., § 320.)

§ 31-809. Business High School used for senior high and elementary school purposes.

Upon completion of the Roosevelt (Business) High School the building now occupied by the Business High School shall be utilized for senior high and elementary school purposes. (Feb. 23, 1931, 46 Stat. 1395, ch. 282, § 1.)

APPROPRIATION

Act Feb. 25, 1929, 45 Stat. 1280, ch. 314, appropriated funds for a new Business High School and provided for use of the old building occupied by the Business High School as an elementary school upon completion of new Business High School.

§§ 31-810, 31-811. Repealed. July 16, 1946, 60 Stat. 541, ch. 582, § 5, effective July 1, 1946.

Sections, act Dec. 22, 1942, 56 Stat. 1072, ch. 804, §§ 2, 3, provided that public school buildings and equipment may be used for day nurseries and nursery schools, and related to fees for such nurseries and nursery schools.

§ 31-812. Entrances to school buildings.

On and after June 28, 1944, appropriations for the District of Columbia shall not be used for the maintenance of school in any building unless all outside doors thereto used as exits or entrances shall open outward and be kept unlocked every school day from from one-half hour before until one-half hour after school hours. (June 28, 1944, 58 Stat. 515, ch. 300, § 1.)

Chapter 9.—MEDICAL AND DENTAL COLLEGES

Sec.

- 31-901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioners—Permit.
- 31-902. Application for registration and permit—Regulations—Inquiry as to equipment.
- 31-903. Penalty for failure to register and obtain permit.
- 31-904. Injunction proceedings—Duty of Commissioners—Jurisdiction of court.
- 31-905. Repeal provisions.

§ 31-901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioners—Permit.

It shall be unlawful for any medical or dental college claiming the authority to confer, or actually conferring, the degree of doctor of medicine, or doctor of dental surgery, not incorporated by a special Act of Congress, to conduct its business in the District of Columbia, unless such college shall be registered by the Commissioners of the District of Columbia and granted by them a written permit to commence or continue business in said District in compliance with the requirements of this chapter. (May 4, 1896, 29 Stat. 112, ch. 154, § 1.)

CROSS REFERENCE

Institutions of learning generally, see § 29-401 et seq.

§ 31-902. Application for registration and permit—Regulations—Inquiry as to equipment.

It shall be the duty of the proper officers of any such college, before commencing or continuing business, to apply to the said Commissioners for registration and a permit to commence or continue business; and said Commissioners are hereby authorized and required to make such regulations concerning the form of such application, the evidence to be adduced in support thereof, and the method of taking such evidence as they may deem best, and shall have power, and it shall be their duty, to give public notice of all hearings upon such applications; and no registration and permit shall be granted until after the Commissioners shall have, by the inquiry and hearing hereinbefore provided for and such other inquiry as they may see fit to make, satisfied themselves that all such medical or dental colleges are fully equipped, both by the character and fitness of the faculty and the sufficiency of their appliances, to give suitable and sufficient instruction in the theory and practice of medicine or dental surgery. (May 4, 1896, 29 Stat. 113, ch. 154, § 2.)

REGISTRATION OF UNINCORPORATED COLLEGES DOING BUSINESS ON MAY 4, 1896

Section 3 of act May 4, 1896, required the proper officers of every medical or dental college not incorporated by a special act of Congress which was doing business in the District on May 4, 1896, to apply for such certificate and registration within thirty days of May 4, 1896, and to prohibit any such college hereafter sought to be opened in said District from commencing business without first obtaining such registration and permit.

§ 31-903. Penalty for failure to register and obtain permit.

Such of the officers and of the faculty of any such medical or dental college in existence on May 4, 1896, and of every such college thereafter sought to be opened in said District, which shall continue or commence to offer instruction in such capacity without first obtaining registration and permit, as herein-

before provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the municipal court of said District, upon an information similar to that filed in the case of violations of the police regulations made by the said Commissioners, shall be fined not less than twenty-five nor more than two hundred and fifty dollars, and in default of payment thereof shall be imprisoned in the common jail of said District not less than thirty nor more than ninety days; said fines when collected to be paid into the Treasury of the United States to the credit of the District of Columbia. (May 4, 1896, 29 Stat. 113, ch. 154, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

§ 31-904. Injunction proceedings—Duty of Commissioners—Jurisdiction of court.

In any case when such action shall be necessary in the opinion of the said Commissioners to give full effect to the intent of this chapter they shall have power, and it shall be their duty, to file in the United States District Court for the District of Columbia, in the name of the said District, a bill in equity against the proper parties praying an injunction against the opening or continuance of any such college not registered and granted a permit as aforesaid; and jurisdiction is hereby conferred upon such court to hear and determine such causes. (May 4, 1896, 29 Stat. 113, ch. 154, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 31-905. Repeal provisions.

All acts and parts of acts enacted prior to May 4, 1896, and all charters obtained by any medical or dental college prior to Mar. 4, 1896, under the general incorporation laws in force in said District, so far as inconsistent with this chapter, are hereby repealed. (May 4, 1896, 29 Stat. 113, ch. 154, § 6.)

Chapter 10.—GALLAUDET COLLEGE

Sec.

- 31-1001 to 31-1007. Repealed.
- 31-1008. Admission of deaf-mutes from District—Not an institution of charity.
- 31-1009. Repealed.
- 31-1010. Expenses of students from District—Division between District and Federal Treasury.
- 31-1011. Education of colored deaf-mute children of District.
- 31-1012 to 31-1019. Repealed.
- 31-1020. Appropriation for instruction of indigent blind from District—Division between District and Federal Treasury.
- 31-1021. Title to certain real estate transferred to institution.
- 31-1022. Secretary of Health, Education, and Welfare to supervise.
- 31-1023. Purchase of supplies.

Sec.

- 31-1024. Report of Convention of American Instructors of the Deaf.
- 31-1025. Gallaudet College—Successor to Columbia Institution for the Deaf.
- 31-1026. Gallaudet College—Purposes.
- 31-1027. Property and property rights—Authority and legal rights—Conveyance or mortgage of property by Board of Directors.
- 31-1028. Gifts of property to Gallaudet College.
- 31-1029. Board of Directors—Appointment and composition—Terms—Power to remove members.
- 31-1030. Powers of the Board of Directors.
- 31-1031. Financial transactions and accounts—Annual report to the Secretary of Health, Education, and Welfare.
- 31-1032. Appropriations.
- 31-1033. Grant of certain lands to Gallaudet College.
- 31-1034. Same—Deed and other evidence of indebtedness to be cancelled and returned to Gallaudet College.

§§ 31-1001 to 31-1007. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section 31-1001, act Feb. 16, 1857, 11 Stat. 161, ch. 46, § 1; R.S. § 4859, concerned the establishment of the Columbia Institution for the Deaf, originally known as the Columbia Institution for the Deaf, Dumb, and Blind, provided for perpetual succession, the holding of real and personal property, a common seal, and limited the holding to necessary property and is covered by sections 31-1025, 31-1027(a), 31-1030(b).

Section 31-1002, act Apr. 8, 1864, 13 Stat. 45, ch. 52, authorized the Columbia Institute for the Deaf, originally known as the Columbia Institution for the Instruction of the Deaf and Dumb and the Blind, to confer degrees and is covered by section 31-1030(g).

Section 31-1003, R.S. § 4860, related to the obligatory nature of the terms of the deed of transfer of the funds and property of Washington's Manual Labor School and Male Orphan Asylum Society of the District of Columbia, as to the District of Columbia Institution for the Deaf, then known as the Columbia Institution for the Instruction of the Deaf and Dumb. See section 31-1027(a).

Section 31-1004, R.S. § 4861, related to the use and alienation of property of the Columbia Institution for the Deaf, then known as the Columbia Institution for the Instruction of the Deaf and Dumb. See section 31-1027.

Section 31-1005, R.S. § 4862, related to management of the Columbia Institution for the Deaf, then known as the Columbia Institution for the Instruction of the Deaf and Dumb. See section 31-1030(a).

Section 31-1006, R.S. § 4863, provided for appointment of a senator and two representatives as directors of the Columbia Institution for the Deaf, their term and reappointment and is covered by section 31-1029.

Section 31-1007, acts July 1, 1898, 30 Stat. 624, ch. 546, § 1; June 10, 1921, 42 Stat. 24, ch. 18, § 305, provided for service of the public members until appointment of their successors, authorizes the directors to control disbursement of public moneys and required the adjustment of accounts in the General Accounting Office and is covered by sections 31-1029, 31-1030(h), 31-1031(a).

§ 31-1008. Admission of deaf-mutes from District—Not an institution of charity.

On and after March 1, 1901, all deaf mutes of teachable age, of good mental capacity, and properly belonging to the District of Columbia shall be received and instructed in Gallaudet College, their admission thereto being subject to the approval of the Superintendent of Public Schools in the District of Columbia. And said institution shall not be regarded nor classified as an institution of charity. (Mar. 1, 1901, 31 Stat. 844, ch. 670, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1; June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

CHANGE OF NAME

"Columbia Institution for the Deaf" was substituted for "Columbia Institution for the Deaf and Dumb" to conform to act Mar. 4, 1911.

"Gallaudet College" was substituted for "Columbia Institution for the Deaf" to conform to act June 18, 1954. See § 31-1025.

NOTES TO DECISIONS

Injunction 1
Obligations and duties 2
Public or private institution 3
Segregation 4
Separate but equal facilities 5

1. Injunction

The District of Columbia Board of Education and Board of Commissioners were not entities and therefore were not subject to suit, although their respective members were properly sued for injunctive relief in respect to education of Negro deaf children in the District. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

2. Obligations and duties

The only obligation of Columbia Institute for the Deaf is to educate deaf children who are approved by District of Columbia Superintendent of Schools and whose education is made the subject of a contract between the Institution and District Board of Commissioners, and failure of Institution to accept Negro deaf children who had not been approved by superintendent and whose education had not been made the subject of a contract was not breach of duty of obligation owing Negro children by institution, and hence Negro children seeking education in Institution could not obtain injunctive relief as against Institution or its directors. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

3. Public or private institution

The Columbia Institution for the Deaf is a private institution and is not part of the public school system of the District of Columbia and it has the right to contract and to sue and be sued, notwithstanding Congressional appropriation of money for education of deaf-mutes taught at the institution. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

4. Segregation

The Congressional intent in appropriating money for instruction of deaf persons in District of Columbia was that there should be separation of races in education of deaf children of District. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

5. Separate but equal facilities

The separate but equal facilities doctrine requires that Negro deaf children in District of Columbia be educated in District of Columbia as are white deaf children in the District, rather than in Maryland. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

§ 31-1009. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section. acts June 16, 1880, 21 Stat. 275, ch. 235; Aug. 30, 1890, 26 Stat. 393, ch. 837, § 1, made provision for instruction in some state institution of feeble-minded applicants for admission to the Columbia Institution for the Deaf.

§ 31-1010. Expenses of students from District—Division between District and Federal Treasury.

All expenses attending the instruction of deaf and dumb persons admitted to the Columbia Institution for the Deaf from the District of Columbia, under section 31-1008, shall be paid from the revenues of the District of Columbia, and estimates for such expenses shall each year be submitted in the regular estimates for the expenses of the government of the District of Columbia. (Mar. 2, 1889, 25 Stat. 962, ch. 411, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

CHANGE OF NAME

Act Mar. 4, 1911, changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

CROSS REFERENCE

Lump-sum appropriation for the District, see § 47-134.

§ 31-1011. Education of colored deaf-mute children of district.

The directors of the Columbia Institution for the Deaf are authorized to provide for the education of colored deaf-mute children properly belonging to the District of Columbia, in the Maryland School for Colored Deaf-Mutes, or some other suitable school, at a cost not exceeding the per capita expense of educating the State pupils in such school. (Mar. 3, 1905, 33 Stat. 901, ch. 1406, § 1; June 27, 1906, 34 Stat. 503, ch. 3553; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

CODIFICATION

Acts Mar. 3, 1905, and June 27, 1906, are the same in substance.

CHANGE OF NAME

Act Mar. 4, 1911, changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

NOTES TO DECISIONS

Injunction 1
Obligations and duties 2
Public or private institution 3
Segregation 4
Separate but equal facilities 5

1. Injunction

The District of Columbia Board of Education and Board of Commissioners were not entities and therefore were not subject to suit, although their respective members were properly sued for injunctive relief in respect to education of Negro deaf children in the District. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

2. Obligations and duties

The only obligation of Columbia Institution for the Deaf is to educate deaf children who are approved by District of Columbia Superintendent of Schools and whose education is made the subject of a contract between the Institution and District Board of Commissioners, and failure of Institution to accept Negro deaf children who had not been approved by Superintendent and whose education had not been made the subject of a contract was not breach of duty or obligation owing Negro children by Institution, and hence Negro children seeking education in Institution could not obtain injunctive relief as against Institution or its directors. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

3. Public or private institution

The Columbia Institution for the Deaf is a private institution and is not part of the public school system of the District of Columbia and it has the right to contract and to sue and be sued, notwithstanding Congressional appropriation of money for education of deaf-mutes taught at the institution. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

4. Segregation

The Congressional intent in appropriating money for instruction of deaf persons in District of Columbia was that there should be separation of races in education of deaf children of District. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

5. Separate but equal facilities

The separate but equal facilities doctrine requires that Negro deaf children in District of Columbia be educated in District of Columbia as are white deaf children in the District, rather than in Maryland. *Miller v. Board of Education of District of Columbia* (1952, 106 F. Supp. 988).

§§ 31-1012 to 31-1015. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section 31-1012, R.S. § 4865; acts July 1, 1918, 40 Stat. 680, ch. 113, § 1, and June 24, 1935, 49 Stat. 394, ch. 286, re-

lated to the admission of students from States and territories.

Section 31-1013, act Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1, limited the number of pupils from one State or territory to be admitted to the Columbia Institution for the Deaf.

Section 31-1014, acts Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1; June 10, 1921, 42 Stat. 20, ch. 18, § 214, required a statement of the number of persons employed by the Columbia Institution for the Deaf and their compensation in the annual Budget, see section 31-1031(b).

Section 31-1015, R.S. § 4866; act Feb. 17, 1909, 35 Stat. 623, ch. 134, related to the duties of judges of the municipal court as to reporting on deaf and dumb persons in the District.

§ 31-1016. Repealed. Aug. 7, 1946, 60 Stat. 871, ch. 770, § 1 (61).

Section, R. S. § 4867, required the superintendent to report to Congress at commencement of every session in December of expenditures made. See section 31-1031.

§§ 31-1017 to 31-1019. Repealed. June 18, 1954, 68 Stat. 267, ch. 324, § 9.

Section 31-1017, R. S. § 4868; related to the annual report of the president and directors of the Columbian Institution for the Deaf to the Secretary of the Interior and is covered by section 31-1031(b).

Section 31-1018, act Mar. 3, 1883, 22 Stat. 625, ch. 143 provided for an itemized report of expenses of the Columbian Institution for the Deaf. See section 31-1031.

Section 31-1019, R. S. § 4869, related to education of indigent blind persons.

§ 31-1020. Appropriation for instruction of indigent blind from District—Division between District and Federal Treasury.

The indefinite appropriation to pay for the instruction of the indigent blind children of the District of Columbia, formerly instructed in the Columbia Institution for the Deaf, shall be paid out of the revenues of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1101, ch. 424, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

AMENDMENTS

Act Mar. 4, 1911, changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

Act Mar. 3, 1899, provided for 50 percent of the expense to be paid from funds of the District of Columbia and 50 percent from the Treasury.

§ 31-1021. Title to certain real estate transferred to institution.

The title to all that parcel of land lying between the west boundary of West Virginia Avenue, as said avenue was laid on July 1, 1916, with a width of sixty-six feet, and the east boundary of the grounds of the Columbia Institution for the Deaf, said parcel of land fronting on Florida Avenue about ten and one-half feet and containing one-tenth of an acre, more or less, and being formerly part of the Baltimore and Ohio Railroad right of way, shall be vested in the Columbia Institution for the Deaf, United States of America, trustee, and the Secretary of the Interior is authorized and directed to issue a patent for the said parcel of land to the said Columbia Institution for the Deaf. (July 1, 1916, 39 Stat. 310, ch. 209.)

PROPERTY PROVISIONS

Ninth Street Northeast approach.—In order to provide a suitable approach to the Ninth Street Northeast overpass across the tracks of the Baltimore and Ohio and Pennsylvania Railroads and furnish better access to a part of the property of the Columbia Institution for the Deaf, described in the records of the office of the assessor for the

District of Columbia as parcel 141/4, the board of directors of the Columbia Institution for the Deaf are hereby authorized to dedicate to the District of Columbia a strip of land ninety feet wide traversing the north part of said property approximately as shown and designated on the revised highway plan of the District of Columbia as Mount Olivet Road Northeast. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 1.)

Adjustment of boundaries and exchange of properties.—In order to readjust the boundaries and exchange properties of the Columbia Institution for the Deaf, parcel 141/4, and Brentwood Park, United States Reservation Numbered 495, the board of directors of the Columbia Institution for the Deaf and the Secretary of the Interior are hereby authorized to convey fee-simple title by deeds, each to the other, to such parts of the property of the Columbia Institution for the Deaf and Brentwood Park (United States Reservation Numbered 495) as in their judgment is to the mutual advantage of both the institution and the park and playground system of the District of Columbia, provided such exchange of properties shall be approved by the National Capital Park and Planning Commission. (Act Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 2.)

Sale of lands authorized—Investment of proceeds.—The board of directors of the Columbia Institution for the Deaf are further authorized to sell and to convey fee-simple title by deed that portion of its real estate, now owned by the Columbia Institution for the Deaf or acquired by exchange under section 2 of this act, which will lie north of the proposed location of Mount Olivet Road extended after a definite survey of such road is established, such sale to be subject to the approval of the Secretary of the Interior. Funds received by the sale of this portion of real property of the institution shall be considered a part of the capital structure of the corporation, which may be invested in securities, buildings, or other real property by the board of directors. If invested in securities, only the income from such investment shall be used for current expenses of the institution. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 3.)

CROSS REFERENCE

Closing or adjusting streets and highways for benefit of religious charitable organizations, see § 7-113.

§ 31-1022. Secretary of Health, Education, and Welfare to supervise.

The Secretary of Health, Education, and Welfare is charged with the supervision of public business relating to Gallaudet College. (R.S., § 441; Mar. 4, 1911, 36 Stat. 1422, ch. 285; 1940 Reorg. Plan No. IV, § 11, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234; 1953 Reorg. Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

CHANGE OF NAME

"Gallaudet College" was substituted for "Columbia Institution for the Deaf" to conform to act June 18, 1954. See § 31-1025.

"Columbia Institution for the Deaf" was substituted for "Columbia Institution for the Deaf and Dumb" to conform to act Mar. 4, 1911.

TRANSFER OF FUNCTIONS

The Department of Health, Education, and Welfare was established, a Secretary of Health, Education, and Welfare was designated as the head of the Department, all functions of the Federal Security Administrator were transferred to the Secretary and the Federal Security Agency and the office of the Federal Security Administrator were abolished by 1953 Reorg. Plan No. 1, made effective Apr. 11, 1953 by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1, and set out as U.S. Code, title V, § 623 and note thereunder.

The functions of the Department of Interior relating to the administration of the Columbia Institution for the Deaf were transferred to the Federal Security Agency to be administered under the direction and supervision of the Federal Security Administrator by 1940 Reorg. Plan No. IV, set out as U.S. Code, title 5, § 133t note.

§ 31-1023. Purchase of supplies.**CODIFICATION**

Section, act Jan. 12, 1927, 44 Stat. 936, ch. 27, § 1 (formerly also set out as U.S. Code, title 5, § 496 and superseded by act Oct. 10, 1940, 54 Stat. 1110, ch. 851, § 2(g)) and act Oct. 10, 1940, 54 Stat. 1110, ch. 851, § 2(g) (formerly also set out as U.S. Code, title 41, § 6a(g) and repealed by act Oct. 31, 1951, 65 Stat. 705, ch. 654, § 1(107), related to purchase of supplies and equipment and procurement of services for Columbia Institution for the Deaf and is covered by the property management provisions of U.S. Code, title 40, ch. 10.

SIMILAR PROVISIONS

Provisions for purchase of supplies and equipment and procurement of services for Columbia Institution for the Deaf were also contained in the following prior appropriation acts:

1927—May 10, 1926, 44 Stat. 455, ch. 277, § 1.

1926—Mar. 3, 1925, 43 Stat. 1143, ch. 462.

1925—June 5, 1924, 43 Stat. 392, ch. 264.

1924—Jan. 24, 1923, 42 Stat. 1176, ch. 42.

1923—May 24, 1922, 42 Stat. 553, ch. 199.

§ 31-1024. Report of Convention of American Instructors of the Deaf.

The Convention of American Instructors of the Deaf shall report to Congress, through the president of Gallaudet College at Washington, District of Columbia, such portions of its proceedings and transactions as its officers shall deem to be of general public interest and value concerning the education of the deaf. (Jan. 26, 1897, 29 Stat. 499, ch. 94, § 4; June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

CHANGE OF NAME

"Gallaudet College" was substituted for "Columbia Institution for the Deaf" to conform to act June 18, 1954. See § 31-1025.

§ 31-1025. Gallaudet College—Successor to Columbia Institution for the Deaf.

The Columbia Institution for the Deaf, created a body corporate by the Act of Congress approved February 16, 1857, as amended, is hereby continued as a body corporate under the name of Gallaudet College, and on and after June 18, 1954 by such name shall be known and have perpetual succession and shall have the powers and be subject to the limitations contained in sections 31-1025 to 31-1032. (June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

§ 31-1026. Gallaudet College—Purposes.

The purposes of Gallaudet College shall be to provide education and training to deaf persons and otherwise to further the education of the deaf. (June 18, 1954, 68 Stat. 265, ch. 324, § 2.)

§ 31-1027. Property and property rights—Authority and legal rights—Conveyance or mortgage of property by Board of Directors.

(a) Gallaudet College is hereby invested with all the property and the rights of property, and shall have and be entitled to use all authority, privileges, and possessions and all legal rights which it has, or which it had or exercised under any former name, including the right to sue and be sued and to own, acquire, sell, mortgage, or otherwise dispose of property it may own now or hereafter acquire. Subject to the provisions of subsection (b), Gallaudet College shall also be subject to all liabilities and obligations now outstanding against said corporation under any former name.

(b) With the approval of the Secretary of Health, Education, and Welfare the Board of Directors of Gallaudet College may convey fee simple title by deed, convey by quitclaim deed, mortgage, or otherwise dispose of any or all real property title to which is vested in Gallaudet College, the Columbia Institution for the Deaf, or any predecessor corporation: *Provided*, That the proceeds of any such disposition shall be considered a part of the capital structure of the corporation, and may be used solely for the acquisition of real estate for the use of the corporation, for the construction, equipment, or improvement of buildings for such use, or for investment purposes, but if invested only the income from the investment may be used for current expenses of the corporation. (June 18, 1954, 68 Stat. 265, ch. 324, § 3; Sept. 13, 1960, 74 Stat. 917, Pub. L. 86-776, § 4.)

AMENDMENT

1960—Act Sept. 13, 1960, substituted "real property title to which is vested in Gallaudet College" for "property title to which is vested in the United States, as trustees, for the sole use of Gallaudet College" in subsec. (b), and inserted words "Subject to the provisions of subsection (b)", in subsec. (a).

§ 31-1028. Gifts of property to Gallaudet College.

Gallaudet College is authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of said Gallaudet College, or for the use of any of its departments or other units as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for such purpose. (June 18, 1954, 68 Stat. 265, ch. 324, § 4.)

§ 31-1029. Board of Directors—Appointment and composition—Terms—Power to remove members.

Gallaudet College shall be under the direction and control of a Board of Directors, composed of thirteen members selected as follows: (1) Three public members of whom: one shall be a United States Senator appointed by the President of the Senate; two shall be Representatives appointed by the Speaker of the House of Representatives; (2) ten other members, all of whom shall be elected by the Board of Directors, who on June 18, 1954 shall include those persons serving as nonpublic members of the Board of Directors of the Columbia Institution for the Deaf immediately prior to such date, and of whom one shall be elected pursuant to regulations of the Board of Directors on nomination by the Gallaudet College Alumni Association for a term of three years. The members appointed from the Senate and House of Representatives shall be appointed for a term of two years at the beginning of each Congress, shall be eligible for reappointment, and shall serve until their successors are appointed. The Board of Directors shall have the power to fill any vacancy in the membership of the Board except for public members. Seven directors shall be a quorum to transact business. The said Board of Directors, by vote of a majority of its membership, shall have power to remove any member of their body (except the public members) who may refuse or neglect to discharge the duties of a director, or whose removal would, in the judgment of said majority, be to the interest and welfare of said corporation. (June 18, 1954, 68 Stat. 265, ch. 324, § 5.)

§ 31-1030. Powers of the Board of Directors.

The Board of Directors shall have the power to—

(a) make such rules, regulations, and bylaws, not inconsistent with the Constitution and laws of the United States, as may be necessary for the good government of Gallaudet College, for the management of the property and funds of such corporation and for the admission, instruction, care, and discharge of students;

(b) provide for the adoption of a corporate seal and for its use;

(c) fix the date of holding their annual and other meetings;

(d) appoint a president, professors, instructors, and other necessary employees for Gallaudet College, delegate to them such duties as it may deem advisable, fix their compensation, and remove them when, in their judgment, the interest of Gallaudet College shall require it;

(e) elect a chairman and other officers and prescribe their duties and terms of office, and appoint an executive committee to consist of five members, and vest the committee with such of its powers during periods between meetings of the Board as the Board deems necessary;

(f) establish such departments and other units, including a department of higher learning for the deaf, a department of elementary education for the instruction of deaf children, a graduate department, and a research department, as the Board deems necessary to carry out the purpose of Gallaudet College;

(g) confer such degrees and marks of honor as are conferred by colleges and universities generally, and issue such diplomas and certificates of graduation as, in its opinion, may be deemed advisable, and consistent with academic standards;

(h) subject to the provisions of section 31-1031, control expenditures of all moneys appropriated by Congress for the benefit of Gallaudet College; and

(i) control the expenditure and investment of any moneys or funds or property which Gallaudet College may have or may receive from sources other than appropriations by Congress. (June 18, 1954, 68 Stat. 266, ch. 324, § 6.)

§ 31-1031. Financial transactions and accounts—Annual report to the Secretary of Health, Education, and Welfare.

(a) All financial transactions and accounts of the corporation in connection with the expenditure of any moneys appropriated by any law of the United States for the benefit of Gallaudet College or for the construction of facilities for its use, shall be settled and adjusted in the General Accounting Office.

(b) It shall be the duty of the Board of Directors of Gallaudet College to have made annually a report to the Secretary of Health, Education, and Welfare as soon as practicable after the first day of July of each year the condition of the corporation, embracing in said report the number of students of each description received and discharged during the preceding school year and the number remaining, also the branches and type of training and education taught and progress made therein, together with a statement showing the receipts of said corporation and from what sources, and its expenditures and for

what objects. (June 18, 1954, 68 Stat. 266, ch. 324, § 7.)

§ 31-1032. Appropriations.

There are hereby authorized to be appropriated such sums as the Congress may determine necessary for the administration, operation, maintenance, and improvement of Gallaudet College, including sums necessary for student aid and research, for the acquisition of property, both real and personal, and for the construction of buildings and other facilities for the use of said corporation. (June 18, 1954, 68 Stat. 266, ch. 324, § 8.)

§ 31-1033. Grant of certain lands to Gallaudet College.

(a) As used in this section and section 31-1034, the term "Institution" means the Columbia Institution for the Instruction of the Deaf and Dumb (also known as Columbia Institution for the Deaf and Dumb and, later, as the Columbia Institution for the Deaf), which was continued as a body corporate under the name of Gallaudet College by sections 31-1025 to 31-1032.

(b) All property conveyed by the Institution to the United States, as trustee, pursuant to certain provisos under the heading "Columbia Institution for the Deaf and Dumb" in the Act of June 10, 1872, Forty-second Congress, second session (17 Stat. L. 347, at 360), by deed dated June 20, 1872, and recorded in liber 752, folio 272, of the land records for the District of Columbia, and all property otherwise made subject to such deed of trust, is hereby given, granted, remised, released, and quitclaimed unto Gallaudet College, free and clear of any trust, lien, encumbrance, or indebtedness arising out of said deed or under the said Act of June 10, 1872, and the college is forever discharged from the obligation of repayment, to the United States, of the sum referred to in said Act and in said deed, or in any note or other evidence of indebtedness executed in connection therewith. (Sept. 13, 1960, 74 Stat. 916, Pub. L. 86-776, § 1.)

REPEAL OF INCONSISTENT PROVISIONS

Section 5 of act Sept. 13, 1960, provided that all acts in conflict with such act Sept. 13, 1960, are repealed.

§ 31-1034. Same—Deed and other evidence of indebtedness to be cancelled and returned to Gallaudet College.

The said deed, and any note or other evidence of indebtedness executed in connection therewith, and all original papers with respect thereto, shall be delivered by the Administrator of General Services (or any other officer of the United States having custody thereof) to the Secretary of Health, Education, and Welfare (or his designee) and shall by the Secretary (or his designee) be canceled and returned to Gallaudet College for its historical records. (Sept. 13, 1960, 74 Stat. 917, Pub. L. 86-776, § 2.)

Chapter 11.—MISCELLANEOUS**Sec.**

31-1101. Whole school-day sessions to be given.

31-1102. Compulsory vaccination against smallpox.

31-1103. Service in high school cadets compulsory—Excuse.

31-1104. School officials not to profit on supplies or textbooks purchased for schools.

31-1105. Janitors to do minor repair work—Selection.

Sec.

- 31-1106. Names of certain schools changed.
- 31-1107. John A. Chamberlain Vocational School.
- 31-1108. Title and jurisdiction over Reservation 277-F transferred for school purposes—Authority to close streets and alleys.
- 31-1109. Board of Education may accept and apply donations for colored schools—Accounting.
- 31-1110. Education of colored children.
- 31-1111. Placement of children in schools.
- 31-1112. Proportionate amount of school moneys to be set apart for colored schools.
- 31-1113. Facilities for educating colored children to be provided.
- 31-1114. Education of children of veterans who lost lives during war—Appropriation authorized.
- 31-1115. Bond not required for supplies issued by Department of the Army.
- 31-1116. School cadets—Issuance of arms—Insurance.
- 31-1117. Solicitation of donations from pupils—Authorization by Board of Education required.

§ 31-1101. Whole school-day sessions to be given.

All children of school age being instructed in the schools of the District beyond the second grade shall be given a whole school-day session. (June 20, 1906, 34 Stat. 316, ch. 3446, § 1.)

§ 31-1102. Compulsory vaccination against smallpox.

No child shall be admitted into the public schools who shall not have been duly vaccinated or otherwise protected against the smallpox. (R. S., D. C., § 274.)

§ 31-1103. Service in high school cadets compulsory—Excuse.

Every male pupil in attendance at the high schools shall be admitted to and shall serve in the high school cadets unless excused from such service by the principal, on certificate of one of the medical inspectors of schools that he is physically disqualified for such service, or on the written request of his parent or guardian. (Mar. 2, 1907, 34 Stat. 1141, ch. 2510.)

CROSS REFERENCE

Bond or fire insurance not required on military equipment, see §§ 31-1115, 31-1116.

§ 31-1104. School officials not to profit on supplies or textbooks purchased for schools.

No school official, teacher, or member of the Board of Education shall receive any pecuniary benefit on account of school supplies or textbooks purchased for the use of the public schools in the District of Columbia. (Aug. 7, 1894, 28 Stat. 254, ch. 232.)

CROSS REFERENCE

Purchase of school books and supplies, see § 31-401 et seq.

§ 31-1105. Janitors to do minor repair work—Selection.

The janitors of the principal school buildings, in addition to their other duties, shall do all minor repairs to buildings and furniture, glazing, fixing seats and desks, and take care of the heating apparatus, and shall be selected with reference to their qualifications to perform this work. (Feb. 25, 1885, 23 Stat. 318, ch. 145.)

CROSS REFERENCE

Control of construction and repair of school buildings, see § 31-803.

§ 31-1106. Names of certain schools changed.

The school formerly known as the M Street High School (old) shall be known as Robert Gould Shaw Junior High School.

The school formerly known as Central High School (old) and annex shall be known as Columbia Junior High School. (June 29, 1922, 42 Stat. 689, ch. 249.)

§ 31-1107. John A. Chamberlain Vocational School.

The new school building built to replace the Lenox Vocational School shall, when occupied, be known as the John A. Chamberlain Vocational School. (July 15, 1939, 53 Stat. 1016, ch. 281, § 1.)

§ 31-1108. Title and jurisdiction over Reservation 277-F transferred for school purposes—Authority to close streets and alleys.

Title to and jurisdiction over reservation 277-F, being part of square 3526, are transferred to the District of Columbia, the said reservation to be included in the site acquired or to be acquired for the McKinley Technical High School; and the commissioners of the District of Columbia are hereby authorized and directed to close all streets and alleys in the area acquired or to be acquired for the McKinley Technical High School and the Langley Junior High School buildings and grounds, where title to the property on both sides of any such streets or alleys shall be in the District of Columbia, the title to the land in such streets or alleys so closed to revert to the District of Columbia for school purposes. (Mar. 4, 1925, 43 Stat. 1320, ch. 556.)

CROSS REFERENCES

Abandonment or readjustment of street and highways to provide land for schools, see § 7-113.

Certain streets closed or abandoned, see § 7-123.

§ 31-1109. Board of Education may accept and apply donations for colored schools—Accounting.

The Board of Education is authorized to receive any donations or contributions that may be made for the benefit of the schools for colored children by persons disposed to aid in the elevation of the colored population in the District, and to apply the same in such manner as in their opinion shall be best calculated to effect the object of the donors; the board of education to account for all funds so received. (R. S., D. C., § 283; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

§ 31-1110. Education of colored children.

It shall be the duty of the Board of Education to provide suitable and convenient houses or rooms for holding schools for colored children, to employ and examine teachers therefor, and to appropriate a proportion of the school funds, to be determined upon number of white and colored children, between the ages of 6 and 17 years, to the payment of teachers' wages, to the building or renting of schoolrooms, and other necessary expenses pertaining to said schools, to exercise a general supervision over them, to establish proper discipline, and to endeavor to promote a thorough, equitable and practical education of colored children in the District of Columbia. (R. S., D. C. § 281; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

AMENDMENTS

1906—Act June 20, 1906, gave control of the public schools of the District to the Board of Education.

1878—Act June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

CROSS REFERENCES

Compulsory school attendance, see § 31-201 et seq.
General powers and duties of Board of Education, see § 31-103.

§ 31-1111. Placement of children in schools.

Any white resident shall be privileged to place his or her child or ward at any one of the schools provided for the education of white children in the District of Columbia he or she may think proper to select, with the consent of the Board of Education; and any colored resident shall have the same rights with respect to colored schools. (R. S., D. C. § 282; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

AMENDMENTS

1906—Act June 20, 1906, gave control of the public schools of the District to the Board of Education.

1878—Act June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

§ 31-1112. Proportionate amount of school moneys to be set apart for colored schools.

It shall be the duty of the proper authorities of the District to set apart each year from the whole fund received from all sources by such authorities applicable to purposes of public education in the District of Columbia, such a proportionate part of all moneys received or expended for school or educational purposes, including the cost of sites, buildings, improvements, furniture and books, and all other expenditures on account of schools, as the colored children between the ages of 6 and 17 years bear to the whole number of children, white and colored, between the same ages, for the purpose of establishing and sustaining public schools for the education of colored children; and such proportion shall be ascertained by the last reported census of the population made prior to such apportionment, and shall be regulated at all times thereby. (R. S., D. C., § 306; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

AMENDMENTS

1906—Act June 20, 1906, gave control of the public schools of the District to the Board of Education.

1878—Act June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

§ 31-1113. Facilities for educating colored children to be provided.

It is the duty of the Board of Education to provide suitable rooms and teachers for such a number of schools in the District of Columbia as, in its opinion, will best accommodate the colored children in the District of Columbia. (R. S., D. C., § 310; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

AMENDMENTS

1906—Act June 20, 1906, gave control of the public schools of the District to the Board of Education.

1878—Act June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

§ 31-1114. Education of children of veterans who lost lives during war—Appropriation authorized.

CODIFICATION

Section, act June 19, 1934, 48 Stat. 1125, ch. 671, authorized an annual appropriation of \$3,600 for fiscal years

1935 to 1943, inclusive, to aid in the education of children of World War I veterans who lost their lives during the War.

§ 31-1115. Bond not required for supplies issued by Department of the Army.

A bond shall not be required on account of military supplies or equipment issued by the Department of the Army for military instruction and practice by the students of high schools in the District of Columbia. (July 15, 1939, 53 Stat. 1015, ch. 281, § 1; June 12, 1940, 54 Stat. 317, ch. 333, § 1.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 31-1116. School cadets—Issuance of arms—Insurance.

Arms authorized to be issued by the Department of the Army to high school cadets of the District of Columbia shall hereafter be issued without requiring that the same shall be insured from loss by fire. (April 27, 1904, 33 Stat. 379, ch. 1628.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 31-1117. Solicitation of donations from pupils—Authorization by Board of Education required.

No part of any appropriation for the District of Columbia shall be paid to any person employed under or in connection with the public schools of the District of Columbia who shall solicit or receive, or permit to be solicited or received, on any public-school premises, any subscription or donation of money or other thing of value from any pupil enrolled in such public schools for presentation of testimonials to school officials or for any purpose except such as may be authorized by the Board of Education at a stated meeting upon the written recommendation of the Superintendent of Schools. (July 1, 1943, 57 Stat. 324, ch. 184, § 1.)

Chapter 12.—AVIATION EDUCATION IN HIGH SCHOOLS

Sec.

- 31-1201. Aviation education in high-school curricula.
- 31-1202. Teachers of aeronautics.
- 31-1203. Free textbooks, maps, and supplies.
- 31-1204. Annual estimates of expenses.

§ 31-1201. Aviation education in high-school curricula.

The Board of Education is hereby authorized and directed to establish and to include in the curricula of the senior high schools of the District of Columbia, as an additional optional course, a course in aeronautics, which shall include instruction in

aerodynamics, the theory of flight, the airplane and its engine, mechanics, engineering, meteorology, practical air navigation, map reading, and such other allied subjects as the Board in its discretion may deem it advisable to prescribe. Such course shall be first offered during the high-school term beginning in 1942. Thereafter such additional courses in aeronautics may be added as deemed desirable by the Board of Education. The same credit toward graduation may be given for said course as is given for other optional courses in said schools. (Dec. 16, 1941, 55 Stat. 806, ch. 585, § 1.)

§ 31-1202. Teachers of aeronautics.

The Board is further authorized to employ a sufficient number of teachers of aeronautics, not to exceed six, adequately to instruct those pupils who elect to pursue the said course, at the salary rates authorized for teachers in the senior high schools. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 2.)

§ 31-1203. Free textbooks, maps, and supplies.

The Board shall provide the pupils of the senior high schools, free of charge, with the use of all aeronautical textbooks, maps, and other necessary educational supplies required for said course. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 3.)

§ 31-1204. Annual estimates of expenses.

The Board shall on and after December 16, 1941, include in its annual estimates of money required for the public schools of the District of Columbia for the ensuing year an amount sufficient to defray the expenses herein authorized. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 5.)

APPROPRIATION

Section 4 of act Dec. 16, 1941, provided that: "There is hereby authorized to be appropriated a sum not to exceed \$16,000 in order to carry out the purposes of this act [this chapter]."

Chapter 13.—EDUCATIONAL AGENCY FOR SURPLUS PROPERTY

Sec.

31-1301. Educational Agency for Surplus Property established—Functions and duties.

31-1302. Working capital fund provided—Rules and regulations of Agency.

31-1303. Termination of Agency.

§ 31-1301. Educational Agency for Surplus Property established—Functions and duties.

There is hereby established in the municipal government of the District of Columbia the District of Columbia Educational Agency for Surplus Property, hereinafter referred to as the "Agency", which shall under the direction of the Commissioners of the District of Columbia carry out in the District of Columbia the State functions contemplated by section 484 (j) and (k) of title 40, U.S. Code, and such other duties relating to the distribution of surplus property, or other functions, as the Commissioners may in their discretion assign to such Agency, and for the purposes of section 484 (j), the District of Columbia shall be deemed to be a State. The Commissioners are authorized to appoint a director for such Agency and such other personnel as may be necessary with compensation to be fixed in

accordance with the Classification Act of 1923, as amended. The Commissioners are also authorized to appoint an advisory board for such Agency to be composed of not more than ten members: *Provided*, That the membership of such board shall include representatives of the tax-supported, tax-exempt, and nonprofit educational institutions in the District of Columbia: *And provided further*, That the members of such advisory board shall serve without compensation and at the pleasure of the Commissioners. Such advisory board may submit reports and recommendations to the Commissioners as well as to the Agency. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 1.)

REFERENCES IN TEXT

Classification Act of 1949, as amended (classified to U.S. Code, title 5, ch. 21), deemed referred to whenever the Classification Act of 1923, as amended, is referred to in any other law, see act Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a), set out as a note under U.S. Code, title 5, § 1071.

TRANSFER OF FUNCTIONS

All functions of the District of Columbia Educational Agency for Surplus Property including the functions of all officers, employees and subordinate agencies were transferred to Director Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952. Reorganization Order No. 18 abolished the District of Columbia Educational Agency for Surplus Property and transferred its functions to the Administrative Services Office created in the Department of General Administration by that order. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and the plan are set out in the appendix to Title 1.

§ 31-1302. Working capital fund provided—Rules and regulations of Agency.

There is hereby authorized to be appropriated from any money in the Treasury to the credit of the District of Columbia not exceeding \$15,000 as a working capital fund for the operation of the Agency, which fund shall be used as a permanent revolving fund for all necessary expenses of such Agency. There shall be deposited to the credit of such fund such amounts as may be appropriated pursuant to this chapter, together with such amounts as the respective branches of the government of the District of Columbia and the private educational institutions authorized by law to participate in the distribution of surplus property shall pay as fees for services rendered by the Agency. The Commissioners are authorized to promulgate rules and regulations governing the manner in which the Agency shall carry out its duties, including the fixing of reasonable fees to be charged for its services. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 2.)

TRANSFER OF FUNCTIONS

Status of District of Columbia Educational Agency for Surplus Property, see note under section 31-1301.

§ 31-1303. Termination of Agency.

The authority of the Agency and of the Advisory Board shall terminate upon direction of the Commissioners of the District of Columbia and in any event no later than the repeal of section 484 (j) and (k) of title 40, U.S. Code. Upon such termination, the assets of the Agency shall be disposed of as the Commissioners may direct. (Aug. 16, 1950, 64 Stat. 451, ch. 720, § 3.)

TRANSFER OF FUNCTIONS

Status of District of Columbia Educational Agency for Surplus Property, see note under section 31-1301.

Chapter 14.—PUBLIC SCHOOL FOOD SERVICES

Sec.

31-1401. Department of food services—Establishment—Direction and control by Board of Education—Program.

31-1402. Powers of the Board.

31-1403. Service credit for retirement—Deposits.

31-1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.

31-1405. Appropriation authorized for maintenance and replacement of equipment and reimbursement of District Public School Food Services Fund—Conditions.

31-1406. Payment and deposit of cafeteria and lunchroom funds—Transfer of supplies and equipment—Time limitation—Payment of obligations after transfer.

31-1407. School-lunch program—Entitlement to funds under National School Lunch Act.

31-1408. Audits of accounts—Reports to Commissioners.

31-1409. Distribution of commodities.

31-1410. Appropriations in connection with distribution of commodities.

§ 31-1401. Department of food services—Establishment—Direction and control by Board of Education—Program.

There is hereby created in the public schools of the District of Columbia a Department of Food Services, which Department, under the direction and control of the Board of Education of the District of Columbia, hereinafter referred to as the "Board", is hereby authorized to conduct a centralized system of public school cafeterias, lunchrooms, and related services, hereinafter referred to as "food services". (Oct. 8, 1951, 65 Stat. 367, ch. 448, title I, § 1.)

SHORT TITLE

Section 10 of act Oct. 8, 1951, provided that: "This title [sections 31-1401 to 31-1408] may be cited as the 'District of Columbia Public School Food Service Act'."

§ 31-1402. Powers of the Board.

For carrying out the purposes of this chapter, the Board is empowered—

(a) to establish in the Department of Food Services an Office of Central Management consisting of a Director and Assistant Directors of Food Services, whose compensation shall be fixed in accordance with the District of Columbia Teachers' Salary Act of 1947, as amended;

(b) to make and enforce such rules and regulations as it deems necessary for the government of the Department of Food Services and for the use and enjoyment of the facilities and services of such department;

(c) upon the written recommendation of the Superintendent of Schools, to employ such personnel as may be required to manage cafeterias, lunchrooms, and related services and to conduct the Office of Central Management. The compensation of such personnel, other than the Director and Assistant Directors of Food Services, shall be fixed in accordance with the Classification Act of 1949: *Provided*, That the salaries of persons employed to manage cafeterias, lunchrooms, and related services shall be

paid in stallments and computed in accordance with the provisions of sections 31-609 and 31-630: *And provided further*, That such persons shall not be entitled to leave with pay of any kind except that which is allowed teachers under the District of Columbia Teachers' Leave Act of 1949;

(d) upon the written recommendation of the Superintendent of Schools, to employ on a full-time or part-time basis such personnel as may be required for the operation and maintenance of food services at rates of pay to be fixed by said Board without reference to the Classification Act of 1949 and with respect to part-time employees without regard to prohibitions or limitations relating to dual compensation as contained in any Act of Congress. Persons employed under the provisions of this paragraph shall be entitled to compensation for all time when and as they perform service, and, in addition thereto, shall be entitled to compensation for such holidays as fall within a regular tour of duty of not less than five days in any established workweek. Persons employed under this paragraph shall not be entitled, by reason of such service, to vacation or annual leave with pay. Notwithstanding the provisions of any other law, such persons shall be entitled to sick leave with pay, to be cumulative at the rate of one day a month, September to June, inclusive, of each year, the total cumulation not to exceed thirty days, to be granted under such conditions as the Board may by regulation prescribe: *Provided*, That as to part-time employees such leave shall be prorated on an hourly basis. The days of sick leave with pay provided for in this section shall mean days on which employees would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board;

(e) upon the written recommendation of the Superintendent of Schools, to accept for the benefit of the program of food services gifts of money which shall be deposited in the fund created by section 31-659¹, and of personal property and volunteer personal service. (Oct. 8, 1951, 65 Stat. 367, ch. 448, title I, § 2.)

REFERENCES IN TEXT

The District of Columbia Teachers' Salary Act of 1947, as amended, referred to in subsec. (a), refers to act July 7, 1947, 61 Stat. 250, ch. 208, as amended, which was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by District of Columbia Teachers' Salary Act of 1955, set out as chapter 15 of this title.

The Classification Act of 1949, referred to in subsecs. (c) and (d), is classified to U.S. Code, title 5, chapter 21.

The District of Columbia Teachers' Leave Act of 1949, referred to in subsec. (c), is classified to sections 31-691 to 31-697.

§ 31-1403. Service credit for retirement—Deposits.

Service rendered by any person for salary or wages as an employee of any cafeteria or lunchroom operated in the public school buildings of the District during any period prior to the date when such cafeteria or lunchroom is placed under the office of central management shall, if and when such person

¹ So in original. Probably should read section 31-1404.

becomes an employee of the Department of Food Services, be deemed to be service rendered for the government of the District of Columbia for purposes of the Civil Service Retirement Act, approved May 29, 1930, as amended, to be computed in accordance with section 5 of such Act: *Provided*, That such person shall make deposits covering such service as provided in section 9 of such Act: *And provided further*, That any such person may elect to make such deposits in installments in accordance with the provisions of section 9 of such Act. (Oct. 8, 1951, 65 Stat. 368, ch. 448, title I, § 3.)

REFERENCES IN TEXT

The Civil Service Retirement Act, approved May 29, 1930, as amended, referred to in the text, was redesignated the Civil Service Retirement Act by act May 29, 1930, ch. 349, § 18, as renumbered and amended by act July 31, 1956, 70 Stat. 760, ch. 804, title IV, § 401 and is classified to U.S. Code, title 5, ch. 30.

Sections 5 and 9 of such Act, referred to in the text, are references to such sections of the Civil Service Retirement Act, approved May 29, 1930, as amended, but prior to the renumbering and amendment by act July 31, 1956. The subject matter of the sections appears in sections 3 and 4 of act May 29, 1930, as renumbered and amended by act July 31, 1956, which are classified to U.S. Code, title 5, §§ 2253, 2254.

REPEAL AND REVIVAL

Section was revived and act Oct. 25, 1951, 65 Stat. 637, ch. 560, § 3 (which had repealed the section effective Oct. 8, 1951) was repealed by act Aug. 5, 1955, 69 Stat. 536, ch. 575, § 1, effective Oct. 8, 1951.

§ 31-1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.

There is hereby created in the Treasury of the United States a fund to be known as "District of Columbia Public School Food Services Fund", hereinafter referred to as the "Food Services Fund", and there is authorized to be appropriated, out of the revenues of the District of Columbia, \$25,000 which shall be credited to the Food Services Fund. All revenues and receipts of any nature whatever derived from the operation of food services, or as provided otherwise by this chapter, shall, under regulations of the Board, be paid over to the Collector of Taxes of the District of Columbia not less often than once each week and by him deposited in the Treasury of the United States to the credit of the Food Services Fund. Such fund shall be used as a permanent revolving fund and expenditures therefrom shall be made only upon vouchers certified by the Superintendent of Schools or his designated agent and approved before payment by the auditor of the District of Columbia, and shall be disbursed in the same manner as other District of Columbia funds are disbursed. The Food Services Fund shall be available for the purchase of foods, supplies, and all other services and expenditures of whatever nature which are necessary for the conduct of the Department of Food Services, including personal services, the operation and maintenance of motor trucks, and the expenses of conducting the Office of Central Management. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 5.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952.

The function of approving vouchers before payment as described in the foregoing section was transferred from the Auditor of the District of Columbia to the Accounting officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated November 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to title 1, Administration.

§ 31-1405. Appropriation authorized for maintenance and replacement of equipment and reimbursement of District Public School Food Services Fund—Conditions.

Appropriations are hereby authorized for the acquisition, maintenance and replacement of equipment used or acquired for use in the conduct of the Department of Food Services in the public schools of the District of Columbia and for reimbursement of the District of Columbia Public School Food Services Fund for lunches served in accordance with section 1758 of title 42, U. S. Code, to children without cost to such children or at reduced cost: *Provided*, That such reimbursement shall be made only in cases where such lunches are served to children of families who are recipients of public assistance granted by the government of the District of Columbia. The rate of such reimbursement for such lunches served by the public schools in the District of Columbia shall be the student price of "Type A Lunch" in effect at the time such lunches are served. As used in this section the term "Type A Lunch" means a Type A Lunch as defined in regulations promulgated by the Secretary of Agriculture pursuant to authority in the National School Lunch Act. Appropriations authorized by this section shall be available for reimbursement of the Food Service Fund in the amount of any agency contributions paid out of such Fund pursuant to the provisions of section 2254(a) of title 5, U. S. Code. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 6; Sept. 2, 1958, 72 Stat. 1735, Pub. L. 85-901, § 1.)

REFERENCES IN TEXT

The National School Lunch Act, referred to in the text, is classified to U.S. Code, title 42, ch. 13.

AMENDMENT

1958—Act Sept. 2, 1958, added provisions relating to reimbursement for school lunches.

§ 31-1406. Payment and deposit of cafeteria and lunchroom funds—Transfer of supplies and equipment—Time limitation—Payment of obligations after transfer.

(a) All funds, whether in cash or other form, in the custody or possession of the person or persons operating cafeterias and lunchrooms in public school buildings of the District of Columbia which funds have been derived from such operations shall, on the date such cafeterias and lunchrooms are placed under the Office of Central Management, be paid to the Collector of Taxes, District of Columbia, and

deposited by him in the Treasury of the United States to the credit of the Food Services Fund, and all supplies and equipment of whatever nature acquired for use in such cafeterias and lunchrooms shall, by the person or persons having custody or possession of such supplies and equipment, be returned or transferred to the Board of Education, together with all books and records pertaining to the same: *Provided*, That the Board of Education shall place all such cafeterias and lunchrooms under the Office of Central Management not more than one year after the Department of Food Services is established by said Board.

(b) All obligations incurred for food, supplies, and equipment used or usable in the conduct of cafeterias and lunchrooms unsatisfied on the day the respective cafeterias and lunchrooms are placed under the Office of Central Management, shall be paid from the Food Services Fund. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 7.)

§ 31-1407. School-lunch program—Entitlement to funds under National School Lunch Act.

Insofar as the Board shall conduct a school-lunch program under the authority of sections 31-1401 to 31-1408, it shall be considered a "school" within the meaning of the National School Lunch Act, and all funds to which it may thus become entitled as a participating school under the National School Lunch Act shall be deposited in the fund created by section 31-1404. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title I, § 8.)

REFERENCES IN TEXT

The National School Lunch Act, referred to in the text, is classified to U.S. Code, title 42, ch. 13.

§ 31-1408. Audits of accounts—Reports to Commissioners.

It shall be the duty of the auditor of the District of Columbia to audit at least quarterly the accounts of the Department of Food Services and make reports thereof to the Commissioners of the District of Columbia. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title I, § 9.)

§ 31-1409. Distribution of commodities.

The Board of Education of the District of Columbia is authorized (a) to enter into a contract or contracts from time to time with the United States Department of Agriculture for the distribution to schools and to public and charitable institutions of commodities made available by said Department, and (b) to carry out, under regulations of the said Board, a program or programs of furnishing milk to school children in the District, including the purchase and distribution of milk under agreement with the United States Department of Agriculture: *Provided*, That all moneys collected under such program or programs shall be paid to the Collector of Taxes of the District of Columbia for deposit into the Treasury of the United States to the credit of the District. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title II, § 201.)

§ 31-1410. Appropriations in connection with distribution of commodities.

Appropriations are hereby authorized to enable the Board of Education to carry out the contracts and programs authorized by section 31-1409. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title II, § 202.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952 and effective September 2, 1952. The function of the quarterly audit and report to the Commissioners of the accounts of the Department of Food Services of the public schools of the District of Columbia was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to title I, Administration.

Chapter 15.—SALARIES OF TEACHERS, SCHOOL OFFICERS AND OTHER EMPLOYEES

SUBCHAPTER I.—SALARY SCHEDULES

Sec.

- 31-1501. Salaries of teachers, school officers and other employees—Service steps.
- 31-1502. 1960 increase in salaries.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

- 31-1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.
- 31-1512. Probationary period.

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

- 31-1521. Rules for assignment to salary classes—Comparative tables.
- 31-1522. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters.

SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

- 31-1531. Method of assignment to service steps—Promotion of employees.
- 31-1532. Assignment of new employees to service steps—Evaluation of past experience—Absence because of military or naval service.
- 31-1533. Salary increases of probationary employees—Termination of employment.
- 31-1534. Temporary employees—Assignment, salaries and termination of employment.
- 31-1535. Effective date of promotions to group B and C—Assignment to numerical service steps.
- 31-1536. Promotions—Assignment to numerical service step.

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

- 31-1541. Employment of retired members of armed services.
- 31-1542. Evening, summer, and Americanization schools—Salaries.
- 31-1543. Classification of certain employees as teachers.
- 31-1544. Authority of Board to regulate vacation period and annual leave applicable to certain employees.

Sec.

31-1545. Sick and emergency leave provisions applicable to certain employees.

31-1546. Sabbatical leave provisions applicable to certain employees.

31-1547. Foreign teacher exchange program applicable to certain employees.

31-1548. Teacher retirement provisions applicable to certain employees.

SUBCHAPTER I.—SALARY SCHEDULES

§ 31-1501. Salaries of teachers, school officers and other employees—Service steps.

The following are the salary schedules for teachers, school officers, and certain other employees of the Board of Education of the District of Columbia whose positions are included therein:

Salary class and position	Service step 1 (mini- mum)	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7	Service step 8	Service step 9	Service step 10	Service step 11	Service step 12	Service step 13
Class 1: Superintendent.	\$19,000												
Class 2: Deputy superintendent.	14,200	\$14,425	\$14,650	\$14,875	\$15,100	\$15,325	\$15,550	\$15,775	\$16,000				
Class 3: Assistant superintendent; president, teachers college.	12,400	12,625	12,850	13,075	13,300	13,525	13,750	13,975	14,200				
Class 4: Dean, teachers college.	11,300	11,525	11,750	11,975	12,200	12,425	12,650	12,875	13,100				
Class 5:													
Group B, master's degree.	9,900	10,125	10,350	10,575	10,800	11,025	11,250	11,475	11,700				
Group C, master's degree plus 30 credit hours.	10,100	10,325	10,550	10,775	11,000	11,225	11,450	11,675	11,900				
Dean of students, teachers college.													
Executive assistant to superin- tendent, Psychiatrist.													
Class 6:													
Group A, bachelor's degree.	9,100	9,325	9,550	9,775	10,000	10,225	10,450	10,675	10,900				
Group B, master's degree.	9,600	9,825	10,050	10,275	10,500	10,725	10,950	11,175	11,400				
Group C, master's degree plus 30 credit hours.	9,800	10,025	10,250	10,475	10,700	10,925	11,150	11,375	11,600				
Director, Department of Food services.													
Class 7:													
Group B, master's degree.	8,800	9,025	9,250	9,475	9,700	9,925	10,150	10,375	10,600				
Group C, master's degree plus 30 credit hours.	9,000	9,225	9,450	9,675	9,900	10,125	10,350	10,575	10,800				
Administrative assistant to deputy superintendent. Director. Principal, senior high school. Chief examiner. Registrar, teachers college. Principal, Vocational High School.													
Class 8:													
Group B, master's degree.	8,500	8,725	8,950	9,175	9,400	9,625	9,850	10,075	10,300				
Group C, master's degree plus 30 credit hours.	8,700	8,925	9,150	9,375	9,600	9,825	10,050	10,275	10,500				
Professor, teachers college. Principal, junior high school. Principal, Americanization school. Supervising director.													
Class 9:													
Group B, master's degree.	8,100	8,325	8,550	8,775	9,000	9,225	9,450	9,675	9,900				
Group C, master's degree plus 30 credit hours.	8,300	8,525	8,750	8,975	9,200	9,425	9,650	9,875	10,100				
Director, Department of School Attendance and Work Per- mits. Principal, elementary school. Principal, Capitol Page School.													
Class 10:													
Group B, master's degree.	8,000	8,225	8,450	8,675	8,900	9,125	9,350	9,575	9,800				
Group C, master's degree plus 30 credit hours.	8,200	8,425	8,650	8,875	9,100	9,325	9,550	9,775	10,000				
Assistant principal, senior high school. Assistant principal, vocational high school.													
Class 11:													
Group A, bachelor's degree.	7,300	7,525	7,750	7,975	8,200	8,425	8,650	8,875	9,100				
Group B, master's degree.	7,800	8,025	8,250	8,475	8,700	8,925	9,150	9,375	9,600				
Group C, master's degree plus 30 credit hours.	8,000	8,225	8,450	8,675	8,900	9,125	9,350	9,575	9,800				
Assistant Director, Depart- ment of Food Services.													
Class 12:													
Group B, master's degree.	7,700	7,925	8,150	8,375	8,600	8,825	9,050	9,275	9,500				
Group C, master's degree plus 30 credit hours.	7,900	8,125	8,350	8,575	8,800	9,025	9,250	9,475	9,700				
Assistant principal, junior high school. Assistant principal, Americani- zation school.													
Class 13:													
Group B, master's degree.	7,400	7,625	7,850	8,075	8,300	8,525	8,750	8,975	9,200				
Group C, master's degree plus 30 credit hours.	7,600	7,825	8,050	8,275	8,500	8,725	8,950	9,175	9,400				
Associate professor, teachers college.													
Class 14:													
Group B, master's degree.	7,300	7,525	7,750	7,975	8,200	8,425	8,650	8,875	9,100				
Group C, master's degree plus 30 credit hours.	7,500	7,725	7,950	8,175	8,400	8,625	8,850	9,075	9,300				
Assistant principal, elementary school.													
Class 15:													
Group B, master's degree.	7,100	7,325	7,550	7,775	8,000	8,225	8,450	8,675	8,900				
Group C, master's degree plus 30 credit hours.	7,300	7,525	7,750	7,975	8,200	8,425	8,650	8,875	9,100				
Assistant director. Statistician.													

Salary class and position	Service step 1 (mini- mum)	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Service step 7	Service step 8	Service step 9	Service step 10	Service step 11	Service step 12	Service step 13
Class 16:													
Group B, master's degree.....	\$6,400	\$6,625	\$6,850	\$7,075	\$7,300	\$7,525	\$7,750	\$7,975	\$8,200				
Group C, master's degree plus 30 credit hours.....	6,600	6,825	7,050	7,275	7,500	7,725	7,950	8,175	8,400				
Assistant professor, teachers college.													
Chief librarian, teachers college.													
Assistant.													
Supervisor.													
Chief attendance officer.													
Clinical psychologist.													
Class 17:													
Group B, master's degree.....	5,700	5,925	6,150	6,375	6,600	6,825	7,050	7,275	7,500				
Group C, master's degree plus 30 credit hours.....	5,900	6,125	6,350	6,575	6,800	7,025	7,250	7,475	7,700				
Psychiatric social worker.													
Class 18:													
Group A, bachelor's degree.....	4,800	4,675	4,850	5,025	5,200	5,375	5,550	5,725	5,900	\$6,075	\$6,250	\$6,425	\$6,600
Group B, master's degree.....	5,300	5,175	5,350	5,525	5,700	5,875	6,050	6,225	6,400	6,575	6,750	6,925	7,100
Group C, master's degree plus 30 credit hours.....	5,500	5,375	5,550	5,725	5,900	6,075	6,250	6,425	6,600	6,775	6,950	7,125	7,300
Attendance officer.													
Census supervisor.													
Child labor inspector.													
Counselor.													
Instructor, teachers college.													
Librarian.													
Research assistant.													
School psychologist.													
School social worker.													
Teacher, elementary and sec- ondary schools.													

(Aug. 5, 1955, 69 Stat. 521, ch. 569, title I, § 1; July 25, 1958, 72 Stat. 414, Pub. L. 85-552, § 1; Aug. 28, 1958, 72 Stat. 1004, Pub. L. 85-838, § 1; Sept. 13, 1960, 74 Stat. 913, Pub. L. 86-773, § 1.)

AMENDMENTS

1960—Act Sept. 13, 1960, substituted “4,800”, “5,300”, and “5,500” for “4,500”, “5,000”, and “5,200” in step 1 of Class 18.

1958—Act Aug. 28, 1958, amended the salary schedule of teachers, school officers and other employees of the Board of Education as follows:

Class 1, provisions reenacted;

Class 2, compensation increased by substituting in the schedule service steps 1 to 9 (\$14,200 to \$16,000) reflecting \$225 step increments for service steps 1 to 7 (\$11,700 to \$13,500) reflecting \$300 step increments;

Class 3, compensation increased by substituting in the schedule service steps 1 to 9 (\$12,400 to \$14,200) reflecting \$225 step increments for service steps 1 to 7 (\$10,000 to \$11,900) reflecting \$300 step increments;

Class 4, provisions added; former Class 4 (position undesignated) provided for service steps 1 to 9 (\$9,500 to \$11,100) reflecting \$200 step increments;

Class 5, provisions added; former Class 5 (position undesignated) provided for service steps 1 to 9 (group B, master's degree, \$8,600 to \$10,200), (group C, master's degree plus 30 credit hours, \$8,800 to \$10,400) reflecting \$200 step increments;

Class 6, compensation increased by substituting in the schedule service steps 1 to 9 (group A, bachelor's degree, \$9,100 to \$10,900), (group B, master's degree, \$9,600 to \$11,400), (group C, master's degree plus 30 credit hours, \$9,800 to \$11,600) reflecting \$225 step increments for service steps 1 to 9 (group A, bachelor's degree, \$7,700 to \$9,300), (group B, master's degree, \$8,200 to \$9,800), (group C, master's degree plus 30 credit hours, \$8,400 to \$10,000) reflecting \$200 step increments;

Class 7, administrative assistant to deputy superintendent and registrar, teacher's college, added to the list of positions and principal, Vocational High School, reclassified to this Class from former Class 9, compensation increased by substituting in the schedule service steps 1 to 9 (group B, master's degree, \$8,800 to \$10,600), (group C, master's degree plus 30 credit hours, \$9,000 to \$10,800) reflecting \$225 step increments for service steps 1 to 9 (group B, master's degree, \$7,700 to \$9,300), (group C, master's degree plus 30 credit hours, \$7,900 to \$9,500) reflecting \$200 step increments; compensation of principal, Vocational High School, in former Class 9, service steps 1 to 9, was for group B, master's degree, \$7,200 to \$8,300 and for group C, master's degree plus 30 credit hours, \$7,400 to \$9,000, reflecting \$200 step increments;

Class 8, principal, junior high school, and principal, Americanization school, reclassified from former Class 9 and supervising director from former Class 10 to this Class, compensation increased by substituting in the schedule service steps 1 to 9 (group B, master's degree, \$8,500 to \$10,300), (group C, master's degree plus 30 credit hours, \$8,700 to \$10,500) reflecting \$225 step increments for service steps 1 to 9 \$7,700 to \$9,300 reflecting \$200 step increments; compensation of principal, junior high school, and principal, Americanization school, in former Class 9, service steps 1 to 9, was for group B, master's degree, \$7,200 to \$8,800 and for group C, master's degree plus 30 credit hours, \$7,400 to \$9,000 and of supervising director in former Class 10, service steps 1 to 9, for group B, master's degree, \$6,800 to \$8,400 and for group C, master's degree plus 30 credit hours, \$7,000 to \$8,600, reflecting \$200 step increments;

Class 9, Director, department of school attendance and work permits, and principal, elementary school, reclassified from former Class 10 and principal, Capitol Page School, from former Class 13 to this Class; compensation of director, department of school attendance and work permits, and principal, elementary school, in former Class 10, service steps 1 to 9, was for group B, master's degree, \$6,800 to \$8,400 and for group C, master's degree plus 30 credit hours, \$7,000 to \$8,600 and of principal, Capitol Page School in former Class 13, service steps 1 to 9, for group B, master's degree, \$6,100 to \$7,700 and for group C, master's degree plus 30 credit hours, \$6,300 to \$7,900, reflecting \$200 step increments; former Class 9, including in the list of positions principals, vocational high school, junior high school and Americanization school, provided for service steps 1 to 9 (group B, master's degree, \$7,200 to \$8,800), (group C, master's degree plus 30 credit hours, \$7,400 to \$9,000) reflecting \$200 step increments, is covered in Classes 7 and 8;

Class 10, assistant principals, senior high school and vocational high school, reclassified from former Classes 13 and 15, respectively, to this Class; compensation of assistant principal, senior high school, in former Class 13, service steps 1 to 9, was for group B, master's degree, \$6,100 to \$7,700 and for group C, master's degree, plus 30 credit hours, \$6,300 to \$7,900 and of assistant principal, vocational high school, in former Class 15, service steps 1 to 9, for group B, master's degree, \$5,900 to \$7,500 and for group C, master's degree plus 30 credit hours, \$6,100 to \$7,700, reflecting \$200 step increments; former Class 10, including in the list of positions director, department

of school attendance and work permits, supervising director, principal, elementary school, and principal, laboratory school, provided for service steps 1 to 9 (group B, master's degree \$6,800 to \$8,400), (group C, master's degree plus 30 credit hours, \$7,000 to \$8,600) reflecting \$200 step increments, and is covered in Classes 8 and 9, except for principal, laboratory school, omitted from specific enumeration;

Class 11, formerly Class 12, so redesignated and amended to increase compensation by substituting in the schedule service steps 1 to 9 (group A, bachelor's degree, \$7,300 to \$9,100), (group B, master's degree, \$7,800 to \$9,600), (group C, master's degree plus 30 credit hours, \$8,000 to \$9,800) reflecting \$225 step increments for service steps 1 to 9 (group A, bachelor's degree, \$6,300 to \$7,900), (group B, master's degree, \$6,800 to \$8,400), (group C, master's degree plus 30 credit hours, \$7,000 to \$8,600) reflecting \$200 step increments; former Class 11 (associate professor, teachers college) provided for service steps 1 to 9, \$6,800 to \$8,400, reflecting \$200 step increments, and is covered in Class 13;

Class 12, assistant principal, junior high school, reclassified from former Class 15, and assistant principal, Americanization school, added to this Class; compensation of assistant principal, junior high school, in former Class 15, service steps 1 to 9, was for group B, master's degree, \$5,900 to \$7,500 and for group C, master's degree plus 30 credit hours, \$6,100 to \$7,700 reflecting \$200 step increments; former Class 12 (assistant director, department of food services) provided for service steps 1 to 9 (group A, bachelor's degree, \$6,300 to \$7,900), (group B, master's degree, \$6,800 to \$8,400), (group C, master's degree plus 30 credit hours, \$7,000 to \$8,600) reflecting \$200 step increments and is covered in Class 11;

Class 13, associate professor, teachers college, reclassified from former Class 11; compensation of such position in former Class 11, service steps 1 to 9, had been \$6,800 to \$8,400, reflecting \$200 step increments; former Class 13, including in the list of positions assistant director, principal, Capitol Page School and assistant principal, senior high school, provided for service steps 1 to 9 (group B, master's degree, \$6,100 to \$7,700), (group C, master's degree plus 30 credit hours, \$6,300 to \$7,900) reflecting \$200 step increments, and is covered in Classes 9, 10, 15;

Class 14, provisions added; former Class 14 (assistant professor, teachers college, and chief librarian, teachers college) provided for service steps 1 to 9 (\$6,100 to \$7,700) reflecting \$200 step increments and is covered in Class 16;

Class 15, assistant director reclassified from former Class 13 and statistician added to this Class; compensation of assistant director in former Class 13, service steps 1 to 9, was for group B, master's degree, \$6,100 to \$7,700 and for group C, master's degree plus 30 credit hours, \$6,300 to \$7,900 reflecting \$200 step increments; former Class 15 (assistant principals, vocational high school and junior high school) provided for service steps 1 to 9 (group B, master's degree, \$5,900 to \$7,500), (group C, master's degree plus 30 credit hours, \$6,100 to \$7,700) reflecting \$200 step increments and is covered in Classes 10 and 12;

Class 16, assistant professor and chief librarian, teachers college reclassified from former Class 14 and assistant, supervisor and chief attendance officer from former Class 17 and clinical psychologist added to this Class; compensation of assistant professor and chief librarian, teachers college in former Class 14, service steps 1 to 9, was \$6,100 to \$7,700 and of assistant, supervisor and chief attendance officer in former Class 17, service steps 1 to 9, (group B, master's degree, \$5,400 to \$7,000), (group C, master's degree plus 30 credit hours, \$5,600 to \$7,200) reflecting \$200 step increments; former Class 16 (position undesignated) provided for service steps 1 to 9, (group B, master's degree, \$5,700 to \$7,300), (group C, master's degree plus 30 credit hours, \$5,900 to \$7,500) reflecting \$200 step increments;

Class 17, provisions added; former Class 17 (assistant, supervisor and chief attendance officer) provided for service steps 1 to 9 (group B, master's degree, \$5,400 to \$7,000), (group C, master's degree plus 30 credit hours, \$5,600 to \$7,200) reflecting \$200 step increments and is covered in Class 16;

Class 18, librarian inserted and librarian, teachers college and school librarian eliminated, elementary and secondary school teachers substituted for separate listing of senior high school, vocational high school, junior high school and elementary school teachers, attendance officer, census supervisor and child labor inspector reclassified from former Class 19 and school psychologist and school social worker added to this Class; compensation increased by substituting in the schedule service steps 1 to 13 (group A, bachelor's degree, \$4,500 to \$6,600), (group B, master's degree, \$5,000 to \$7,100), (group C, master's degree plus 30 credit hours, \$5,200 to \$7,300) reflecting \$175 step increments for service steps 1 to 13 (group A, \$3,900 to \$5,800), (group B, master's degree, \$4,400 to \$6,300), (group C, master's degree plus 30 credit hours, \$4,600 to \$6,500) reflecting \$160 step increments for all increases but last and a \$140 step increment for last increase; compensation of attendance officer, census supervisor and child labor inspector, in former Class 19, steps 1 to 13, was for group A, bachelor's degree, \$3,900 to \$5,800 and for group B, master's degree, \$4,400 to \$6,300, reflecting \$160 step increments for all increases but last and \$140 step increment for last increase;

Class 19, provisions for compensation of attendance officer, child labor inspector and census supervisor in service steps 1 to 13 (group A, bachelor's degree, \$3,900 to \$5,800), (group B, master's degree, \$4,400 to \$6,300) reflecting \$160 step increments for all increases but last and \$140 step increment for last increase were eliminated and are covered in Class 18.

Act July 25, 1958, increased the compensation of superintendent of schools in Class 1 from \$14,000, \$16,000 and \$18,000 when in possession of a bachelor's, master's or doctor's degree, respectively, to \$19,000.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 5 of act Sept. 13, 1960, provided that: "The provisions of this Act [enacting section 31-1502, amending this section, and enacting provisions set out as notes under this section and section 31-1502] shall become effective as of July 1, 1960."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 4 of act Aug. 28, 1958, provided that:

"(a) The effective date of this Act [enacting section 31-680 and amending sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545] shall be January 1, 1958.

"(b) For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Employees' Group Life Insurance Act of 1954, as amended [U.S. Code, title 5, chapter 24], all changes in rates of compensation or salary which result from the enactment of this Act [enacting section 31-680 and amending sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545] shall be held and considered to be effective as of the first day of the first pay period which begins on or after the date of such enactment [Aug. 28, 1958]."

Section 4(b) of act July 25, 1958, provided that amendment of this section by act July 25, 1958, shall take effect on the first day of the first pay period which begins after July 25, 1958.

EFFECTIVE DATE

Section 25 of act Aug. 5, 1955, provided that: "This Act [enacting this chapter, amending section 31-696 and repealing sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679] shall become effective on July 1, 1955."

SHORT TITLE

Section 24 of act Aug. 5, 1955, provided that: "This Act [enacting this chapter, amending section 31-696 and repealing sections 31-659, 31-660, 31-661, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679] may be cited as 'District of Columbia Teachers' Salary Act of 1955.'"

RETROACTIVE COMPENSATION UNDER ACT SEPT. 13, 1960

For provisions relating to retroactive compensation, see section 3 of act Sept. 13, 1960, set out as a note under section 31-1502.

RETROACTIVE COMPENSATION UNDER ACT AUG. 28, 1958

Section 2 of act Aug. 28, 1958, provided as follows with respect to payment of retroactive compensation:

"Retroactive compensation or salary shall be paid by reason of this Act [enacting section 31-680 and amending sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545] only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to any employee covered in section 1 of this Act [amending sections 31-1501, 31-1511, 31-1521, 31-1522, 31-1531, 31-1532, 31-1542 to 31-1545] who retired during the period beginning on the day following the first day of the first pay period which began on or after January 1, 1958, and ending on August 28, 1958, for services rendered during such period and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), as amended [U.S. Code, title 5, §§ 61f to 61k], for services rendered during the period beginning on the first day of the first pay period which began on or after January 1, 1958, and ending on August 28, 1958, by any such employee who dies during such period."

§ 31-1502. 1960 increase in salaries.

Each employee of the Board of Education of the District of Columbia whose salary is fixed and regulated by this chapter, shall receive, in addition to the compensation already provided by this chapter, compensation at the rate of 7.5 per centum of the aggregate compensation provided by this chapter; except that the provisions of this section shall not be applicable with respect to (A) any employee whose salary is fixed by the salary schedule for service step 1 of class 18, or (B) the superintendent and the deputy superintendent of schools. (Sept. 13, 1960, 74 Stat. 913, Pub. L. 86-773, § 2.)

CODIFICATION

Section was not enacted as part of the District of Columbia Teachers' Salary Act of 1955, which comprises this chapter.

RETROACTIVE COMPENSATION UNDER ACT SEPT. 13, 1960

Section 3 of act Sept. 13, 1960, provided that:

"(a) Retroactive compensation or salary shall be paid by reason of this Act [enacting this section and amending section 31-1501] only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this Act [Sept. 13, 1960], except that such retroactive compensation or salary shall be paid (1) to any employee covered in this Act who retired during the period beginning on the day following the first day of the first pay period which began on or after July 1, 1960, and ending on the date of enactment of this Act [Sept. 13, 1960], for services rendered during such period and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, 81st Congress), as amended [U.S. Code, title 5, §§ 61f-61k], for services rendered during the period beginning on the first day of the first pay period which began on or after July 1, 1960, and ending on the date of enactment of this Act [Sept. 13, 1960], by any such employee who dies during such period.

"(b) For the purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia."

DETERMINATION OF AMOUNT OF GROUP INSURANCE

Section 4 of act Sept. 13, 1960, provided that: "For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Em-

ployees' Group Life Insurance Act of 1954, as amended [U.S. Code, title 5, ch. 24], all changes in rates of compensation or salary which result from the enactment of this Act [adding this section and amending section 31-1501] shall be held and considered to be effective as of the date of enactment of this Act [Sept. 13, 1960]."

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§ 31-1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

(a) The Board of Education on written recommendation of the Superintendent of Schools is authorized to establish the eligibility requirements and prescribe methods of appointment and promotion for teachers, school officers, and other employees. The Board of Education is authorized and directed on written recommendation of the Superintendent of Schools, to classify and assign all teachers, school officers, and other employees to the salary classes and groups in section 31-1501. Teachers, school officers, and other employees on probationary or permanent status shall not be required to take any examinations, either mental or physical, to be continued in the positions in which they are employed on December 31, 1957, or to which they may be transferred and assigned under the provisions of section 31-1521 and section 31-1522. No teacher, school officer, or other employee shall be appointed or promoted to any position in section 31-1501 on probationary or permanent status unless he possesses a master's degree, except that a person possessing a bachelor's degree may be appointed on probationary or permanent status as Director of Food Services, Assistant Director of Food Services, Supervising Director of Military Science and Tactics, teacher of military science and tactics, teacher of driver training, shop teacher in the vocational education program, teacher in the junior high schools, counselor in the vocational high schools, counselor in the junior high schools, teacher in the elementary schools, school social worker, research assistant, attendance officer, child labor inspector, or census supervisor, and a person not possessing a bachelor's degree may be appointed on probationary or permanent status as shop teacher in the vocational education program if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board. No teacher, school officer, or other employee shall receive compensation at a rate less than his annual compensation as of December 31, 1957.

(b) Notwithstanding any provision of this chapter the Board is authorized, on the written recommendation of the Superintendent of Schools, to appoint or promote shop teachers in the vocational education program to salary class 18, group B, without a master's degree if they submit acceptable evidence of equivalent training and experience in accordance with the rules of the Board, and to appoint or promote such teachers to salary class 18, Group C, without a master's degree if they submit acceptable evidence of equivalent training and experience in accordance with the rules of the Board, plus thirty credit hours. The Board is further authorized, on the written recommendation of the

Superintendent of Schools, to appoint or promote vocational shop teachers with the training and experience required for placement in salary class 18, group B, to administrative or supervisory positions in the vocational education program.

(c) When used in this chapter—

(1) The term “master’s degree” means a master’s degree granted in course by an accredited higher educational institution.

(2) The term “plus thirty credit hours” means the equivalent of not less than thirty graduate semester hours in academic, vocational, or professional courses beyond a master’s degree, representing a definite educational program satisfactory to the Board, except that in the case of a shop teacher in the vocational education program the thirty semester hours need not be graduate semester hours. Graduate credit hours beyond thirty which were earned prior to obtaining a master’s degree may be applied in computing such thirty credit hours.

(3) The terms “Board” and “Board of Education” mean the Board of Education of the District of Columbia.

(4) The term “Salary Act of 1947” means the District of Columbia Teachers’ Salary Act of 1947, as amended.

(Aug. 5, 1955, 69 Stat. 523, ch. 569, title II, § 2; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1.)

REFERENCES IN TEXT

The District of Columbia Teachers’ Salary Act of 1947, as amended, referred to in subsec. (c) (4), was formerly classified to sections 31-659, 31-660, 31-662, 31-663, 31-664, 31-665, 31-666, 31-667, 31-668, 31-669, 31-670, 31-671, 31-672, 31-673, 31-674, 31-675, 31-677 to 31-679, was repealed by act Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 20, eff. July 1, 1955, and is covered by this chapter. Section 31-676 (section 18 of the District of Columbia Teachers’ Salary Act of 1947, as amended, had previously been repealed by act Oct. 13, 1949, 63 Stat. 844, ch. 686, § 9 (b), eff. July 1, 1949, and is covered by sections 31-691, 31-694.

AMENDMENT

1958—Subsec. (a) amended by act Aug. 28, 1958, which substituted “December 31, 1957” for “June 30, 1955” in two instances, inserted in the exception clause a reference to school social worker and the provision for appointment as shop teacher in the vocational education program and substituted in such exception clause “shop teacher in the vocational education program” for “shop teacher in the vocational high schools.”

Subsec. (b) amended by act Aug. 28, 1958, which substituted the present provisions for “Notwithstanding any provision of this chapter the Board is authorized on a written recommendation of the Superintendent of Schools, to appoint or promote vocational high school shop teachers to salary class 18, group B, without a master’s degree if they submit evidence of equivalent training and experience in accordance with the rules of the Board. A vocational high school shop teacher may not be appointed, assigned, or promoted to salary class 18, group C, who does not possess a master’s degree granted in course plus thirty credit hours.”

Subsec. (c) amended by act Aug. 28, 1958, to delete from par. (1) the definition of doctor’s degree and to add to par. (2) the exception clause and to delete therefrom the concluding sentence: “Graduate credit hours beyond thirty which were earned prior to obtaining a master’s degree may be applied in computing such thirty credit hours.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§ 31-1512. Probationary period.

For other than temporary employees and the Superintendent of Schools, the first two years of service in each position covered by section 31-1501 shall be probationary regardless of any change in title or numbers used in classifying the position. Teachers, school officers, and other employees who have satisfactorily completed the probationary period in any position covered by section 31-1501 and whose permanent appointments have been approved by the Board shall be considered employees of the Board on permanent tenure. (Aug. 5, 1955, 69 Stat. 524, ch. 569, title II, § 3.)

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

§ 31-1521. Rules for assignment to salary classes—Comparative tables.

Each teacher, school officer, and other employee in the service of the Board on January 1, 1958, who occupies a position held by him on December 31, 1957, under the provisions of this chapter shall be placed in a salary class covered by section 31-1501 as indicated at the end of this section. Any employee in group A, B, or C of his salary class on December 31, 1957, shall be assigned to the same letter group of the class to which he is transferred on January 1, 1958, except that an employee in group B on December 31, 1957, who possesses a master’s degree or its equivalent as determined by the Board in accordance with subsection (b) of section 31-1511, plus thirty credit hours, shall be transferred to group C. Teachers college employees in salary classes 8, 13, and 16 on January 1, 1958, shall be assigned to group C.

TITLE AND CLASS OF POSITION ON DECEMBER 31, 1957		TITLE AND CLASS OF POSITION ON JANUARY 1, 1958	
Title	Class	Title	Class
Superintendent of schools.....	1	Superintendent of schools.....	1
Deputy superintendent.....	2	Deputy superintendent.....	2
Assistant superintendent.....	3	Assistant superintendent.....	3
President, teachers college.....	3	President, teachers college.....	3
Dean, teachers college.....	4	Dean, teachers college.....	4
Executive assistant to super- intendent.....	5	Executive assistant to super- intendent.....	5
Dean of students, teachers college.....	5	Dean of students, teachers college.....	5
Director, Department of Food Services.....	6	Director, Department of Food Services.....	6
Director.....	7	Director.....	7
Administrative assistant to deputy superintendent.....	7	Administrative assistant to deputy superintendent.....	7
Registrar, teachers college.....	7	Registrar, teachers college.....	7
Chief examiner.....	7	Chief examiner.....	7
Principal, senior high school.....	7	Principal, senior high school.....	7
Professor, teachers college.....	8	Professor, teachers college.....	8
Principal, vocational high school.....	9	Principal, vocational high school.....	7
Principal, junior high school.....	9	Principal, junior high school.....	8
Principal, Americanization school.....	9	Principal, Americanization school.....	8
Supervising director.....	10	Supervising director.....	8
Director, Department of School Attendance and Work Permits.....	10	Director, Department of School Attendance and Work Permits.....	9
Principal, elementary school.....	10	Principal, elementary school.....	9
Principal, laboratory school.....	10	Principal, elementary school.....	9
Associate professor, teachers college.....	11	Associate professor, teachers college.....	13
Assistant director, Depart- ment of Food Services.....	12	Assistant director, Depart- ment of Food Services.....	11
Assistant director.....	13	Assistant director.....	15
Principal, Capitol Page School.....	13	Principal, Capitol Page School.....	9
Assistant principal, senior high school.....	13	Assistant principal, senior high school.....	10
Statistician.....	13	Statistician.....	15
Assistant professor, teachers college.....	14	Assistant professor, teachers college.....	16
Chief librarian, teachers col- lege.....	14	Chief librarian, teachers col- lege.....	16
Assistant principal, vocational high school.....	15	Assistant principal, vocational high school.....	10
Assistant principal, junior high school.....	15	Assistant principal, junior high school.....	12

TITLE AND CLASS OF POSITION ON
DECEMBER 31, 1957—Continued

Title	Class
Assistant principal, Americanization school.....	15
Assistant principal, elementary school.....	16
Assistant.....	17
Chief attendance officer.....	17
Supervisor.....	17
Clinical psychologist.....	17
Instructor, teachers college.....	18
Librarian, teachers college.....	18
Teacher, senior high school.....	18
Teacher, vocational high school.....	18
Teacher, junior high school.....	18
Teacher, elementary school.....	18
School librarian.....	18
Counselor.....	18
Research assistant.....	18
School psychologist.....	18
School social worker.....	18
Attendance officer.....	19
Child labor inspector.....	19
Census supervisor.....	19

TITLE AND CLASS OF POSITION ON
JANUARY 1, 1958—Continued

Title	Class
Assistant principal, Americanization school.....	12
Assistant principal, elementary school.....	14
Assistant.....	16
Chief attendance officer.....	16
Supervisor.....	16
Clinical psychologist.....	16
Instructor, teachers college.....	18
Librarian.....	18
Teacher, elementary and secondary school.....	18
Teacher, elementary and secondary school.....	18
Teacher, elementary and secondary school.....	18
Teacher, elementary and secondary school.....	18
Librarian.....	18
Counselor.....	18
Research assistant.....	18
School psychologist.....	18
School social worker.....	18
Attendance officer.....	18
Child labor inspector.....	18
Census supervisor.....	18

(Aug. 5, 1955, 69 Stat. 524, ch. 569, title III, § 4; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1.)

AMENDMENT

1958—Act Aug. 28, 1958, amended the section generally.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§ 31-1522. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters.

(a) This chapter applies to all positions under the Board which require at least a bachelor's degree in an appropriate field, and in addition—

(1) involve classroom or other instruction or the supervision and direction of classroom and other instructional activities; or

(2) involve activities, other than teaching, which require the incumbents to possess academic credits in educational theory and practice at least equivalent to those required of a teacher with a bachelor's degree; or

(3) involve activities which are so directly related to the educational process that the positions have characteristics of the educational field to a marked degree, even though academic credits in educational theory and practice are not required; or

(4) involve the management or direction or organizational units or school services which, though not directly involved in the educational process, require the incumbent to deal so extensively with employees who are directly involved in the educational process in problems that require an understanding of the aims, methods and points of view of educators and educational philosophy, that it becomes impractical, insofar as salary treatment is concerned, to attempt to distinguish between them and positions covered under paragraphs (1), (2), or (3) of this subsection. This paragraph (4) shall apply only to such positions as are necessary to coordinate such non-educational units or services with the educational activities of the school system.

(b) The Board, with the concurrence of the Board of Commissioners of the District of Columbia, is authorized to determine which positions meet

the criteria specified in subsection (a) of this section and to establish or transfer positions covered under other wage or salary fixing acts or authorities to the coverage of this chapter. Similarly, the Board, with the concurrence of the said Board of Commissioners, is authorized to determine that positions covered under this chapter do not meet the criteria specified in subsection (a) of this section and to remove any such position from the coverage of this chapter: *Provided*, That any employee occupying any position covered by this chapter on the effective date of this chapter, but which is later determined not to meet the criteria specified in subsection (a) of this section, shall continue to be entitled to the salary and other benefits of this chapter as long as he remains in such position. The Board, subject to the concurrence of the said Board of Commissioners, is authorized to specify for any position to be brought under this chapter, the class and group as established in this chapter which shall apply to such position: *Provided*, That such class shall be selected on the basis of the difficulty, responsibility, and qualification requirements of such position. Positions brought under this chapter in accordance with this section shall be subject to the provisions of this chapter to the same degree and in all respects as if such positions were specifically named in this chapter. The Board is authorized to conduct such studies as are required to apply the criteria specified in subsection (a) of this section. The Board of Education of the District of Columbia, with the cooperation of the Board of Commissioners of the District of Columbia, is authorized to make a study of the classification of the positions covered under this chapter for the purpose of determining what classification adjustments may be necessary or desirable to provide a classification alignment based on the difficulty, responsibility, and qualification requirements of the positions and to take such appropriate corrective action as is concurred in by the Board of Commissioners: *Provided*, That any such adjustments shall be made within the classes established by this chapter: *Provided further*, That no adjustment resulting from this study shall decrease the existing rate of compensation of any present employee, but when a position becomes vacant any subsequent appointee to such position shall be compensated in accordance with the rate of pay determined to be applicable to such position. If a position is placed in a lower salary class and the present salary of the incumbent falls between two step rates for the newly assigned class, he shall receive the higher of such rates. If a position is placed in a higher salary class, placement for salary purposes shall be made in accordance with section 31-1536. (Aug. 5, 1955, 69 Stat. 525, ch. 569, title III, § 5; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838, § 1.)

REFERENCES IN TEXT

Effective date of this chapter, referred to in subsection (b), means July 1, 1955. See Effective Date note under section 31-1501.

AMENDMENT

1958—Subsec. (b) amended by act Aug. 28, 1958, to add provisions respecting the making of a study of classification of positions and adjustments thereof.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

§31-1531. Method of assignment to service steps—Promotion of employees.

(a) As of January 1, 1958, each employee assigned to a salary class in accordance with section 31-1501 and section 31-1521 shall be assigned to the same numerical service step on the schedule for his class, or class and group, under this chapter as he occupied on December 31, 1957. On July 1, 1958, each permanent employee in the service of the Board who on June 30, 1958, was in such service but was not yet at the highest numerical service step for his salary class, or class and group, in section 31-1501 shall be assigned to the numerical service step for his class, or class and group, in section 31-1501 next above the step occupied by him on June 30, 1958. As soon as possible thereafter, and not later than June 30, 1959, the Board shall re-evaluate the previous service of each probationary and permanent employee under this chapter who served in the public schools of the District of Columbia prior to July 1, 1955, who also was in service in such schools on July 1, 1958, and who on July 1, 1958, was not assigned to the highest numerical service step of the salary schedule for his class, or class and group, to determine the number of years of service with which the employee shall be newly credited for the purpose of salary placement. All such employees shall be given placement credit for previous service in accordance with the provisions of this chapter governing the placement, advancement, and promotion of employees who are newly appointed, reappointed or reassigned to positions in the District of Columbia public schools.

(b) As soon as such reevaluation is completed for all employees involved, each such employee shall be assigned to the numerical service step for his salary class, or class and group, under this chapter next above the step corresponding to the number of his years of creditable service rendered prior to July 1, 1958, as determined by such re-evaluation, but no employee shall receive a salary above the top step for his class, or class and group, or below the step already occupied by him. If such re-evaluation places the employee on a higher numerical service step than the one already occupied by him, he shall receive the full annual salary at the higher step for the year beginning July 1, 1958. Beginning on July 1, 1959, each permanent employee who has not yet reached the highest service step for his salary class, or class and group, under this chapter shall advance one such step each year until he reaches the highest step for his class, or class and group.

(c) The Superintendent of Schools, salary class 1, shall be assigned as of the date of his appointment as Superintendent to the salary step provided for that position in section 31-1501.

(d) Any permanent employee serving in a position which is not covered by this chapter but which

may later be established under section 31-1522 shall be given service credit for the purpose of salary placement under this chapter equivalent to the number of years of satisfactory service rendered within the school system in the position then occupied by the employee, and shall be assigned to the numerical service step on the schedule for his class, or class and group, under this chapter next above the numerical service step corresponding to his years of creditable service in such position. If the employee has already attained a service step in such position which is numerically as high or higher than the top service step provided for his salary class, or class and group, under this chapter, he shall be assigned to the highest service step provided for his class, or class and group, under this chapter. (Aug. 5, 1955, 69 Stat. 526, ch. 569, title IV, § 6; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838, § 1.)

AMENDMENT

1958—Act Aug. 28, 1958, amended the section generally and designated the provisions as subsections. (a)—(d).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§31-1532. Assignment of new employees to service steps—Evaluation of past experience—Absence because of military or naval service.

(a) Each employee who is newly appointed or reappointed to a position under section 31-1501, except the Superintendent of Schools, shall be assigned to the service step numbered next above the number of years of service with which he is credited for the purpose of salary placement. The Board, on the written recommendation of the Superintendent of Schools, is authorized to evaluate the previous experience of each such employee to determine the number of years with which he may be so credited. Employees newly appointed, reappointed, or reassigned to any position in salary class 18 shall receive one year of such placement credit for each year of satisfactory service, not in excess of five years, in the same type of position regardless of school level, in an educational system or institution of recognized standing outside the District of Columbia public schools, as determined by the Board: *Provided*, That employees appointed to the positions of attendance officer, census supervisor, child labor inspector, counselor, librarian, research assistant, school psychologist, and school social worker shall also receive one year of placement credit for each year of satisfactory service in a teaching position, but not in excess of five years for all types of service rendered outside the school system, and persons appointed to the position of shop teacher in the vocational education program shall receive one year of placement credit for each year of approved experience in the trades, as determined by the Board, but not in excess of five years for any combination of trade experience and educational service outside the school system. Employees newly appointed or reappointed to the positions of chief librarian and assistant professor (class 16), associate professor (class 13), and professor (class 8) shall receive one year of placement credit for each year of satisfactory service, not in excess of five years, in a position of

the same or higher rank in a college or university of recognized standing outside the District of Columbia public schools, as determined by the Board. Employees newly appointed, reappointed, or reassigned to any position in salary classes 1 to 17 inclusive, except the positions of chief librarian and assistant professor, associate professor and professor, shall receive no placement credit for educational service or trade experience outside the District of Columbia public schools. Employees reappointed or reassigned to positions in classes 2 to 18 inclusive shall receive one year of placement credit for each year of satisfactory service in the same salary class or in a position of equivalent or higher rank within the District of Columbia public schools, except that no employee shall receive more than five years of placement credit for previous service in any combination of the following: (1) service rendered outside the public school system, (2) service rendered as a temporary employee within such system, and (3) service rendered prior to reappointment after resignation from such system. Credit for service rendered either inside or outside the District of Columbia public schools shall be effective on the date of the regular Board meeting immediately preceding the date of approval by the Board or on the date of appointment, whichever is later.

(b) In crediting previous experience of any teacher who has been absent from his duties because of naval or military service in the armed forces of the United States or its allies, the Board is hereby authorized to include such naval or military service as the equivalent of approved experience.

(c) No provision in this chapter shall be interpreted as preventing any teacher, school officer, or other employee of the Board who has been granted leave to enter the armed forces of the United States or its allies from receiving any annual service increment or increments to which he would have been entitled had he remained continuously in the service of the public schools. (Aug. 5, 1955, 69 Stat. 527, ch. 569, title IV, § 7; Aug. 28, 1958, 72 Stat. 1010, Pub. L. 85-838, § 1.)

AMENDMENT

1958—Subsec. (a) amended by act Aug. 28, 1958, which substituted present provisions for "Each employee appointed under this chapter who has not had prior service under the Board or who may be reappointed or reinstated, shall be assigned to the service step numbered next above the number of years of service with which he is credited for the purpose of salary placement. The Board, on the written recommendation of the Superintendent of Schools, is authorized to evaluate the previous experience of each new appointee to determine the number of years with which he may be credited for the purpose of salary placement. Credit for service rendered either inside or outside of public schools of the District of Columbia shall be effective on the date of the regular Board meeting immediately preceding the date of approval by the Board or on the date of appointment, whichever is later. Such credit shall apply to all positions in salary classes 18 and 19, and to the positions of chief librarian and assistant professor, salary class 14; and to the position of associate professor, salary class 11; and to the position of professor, salary class 8. Such placement credit shall not be granted in excess of five years."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§ 31-1533. Salary increases of probationary employees—Termination of employment.

(a) Each teacher, school officer, and other employee appointed or promoted on probationary tenure to a position covered by section 31-1501 shall receive his first increase in salary in that position on the beginning day of his second year of probationary service in the position; he shall receive his second increase in salary in that position on the date when his appointment or promotion to the position is made permanent; and he shall receive all subsequent increases in salary to which he is entitled in that position on July 1 of each year, beginning with the July 1 next after the date of his permanent appointment or promotion to the position in accordance with section 31-1531 and section 31-1532.

(b) Any employee in the service of the Board on the effective date of this chapter appointed or promoted on probationary tenure during the period from July 1, 1952, to June 30, 1955, inclusive, to a position covered by section 31-1521 shall be compensated for salary increases in accordance with subsection (a) of this section and shall receive his first increase effective as of the first date of his second year of probationary service based upon the rates of pay currently in effect on that date and such employee shall be assigned on July 1, 1955, to the numerical service step in the salary schedule for his class, or class and group, in section 31-1501 corresponding to his number of years of creditable service.

(c) The Board is authorized to terminate the services of any probationary employee in the class to which appointed, upon the written recommendation of the Superintendent of Schools, at any time during the two year probationary period: *Provided*, That if an employee so terminated has permanent status within the school system he shall be returned to the salary class he last occupied on permanent status, and placed on the step which would have been occupied by him. (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 8.)

REFERENCES IN TEXT

Effective date of this chapter, referred to in subsec. (b), means July 1, 1955. See Effective Date note under section 31-1501.

§ 31-1534. Temporary employees—Assignment, salaries and termination of employment.

The Board is hereby authorized to appoint and assign temporary employees within the salary structure of section 31-1501, whenever such action is necessary and recommended in writing by the Superintendent of Schools. Such appointments shall be for periods not to extend beyond June 30 of the fiscal year in which the appointments are made and the Board is authorized to terminate the appointment of any temporary employee at any time upon the written recommendation of the Superintendent of Schools. Each temporary employee shall be assigned to a numerical service step and receive an annual rate of compensation in accordance with section 31-1532, but he shall receive no annual service increments and may be credited with not more than five years of service either inside or outside the public schools of the District of

Columbia for the purpose of salary placement. (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 9.)

§ 31-1535. Effective date of promotions to group B and C—Assignment to numerical service steps.

(a) On and after July 1, 1955, each promotion to group B, or group C, within a salary class shall become effective on the date of the regular Board meeting immediately preceding the date of approval by the Board or on the effective date of the master's degree or the completion of thirty credit hours beyond the master's degree, whichever is later.

(b) Any employee in a position covered by section 31-1501 who is promoted to group B or group C of the same salary class shall be assigned to the same numerical service step on the schedule for his new group as he would have occupied on the schedule from which promoted. (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 10, eff. July 1, 1955.)

§ 31-1536. Promotions—Assignment to numerical service step.

Any employee in a salary class covered by section 31-1501, when promoted to a higher-paid salary class, shall be assigned to the lowest numerical service step on the schedule for his new class, or class and group, which will give him an immediate increase in annual salary rate at least equal to the sum of the following:

(1) Any annual service increment to which the employee would have been entitled in his former salary class at the time of his promotion; and

(2) The annual service increment scheduled for his new class and group: *Provided*, That no such employee shall be assigned to a higher numerical service step on the schedule for his new class, or class group, than he would have occupied on the schedule from which promoted.

(Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 11, eff. July 1, 1955.)

**SUBCHAPTER V.—ACCOMPANYING
LEGISLATION**

§ 31-1541. Employment of retired members of armed services.

Notwithstanding any law or regulation to the contrary, the Board, on the written recommendation of the Superintendent of Schools, may employ not more than fifteen retired members of the armed services of the United States as teachers of military science and tactics in the public high schools of the District of Columbia, and such teachers so employed shall be entitled to compensation in accordance with the salary schedules in section 31-1501, in addition to their retired pay and allowances. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 12.)

§ 31-1542. Evening, summer, and Americanization schools—Salaries.

(a) The Board is hereby authorized to conduct as parts of the public school system, summer schools, evening schools, and an Americanization School, under and within appropriations made by Congress. The pay rates for teachers, officers, and other educational employees in the summer and evening schools shall be as follows:

Classification	Step 1	Step 2	Step 3
Per diem			
SUMMER SCHOOLS (REGULAR)			
Teacher, elementary and secondary schools.....	\$16.37	\$18.38	\$20.39
Instructor, teachers college.....	20.33	21.79	24.10
Assistant professor, teachers college.....	22.59	25.36	28.14
Assistant principal, senior high school.....	22.67	24.63	27.25
Associate professor, teachers college.....	23.74	26.65	29.56
Supervising director.....	22.92	25.73	28.55
Principal, elementary school.....	23.74	26.65	29.56
Principal, junior high school.....	25.67	27.48	30.39
Professor, teachers college.....	24.55	27.57	30.58
Principal, senior high school.....			
Per diem			
VETERANS SUMMER HIGH-SCHOOL CENTERS			
Teacher.....	\$24.55	\$27.57	\$30.58
Per period			
EVENING SCHOOLS			
Teacher.....	\$4.69	\$5.01	\$5.34
Assistant principal, secondary school.....	5.85	6.55	7.29
Principal, elementary school.....	5.94	6.66	7.39
Principal, secondary school.....	6.36	7.14	7.92

(b) Beginning on January 1, 1958, each teacher, officer, and other educational employee serving in the summer or evening schools shall be paid at the rate specified for his position under step 1 of the schedule in subsection (a) of this section while serving his first, second, and third years in such position; he shall be paid at the rate specified under step 2 while serving his fourth, fifth, and sixth years in such position; and he shall be paid at the rate specified in step 3 while serving his seventh and any subsequent years in such position.

(c) When an employee covered by the pay schedule in subsection (a) of this section is promoted to a higher paid position in this same schedule, he shall be paid during his first three years of service in such position at the scheduled rate for such position which is next above the rate he would have received if continued in his previous position; he shall be paid at the next higher scheduled rate for his position during his second three years of service in such position; and he shall be paid at the scheduled rate above that (if any) during his subsequent years in such position. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 13; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1.)

AMENDMENT

1958—Act Aug. 28, 1958, designated existing provisions as subsec. (a), substituting the present provisions for "The Board is hereby authorized to conduct as parts of the public school system, evening schools, summer schools, and Americanization School, under and within appropriations made by Congress, and on the written recommendation of the Superintendent of Schools to fix and prescribe the salaries of teachers in the evening and summer schools", and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§ 31-1543. Classification of certain employees as teachers.

Each employee assigned to salary class 18 in the schedule provided in section 31-1501, each chief librarian and each assistant professor in salary class 16, each associate professor in class 13, and each professor in class 8 shall be classified as a teacher for payroll purposes and his annual salary shall be

paid in ten monthly installments in accordance with existing law. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 14; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1.)

AMENDMENT

1958—Act Aug. 28, 1958, substituted "Each employee assigned to salary class 18 in the schedule provided in section 31-1501, each chief librarian and each assistant professor in salary class 16, each associate professor in class 13," for "Each employee assigned to salary class 18 in the foregoing schedules, and to the position of attendance officer, salary class 19; each chief librarian and each assistant professor in class 14; each associate professor in class 11;".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§ 31-1544. Authority of Board to regulate vacation period and annual leave applicable to certain employees.

On and after January 1, 1958, sections 31-698 and 31-698a shall apply to employees of the Board of Education whose salaries are fixed in salary classes 7-17, inclusive, under section 31-1501, except the following: Chief examiner, administrative assistant to deputy superintendent, and registrar, teachers college, in class 7; professor, in class 8; Director, Department of School Attendance and Work Permits, in class 9; Assistant Director, Department of Food Services, in class 11; associate professor, in class 13; statistician, in class 15; assistant professor and chief librarian, in class 16. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 15; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1.)

AMENDMENT

1958—Act Aug. 28, 1958, substituted "January 1, 1958", for "effective date of this chapter", added the exception clause and deleted the second sentence which read: "However, such sections shall not apply to the following employees: Chief examiner, class 7; and professor, class 8; associate professor, class 11; Assistant Director, Department of Food Services, class 12; assistant professor and chief librarian, class 14."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§ 31-1545. Sick and emergency leave provisions applicable to certain employees.

On and after January 1, 1958, sections 31-691, 31-692 to 31-694, 31-695, 31-696, 31-697 shall apply

to employees of the Board whose salaries are fixed in salary class 18, and to the following employees in the salary classes indicated: Professor, class 8; associate professor, class 11; chief librarian and assistant professor, class 14, under this chapter. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 16; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1.)

AMENDMENT

1958—Act Aug. 28, 1958, substituted "January 1, 1958", for "the effective date of this chapter" and deleted "and the position of attendance officer, salary class 19" "following salary class 18".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31-1501.

§ 31-1546. Sabbatical leave provisions applicable to certain employees.

On and after July 1, 1955, sections 31-632 to 31-637 shall apply to employees of the Board whose salaries are fixed under section 31-1501. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 17.)

§ 31-1547. Foreign teacher exchange program applicable to certain employees.

On and after July 1, 1955, section 31-699 to 31-699b shall apply to employees of the Board whose salaries are fixed under section 31-1501. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 18.)

§ 31-1548. Teacher retirement provisions applicable to certain employees.

On and after July 1, 1955, subchapter II of chapter 7 of this title shall apply to probationary and permanent employees of the Board whose salaries are fixed under section 31-1501, and all references in subchapter II of chapter 7 of this title to the Salary Act of 1947 shall be interpreted to apply to this chapter. Nothing in this subsection shall require the recomputation of the annuity of any person retired under subchapter II of chapter 7 of this title prior to the effective date of this chapter, or of any person retired prior to the effective date of subchapter II of chapter 7 of this title, whose annuity is computed in accordance with the provisions of subchapter II of chapter 7 of this title. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 19.)



32

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TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS

Chap.	Sec.
1. Association for Works of Mercy	32-101
2. Washington Humane Society	32-201
3. Hospitals and Asylums—General Provisions	32-301
4. Saint Elizabeths Hospital	32-401
5. Industrial Home School	32-501
6. District Training School	32-601
7. Home Care for Dependent Children	32-701
7A. Aid to Dependent Children	32-751
7B. Placement of Children in Family Homes	32-781
8. National Training School for Boys	32-801
9. National Training School for Girls	32-901
10. Miscellaneous	32-1001

Chapter 1.—ASSOCIATION FOR WORKS OF MERCY

Sec.
32-101. Custody and control of girls under 18 years of age—How obtained—Approval by probate court.
32-102. Girls under 18 years of age convicted of crime—Commission to custody of association.
32-103. Custody and discharge of inmates.
32-104. Probate court may appoint association as guardian—Term of guardianship.

§ 32-101. Custody and control of girls under 18 years of age—How obtained—Approval by probate court.

The Association for Works of Mercy, a charitable corporation in the District of Columbia, is hereby authorized and empowered to receive and have the custody and control of, and to suitably maintain, teach, employ, and discipline girls under the age of eighteen years, resident in the District of Columbia, until they attain the age of eighteen years. The right to the custody and control of any such girl shall be obtained in the manner following:

First. By a written instrument executed by the father of such girl, giving such custody and control to said association and renouncing parental rights.

Second. If the father be not living, or is unknown, or not resident in the District of Columbia, by a written instrument executed by the mother of such girl, giving such custody and control to said association and renouncing parental rights.

Third. By a written instrument executed by the guardian of the person of such girl, giving such custody and control to said association and renouncing the rights of guardianship.

Fourth. If there be no father, or mother, or guardian of such girl living, or known, resident in the District of Columbia, by an instrument in writing executed by such girl, surrendering herself to the custody, control, and maintenance of said association.

Fifth. No such instrument shall be effectual in law until it shall be approved by the judge of the probate court of the District of Columbia by an indorsement of such approval thereon signed by such judge. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 1; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

CHANGE OF NAME

Act Mar. 3, 1901, designated orphans court as the probate court.

CROSS REFERENCES

National Training School for Girls, see § 32-901 et seq.
Powers and duties of Board of Public Welfare, see § 3-101 et seq.

§ 32-102. Girls under 18 years of age convicted of crime—Commission to custody of association.

When any girl under the age of eighteen years shall be duly convicted of any offense punishable by fine or imprisonment for a term less than two years before any court in the District of Columbia, if it shall appear to the satisfaction of the court that such girl is a suitable subject for the custody of said association, the court may, instead of imposing such fine or imprisonment, and with the assent of said association, cause such girl to be committed to the custody and control of said association, there to remain until she shall attain the age of eighteen years, or be otherwise discharged in due course of law. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 2.)

§ 32-103. Custody and discharge of inmates.

A girl, duly received into the institution of the said association, shall be kept there, disciplined, instructed, employed, and governed under the direction of said association until she is either reformed and discharged or has attained the age of eighteen years; but the association shall have the right to discharge and return to the parents, guardian, or protector any girl who, in its judgment, ought, for any cause, to be removed from the institution, and in such case the association shall enter upon its minutes the reasons for her discharge; and in case such girl was received under the order of any criminal court, a copy of the minute of such reasons shall be forthwith transmitted to the court under whose order she was received. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 3.)

§ 32-104. Probate court may appoint association as guardian—Term of guardianship.

The probate court of the District of Columbia shall have power to appoint the said association the guardian of the person of any girl under the age of eighteen years, in the same manner and with the same effect that it has power to appoint guardians of the person of female infants. And such guardianship shall continue until such girl shall attain the age of eighteen years, unless the probate court shall discharge the same or otherwise direct. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 4; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

CHANGE OF NAME

Act Mar. 3, 1901, designated orphans court as the probate court.

Chapter 2.—WASHINGTON HUMANE SOCIETY

Sec.

- 32-201. Incorporation—Name.
 32-202. Officers.
 32-203. Officers to be chosen from members.
 32-204. By-laws.
 32-205. Police to arrest law violators at request of member of society—Evidence of membership.
 32-206. Disposition of fines.
 32-207. Law effective throughout District.
 32-208. Society authorized to prevent cruelty to children.
 32-209. Commissioners to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.
 32-210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.
 32-211. Right to alter, amend or repeal reserved.

§ 32-201. Incorporation—Name.

N. P. Chipman, J. P. Newman, B. Peyton Brown, John A. L. Morrell, Mathew G. Emery, Joseph H. Bradley, senior, William R. Woodward, E. Whittlesey, Warren Choate, Andrew B. Duvall, A. S. Solomons, W. G. Metzertott, Alexander R. Shepperd, S. J. Bowen, H. M. Sweeney, Benjamin E. Gittings, William Tucker, Charles H. Lane, W. Burris, William McPheeters, E. F. N. Faehtz, J. L. Gatchel, John R. Elvans, Edgar I. Booraem, L. H. Hopkins, Thomas P. Keene, W. D. Blackford, F. H. Day, J. Sayles Brown, William Lanborn, E. L. Corbin, N. A. West, John R. Arrison, W. A. Farlee, Benjamin F. Fuller, Robert A. Slater, Alonzo Bell, A. T. Kinney, John J. Jett, A. M. Scott, A. C. White, A. E. Newton, A. S. Taylor, William H. Rowe, Robert Reyburn, W. H. Slater, John C. Parker, William J. Wilson, S. S. Baker, A. Jones, S. R. Bond, John F. Cook, D. W. Anderson, George A. Hall, Charles H. Moulton, John Edwin Mason, Allison Nailor, junior, David A. Burr, T. C. Grey, R. H. Marsh, Thomas Perry, George F. Gulick, and Theodore F. Gatchel, all of the District of Columbia, and such other persons as were associated with them in conformity to this chapter, and their successors duly chosen, were constituted and created a body corporate in the District of Columbia, to be known as the Washington Humane Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 1; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

CHANGE OF NAME

"Washington Humane Society" was substituted for "Association for the Prevention of Cruelty to Animals" to conform to change of name effected by act Feb. 13, 1885.

§ 32-202. Officers.

The officers of said corporation shall consist of a president, five vice-presidents, one secretary, one treasurer, an executive committee of eleven members, and such other officers as shall from time to time seem necessary to this society. (June 21, 1870, 16 Stat. 158, ch. 135, § 2.)

§ 32-203. Officers to be chosen from members.

The foregoing officers shall be chosen from among the members of the society. (June 21, 1870, 16 Stat. 158, ch. 135, § 3.)

§ 32-204. By-laws.

The said society, for fixing the terms of admission of its members, for the government of the same, for the election, changing, and altering the officers above

named, and for the general regulation and management of its affairs, shall have power to form a code of by-laws, not inconsistent with the laws of the District of Columbia, or of the United States, which code, when formed and adopted at a regular meeting, shall, until modified or rescinded, be equally binding as this chapter upon the society, its officers, and members. (June 21, 1870, 16 Stat. 158, ch. 135, § 4.)

§ 32-205. Police to arrest law violators at request of member of society—Evidence of membership.

The police force of the District of Columbia shall, upon application of any member of the association, who shall have viewed any violation of the law or ordinances of the city for the prevention of cruelty to animals, arrest offending parties without a warrant, who shall be taken by such police officer before the municipal court for trial; and the proper evidence of such membership to a police officer shall be the exhibition of a badge or certificate of membership. (June 21, 1870, 16 Stat. 158, ch. 135, § 5; R. S., D. C., § 998; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

AMENDMENT

1901—Act Mar. 3, 1901, substituted "police court" for "justice of the peace court".

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Arrest of persons keeping animals or fowls for fighting or baiting, see § 22-809.

Arrests under statutes relating to the prevention of cruelty to children and animals, see § 22-804.

Criminal prosecution, see § 22-801 et seq.

§ 32-206. Disposition of fines.

One-half of all the fines collected through the instrumentality of the society or its agents, for violations of such laws, shall accrue to the benefit of said society. (June 21, 1870, 16 Stat. 158, ch. 135, § 6; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 48.)

AMENDMENT

1901—Act Mar. 3, 1901, eliminated provision for payment of one half of fines collected to the school fund of city or district in which offense committed.

CROSS REFERENCE

Association entitled to fines and forfeitures levied in prosecution of laws to prevent cruelty to animals, see § 22-806.

§ 32-207. Law effective throughout District.

The provisions of sections 32-201 to 32-207 shall be general within the boundaries of the District of Columbia. (June 21, 1870, 16 Stat. 159, ch. 135, § 7.)

§ 32-208. Society authorized to prevent cruelty to children.

The Washington Humane Society is authorized to extend its operations to the protection of children as well as animals from cruelty and abuse. In pursuance thereof the said society may cause its proper officers or agents to prefer complaints, before any court in the District of Columbia having jurisdiction, for the violation of any law relating to or affecting the protection of children in said District, and by its proper attorney may aid in bringing the facts before

such court in any proceeding taken. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

CODIFICATION

Section 1 of act Feb. 13, 1885, provided in part: "From and after the passage of this act the Association for the Prevention of Cruelty to Animals for the District of Columbia shall be known as the 'Washington Humane Society'".

NOTES TO DECISIONS

1. Powers of society

This section and § 32-209 gave the Washington Humane Society authority to prefer complaints before any court of the District of Columbia having jurisdiction in any case where the welfare of a child was involved. They also gave authority and power to the agents of said society to take before said courts dependent and delinquent children, and to prosecute those responsible for such dependency or delinquency. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D. C. 186).

§ 32-209. Commissioners to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.

The commissioners of the District of Columbia shall, by the police force of said District, aid the said society, its officers and agents, in the enforcement of all laws relating to or affecting the protection of children; and the commissioners of the said District, and their successors, are authorized, in their discretion, to detail, from time to time, an officer or officers to aid specially in the work of said society, or they may commission any duly appointed agents of said society special police officers, without compensation; and such agents or officers shall have power to arrest, without warrant, all persons violating in their presence or sight any law relating to or affecting the protection of children, or other parties so offending by virtue of a warrant issued by the juvenile court of the District of Columbia, which offenders shall be taken by such agents or officers before the said juvenile court of the District of Columbia for trial. Said agents or officers are also hereby empowered to bring before the said court any child who is subjected to cruel treatment, wilful abuse, or neglect, or any child under seventeen years of age found in a house of ill-fame; and said court may commit such child to an orphan asylum or other public charitable institution in the District of Columbia, with the consent of the constituted authorities of such asylum or institution, or make such other disposition thereof as provided by law in cases of vagrant, destitute, or abandoned children. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 2; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

AMENDMENT

1906—Act Mar. 19, 1906, changed the authority from police court to the "juvenile court" and raised age limit to "seventeen."

NOTES TO DECISIONS

In general 1 Marriage of ward of court 2

1. In general

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

2. Marriage of ward of court

The marriage of an incorrigible girl does not automatically terminate the control of the juvenile court over such minor. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D. C. 186).

§ 32-210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.

The commissioners of the District of Columbia are authorized, in their discretion, to detail from time to time one or more members of the Metropolitan police force to aid the Washington Humane Society in the enforcement of laws relating to cruelty to animals as well as of the laws relating to cruelty to children. (June 25, 1892, 27 Stat. 60, ch. 135, § 2.)

§ 32-211. Right to alter, amend, or repeal reserved.

Congress shall have power to alter, amend, or repeal sections 32-201 to 32-207 at any time. (June 21, 1870, 16 Stat. 159, ch. 135, § 8.)

Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

Sec.

- 32-301. Private hospitals and asylums—To be licensed.
- 32-302. Director of public health to enforce regulations—Inspection.
- 32-303. Penalties for violation of sections 32-301, 32-302 or regulations.
- 32-304. Commissioners of the District of Columbia to make regulations.
- 32-305. Prosecutions in municipal court.
- 32-306. Smallpox hospital—Regulations.
- 32-307. Washington Asylum Hospital continued.
- 32-308. Admission of pay patients to psychopathic ward of Gallinger Hospital.
- 32-309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.
- 32-310. Admission of pay patients to Tuberculosis Hospital.
- 32-311. Limitation on erection of hospital for contagious diseases.
- 32-312. Children's Tuberculosis Sanatorium—Construction and equipping authorized.
- 32-313. Admission of pay patients to Children's Tuberculosis Sanatorium.
- 32-314, 32-315. Repealed.
- 32-316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioners.
- 32-316a. Providence Hospital authorized to conduct medical and nursing school—Examinations—Certificate awards.
- 32-317. The Freedmen's Hospital—Direction—Expenditures.
- 32-318. Admission of patients to Freedmen's Hospital—Charges—Disposition of money collected.
- 32-318a. Charges for treatment of patients.
- 32-319. Authority to contract for the care and treatment of persons from District of Columbia in Freedmen's Hospital.
- 32-320. Unclaimed money of deceased patients.
- 32-321. Availability of appropriations.
- 32-322. Availability of appropriations to furnish medical services to non-indigent persons.
- 32-323. Conveyance of property to Columbia Hospital.
- 32-324. Restriction on use of property.
- 32-325. Creation of lien in favor of the United States.
- 32-326. Standards of indigency—Emergency patients.
- 32-327. Volunteer services in connection with medical services in Health Department.
- 32-328. Volunteer services in connection with Glenn Dale Tuberculosis Sanatorium.
- 32-329. Volunteer services in connection with Gallinger Municipal Hospital and the Tuberculosis Hospital.

§ 32-301. Private hospitals and asylums—To be licensed.

No person shall in the District of Columbia establish or maintain any private hospital or asylum,

either for the reception of human beings or of domestic animals, unless or until licensed by the commissioners of said District. (Apr. 20, 1908, 35 Stat. 64, ch. 148, § 1.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Exemption from provisions of Alcoholic Beverage Control Act, see § 25-109.

Powers and duties of Board of Public Welfare concerning charitable, corrective, and penal institutions, see § 3-101 et seq.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33-418.

NOTES TO DECISIONS

1. Liability for torts

Employees of charitable hospital are not "beneficiaries" but are strangers to the charity, and the hospital's immunity from liability for torts of its employees or agents does not preclude recovery by them for injuries. *Hughes v. President and Directors of Georgetown College* (1940, 33 F. Supp. 867).

§ 32-302. Director of public health to enforce regulations—Inspection.

It shall be the duty of the director of public health of the District of Columbia, and of such agents and employees in the service of the health department of said District as he may designate for that purpose, to enforce the provisions of sections 32-301 to 32-305 and of all regulations made by authority thereof; and said director of public health and agents and employees are hereby authorized, in the performance of the duty aforesaid, to enter and inspect during all reasonable hours all private hospitals and asylums in said District. No person shall interfere with said director of public health, or with any agent or employee aforesaid, in the performance of his official duty, nor hinder, prevent, or refuse to permit any inspection authorized by said sections. (Apr. 20, 1908, 35 Stat. 64, ch. 148, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under § 6-101.

§ 32-303. Penalties for violation of sections 32-301, 32-302 or regulations.

Any person who, for himself or as the employee or agent of another person, or as a member, officer, or employee or a firm or corporation, violates any of the provisions of sections 32-301, 32-302, or any regulations made hereunder by the commissioners of the District of Columbia, or aids in the violation thereof, shall be punished by a fine not exceeding two hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment, in the discretion of the court. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 3.)

§ 32-304. Commissioners of the District of Columbia to make regulations.

The commissioners of the District of Columbia be, and they are hereby, authorized and empowered to promulgate from time to time such regulations as in their judgment public interests require to govern the establishment and maintenance of private hospitals and asylums, whether for human beings or for do-

mestic animals, and to regulate the issue, suspension, and revocation of licenses aforesaid. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 4.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Rules and regulations generally, see § 1-226 and notes.

§ 32-305. Prosecutions in municipal court.

All prosecutions under sections 32-301 to 32-304 shall be in the Municipal Court for the District of Columbia upon information signed by the corporation counsel of said District or by one of his assistants. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 32-306. Smallpox hospital—Regulations.

The commissioners of the District of Columbia are hereby authorized to make rules and regulations for the government of the smallpox hospital. (June 8, 1896, 29 Stat. 281, ch. 373.)

CROSS REFERENCE

Power of Commissioners to make rules and regulations to prevent and control spread of communicable diseases, see § 6-118.

§ 32-307. Washington Asylum Hospital continued.

The hospital service being rendered on June 29, 1922, by the Washington Asylum Hospital, in so far as it is not provided for in the new buildings of the Gallinger Municipal Hospital, may be continued in the old buildings occupied on June 29, 1922. (June 29, 1922, 42 Stat. 702, ch. 249, § 1.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, and effective Aug. 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Gallinger Municipal Hospital and Health Department and transferred all of their positions and functions to the new department. It further provided that within the department, the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. This order was issued pursuant to Reorganization Plan No. 5, of 1952. The order and plan are set out in the Appendix to title 1, Administration.

NOTES TO DECISIONS

1. In general

Mere change of location of the Gallinger Hospital served to repeal the original dedication of the Upshur tract for municipal hospital purposes. *Rudolph v. Hunt* (1923, 286 F. 1007, 52 App. D.C. 343).

§ 32-308. Admission of pay patients to psychopathic ward of Gallinger Hospital.

Pay patients may be admitted to the psychopathic ward of the Gallinger Municipal Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (June 7, 1924, 43 Stat. 568, ch. 302, § 1.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953 and effective Aug. 15, 1953, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Gallinger Municipal Hospital and Health Department and transferred all of their positions and functions to the new department. It further provided that within the department, the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

NOTES TO DECISIONS

In general 1
Governmental function 2

1. In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

2. Governmental function

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

Care for the indigent sick is a "governmental function". *Id.*

§ 32-309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.

Pay patients may be admitted to the contagious-disease ward of the Gallinger Municipal Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (Apr. 14, 1932, 47 Stat. 79, ch. 98, § 1.)

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital and the Health Department.

NOTES TO DECISIONS

In general 1
Governmental function 2

1. In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

2. Governmental function

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

Care for the indigent sick is a "governmental function". *Id.*

§ 32-310. Admission of pay patients to Tuberculosis Hospital.

Pay patients may be admitted to the Tuberculosis Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (June 7, 1924, 43 Stat. 538, ch. 302, § 1.)

CROSS REFERENCE

Tuberculosis hospital under jurisdiction and control of the health department, see § 6-117.

NOTES TO DECISIONS

In general 1
Governmental function 2

1. In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

2. Governmental function

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U.S. App. D.C. 364).

Care of the indigent sick is a "governmental function". *Id.*

§ 32-311. Limitation on erection of hospital for contagious diseases.

No building for use as a public or private hospital for contagious diseases shall be erected in the District of Columbia within three hundred feet of any building owned by a private individual or any other party than the one erecting the building. (Mar. 2, 1895, 28 Stat. 758, ch. 176.)

CROSS REFERENCE

Commissioners may make rules and regulations to control and prevent spread of communicable diseases, see § 6-118.

§ 32-312. Children's Tuberculosis Sanatorium—Construction and equipping authorized.

The Commissioners of the District of Columbia are authorized to acquire, by purchase, condemnation, or otherwise, a site, and to cause to be constructed thereon, in accordance with plans and specifications approved by such commissioners, suitable buildings and structures for use as a children's tuberculosis sanatorium, including necessary approaches and roadways, heating and ventilating apparatus, furniture, equipment, and accessories. (Mar. 1, 1929, 45 Stat. 1425, ch. 422, § 1.)

APPROPRIATIONS

Act Apr. 18, 1930, 46 Stat. 218, ch. 186, increased the authorized appropriation for the children's tuberculosis sanatorium from \$500,000 to \$625,000 or so much thereof as may be necessary.

Section 2 of act Mar. 1, 1929, 45 Stat. 1425, ch. 422, authorized an appropriation of \$500,000, or so much thereof as might be necessary to construct and equip a children's tuberculosis sanatorium, to be appropriated in like manner as other appropriations for the District of Columbia.

ACQUISITION OF LAND

Act Apr. 18, 1930, 46 Stat. 218, ch. 186, provided in part: "That if the land proposed to be acquired as a site for the said sanatorium is without the District of Columbia the title to said property shall be taken directly to and in the name of the United States, and in case a satisfactory price cannot be agreed upon for the purchase of said land, the Attorney General of the United States, at the request of the Commissioners of the District of Columbia, shall institute condemnation proceedings to acquire such land as may be selected for said site either in the State of Maryland or in the State of Virginia in accordance with the laws of said States, and expenses of procuring evidence of title or of condemnation, or both, shall be paid out of the appropriation herein made for the purchase of said site."

§ 32-313. Admission of pay patients to Children's Tuberculosis Sanatorium.

Pay patients may on and after June 23, 1936, be admitted to the Children's Tuberculosis Sanatorium for care and treatment at such rates and under such regulations as may be established by the commissioners of the District of Columbia, insofar as such admissions will not interfere with admission of indigent patients. (June 23, 1936, 49 Stat. 1880, ch. 726, § 1.)

§§ 32-314, 32-315. Repealed. June 28, 1952, 66 Stat. 288, ch. 486, § 4(a)(2), (3).

Section 32-314, act Mar. 4, 1915, 38 Stat. 1147, ch. 147, related to improvements or repairs to Columbia Hospital for Women and Lying-in Asylum buildings and grounds.

Section 32-315, act Mar. 3, 1893, 27 Stat. 551, ch. 199, § 1, related to filling of vacancies among trustees of Columbia Hospital for Women and Lying-in Asylum by District Commissioners.

SAVINGS PROVISION

Section 4 (b) of act June 28, 1952, provided that: "the repeals * * * shall not affect the current term of office of any trustee or director of the Columbia Hospital for Women and Lying-in Asylum appointed prior to the date of the enactment of this Act [June 28, 1952], and the existing directors and their successors shall have all the powers and authority of the original incorporators named in the Act of Incorporation of said hospital * * * and the power to fill vacancies on the board of directors".

§ 32-316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioners.

Providence Hospital and Garfield Memorial Hospital shall receive at any time such patients suffering with minor contagious diseases as may be sent by the commissioners of the District of Columbia at the request of the director of public health of the District. (July 1, 1898, 30 Stat. 635, ch. 546; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

CROSS REFERENCE

Rules and regulations by Commissioners to prevent spread of communicable diseases, see §§ 6-118, 32-306.

§ 32-316a. Providence Hospital authorized to conduct medical and nursing school—Examinations—Certificate awards.

The Providence Hospital is authorized to conduct not only a hospital, clinic, and all the departments, staffs, and services usually connected therewith, but also a school for the education and training of nurses and interns with full power to examine the said nurses and interns and to issue suitable certificates evidencing the completion of their courses of training. (Oct. 29, 1945, 59 Stat. 551, ch. 439, § 2.)

CHANGE OF NAME

Section 1 of act Oct. 29, 1945, provided: "The corporate name of the said corporation shall be 'Providence Hospital' instead of 'The Directors of Providence Hospital.'"

§ 32-317. The Freedmen's Hospital—Direction—Expenditures.

The Freedmen's Hospital in the District of Columbia shall, until otherwise ordered by Congress, be continued under the direction of the Secretary of Health, Education, and Welfare who shall submit estimates for expenses and maintenance. (R. S., § 2038; June 23, 1874, 18 Stat. 223, ch. 455, § 1; 1940

Reorg. Plan No. 5, eff. June 30, 1940, 5 F. R. 2421, 54 Stat. 1234; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

AMENDMENTS

1874—Act June 23, 1874, amended section generally. Prior to such amendment, section read as follows: "The Freedmen's Hospital and Asylum in the District of Columbia is, until otherwise ordered by Congress, continued under the control and supervision of the Secretary of War, who shall make all estimates, pass all accounts, and be responsible to the Treasury for all expenditures; but no part of any appropriation shall be used in support of, or to pay the expenses on account of, any person hereafter to be admitted to such Hospital and Asylum, unless persons removed thither from some other Government hospital."

TRANSFER OF FUNCTIONS

The Department of Health, Education, and Welfare was established, a Secretary of Health, Education, and Welfare was designated as the head of the Department, all agencies of the Federal Security Agency, including Freedmen's Hospital, and all functions of the Federal Security Administrator were transferred to the Department and Secretary, respectively, and the Federal Security Agency and the office of the Federal Security Administrator were abolished by 1953 Reorg. Plan No. 1.

Freedmen's Hospital and its functions were transferred from the Department of Interior to the Federal Security Agency to be administered under the direction and supervision of the Federal Security Administrator by 1940 Reorg. Plan No. 5. The Hospital was placed by the Administrator under the supervision of the Public Health Service.

§ 32-318. Admission of patients to Freedmen's Hospital—Charges—Disposition of money collected.

Patients may be admitted to Freedmen's Hospital for care and treatment on the payment of such reasonable charges therefor as the Secretary of Health, Education, and Welfare shall prescribe. All moneys so collected shall be paid into the treasury to the credit of Freedmen's Hospital, to be disbursed under the supervision of the Secretary of Health, Education, and Welfare for subsistence, fuel and light, clothing, bedding, forage, medicine, medical and surgical supplies, surgical instruments, repairs, furniture, and other absolutely necessary expenses incident to the management of the hospital. (June 26, 1912, 37 Stat. 172, ch. 182, § 1; May 29, 1928, 45 Stat. 992, ch. 901, § 1, par. 78; 1940 Reorg. Plan No. 5, eff. June 30, 1940, 5 F. R. 2421, 54 Stat. 1234; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

AMENDMENT

1928—Act May 29, 1928, deleted: "A report as to expenditures thereof shall be made annually to Congress."

TRANSFER OF FUNCTIONS

See note under section 32-317 concerning the Freedmen's Hospital and Secretary of Interior.

§ 32-318a. Charges for treatment of patients.

The amounts to be charged the District of Columbia and other establishments of the Government for the treatment of patients for which they are responsible shall be calculated on the basis of a per diem rate approved by the Bureau of the Budget. (July 3, 1945, 59 Stat. 366, ch. 263, title II, § 201; July 26, 1946, 60 Stat. 687, ch. 672, title II, § 201; July 8, 1947, 61 Stat. 265, ch. 210, title II, § 201.)

AMENDMENTS

1947—Act July 8, 1947, substituted "Bureau of the Budget" in lieu of "the President."

1946—Act July 26, 1946, amended section by omitting "recommended annually in advance by the Federal Board of Hospitalization and" preceding "approved."

§ 32-319. Authority to contract for the care and treatment of persons from District of Columbia in Freedmen's Hospital.

The Secretary of Health, Education, and Welfare is authorized to enter into contract with the Board of Public Welfare of the District of Columbia for the care and treatment of persons from the District of Columbia admitted to the Freedmen's Hospital; and any money that may be received, from this source, shall be paid to the Secretary of Health, Education, and Welfare, to be applied to the uses and purposes of the hospital. (Mar. 3, 1905, 33 Stat. 1190, ch. 1483, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58; 1940 Reorg. Plan No. 5, eff. June 30, 1940, 5 F. R. 2421, 54 Stat. 1234; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

AMENDMENT

1926—Act Mar. 16, 1926, substituted "Board of Public Welfare" for "Board of Charities".

TRANSFER OF FUNCTIONS

See note under section 32-317 concerning the Freedmen's Hospital and Secretary of Interior.

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-320. Unclaimed money of deceased patients.

All unclaimed money left at the Freedmen's Hospital by deceased patients shall, after a period of three years, be deposited in the treasury of the United States to the credit of miscellaneous receipts. (July 1, 1916, 39 Stat. 311, ch. 209, § 1.)

TRANSFER OF FUNCTIONS

See note under section 32-317 concerning the Freedmen's Hospital and Secretary of Interior.

§ 32-321. Availability of appropriations.

On and after June 30, 1945, no District of Columbia appropriations shall be available for the care of persons, except in emergency cases, where the person has been a resident of the District of Columbia for less than one year at the time of application for admission. (June 30, 1945, 59 Stat. 282, ch. 209, § 1.)

SIMILAR PROVISIONS

- 1945—June 28, 1944, 58 Stat. 519, ch. 300, § 1.
- 1944—July 1, 1943, ch. 184, § 1, 57 Stat. 328.
- 1943—June 27, 1942, ch. 452, § 1, 56 Stat. 441.
- 1942—July 1, 1941, ch. 271, § 1, 55 Stat. 517.
- 1941—June 12, 1940, ch. 333, § 1, 54 Stat. 323.

CROSS REFERENCE

Emergency cases and standards of indigency, see § 32-326.

§ 32-322. Availability of appropriations to furnish medical services to non-indigent persons.

On and after July 9, 1946, no part of any appropriation for Gallinger Municipal Hospital or the Health Department shall be used for furnishing, other than at rates prescribed by the Commissioners, clinical services, drugs, pharmaceutical preparations, or X-ray service, to persons who are not indigent, except in emergency cases or where the Commissioners determine it to be necessary in the public interest. (July 9, 1946, 60 Stat. 511, ch. 544, § 1.)

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital and the Health Department.

SIMILAR PROVISIONS

Similar provisions were contained in the District of Columbia Appropriation Act, 1946, act June 30, 1945, 59 Stat. 282, ch. 209, § 1.

NOTES TO DECISIONS

In general 1
Governmental function 2

1. In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

2. Governmental function

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay patient. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

Care for the indigent sick is a "governmental function". *Id.*

§ 32-323. Conveyance of property to Columbia Hospital.

Subject to the provisions of section 32-324, the Administrator of General Services and the Commissioners of the District of Columbia are directed to convey, without monetary consideration, to the Columbia Hospital for Women and Lying-in Asylum, Washington, District of Columbia, a corporation created by the Act of June 1, 1866 (14 Stat. 55), all right, title, and interest of the United States and of the District of Columbia in and to those pieces or parcels of land in the District of Columbia, described as follows, together with all improvements thereon and appurtenances thereto:

(a) All that piece or parcel of land situate and lying in the city of Washington in the District of Columbia and known as part of square numbered 25, as laid down and distinguished on the plat or plan of said city, as follows: Beginning at the southeast corner of said square and running thence north with Twenty-fourth Street two hundred and thirty-one feet and seven inches; thence west two hundred and thirty feet and six inches; thence north to M Street two hundred and thirty-one feet and ten inches; thence west with M Street two hundred and fifteen feet and six inches to Twenty-fifth Street; thence south with Twenty-fifth Street two hundred and sixty-three feet and five inches; thence east two hundred feet; thence south to L Street two hundred feet; thence east with L Street two hundred and forty-six feet to the beginning; and being the property conveyed to the United States of America by deed dated October 17, 1876, from the Columbia Hospital for Women and Lying-in Asylum, recorded in liber 836, folio 159, of the land records of the District of Columbia.

(b) All that piece or parcel of land situate and lying in the city of Washington in the District of Columbia on the northeast corner of L and Twenty-fifth Streets Northwest, being a part of original square numbered 25, as follows: Beginning at the southwest corner of said square and running thence east with the line of said L Street two hundred feet for a corner; thence north two hundred feet for a corner; thence west two hundred feet for a corner; and thence south two hundred feet to the place

of beginning; containing forty thousand square feet of ground, more or less, and being the property conveyed to the United States of America by deed dated July 6, 1872, from the Columbia Hospital for Women and Lying-in Asylum and Edward Maynard, recorded in liber 811, folio 481 of the land records of the District of Columbia. (June 28, 1952, 66 Stat. 287, ch. 486, § 1.)

§ 32-324. Restriction on use of property.

The deed conveying the property described in section 32-323 shall provide that no part of said property shall, without the consent of the United States, be devoted to any other purpose than a hospital for women. (June 28, 1952, 66 Stat. 288, ch. 486, § 2.)

§ 32-325. Creation of lien in favor of the United States.

The provisions of the paragraph following the appropriation for the Washington Hospital for Foundlings in section 32-1003, creating a lien in favor of the United States with respect to the appropriations referred to therein, shall also apply to the appropriations in the aggregate amount of \$50,000, granted in the Act of June 10, 1872 (17 Stat. 360), and in the Act of March 3, 1875 (18 Stat. 386), for the purchase by the United States of the property described in section 32-323, and the acceptance by the Columbia Hospital for Women and Lying-in Asylum of the conveyance of said property shall be deemed an acceptance of and agreement to this provision. (June 28, 1952, 66 Stat. 288, ch. 486, § 3.)

§ 32-326. Standards of indigency—Emergency patients.

The Commissioners of the District of Columbia shall establish from time to time reasonable standards of indigency for admission of patients to municipal hospitals of the District of Columbia: *Provided*, That emergency and semi-indigent patients may be admitted to the general ward and tuberculosis ward of Gallinger Municipal Hospital on a full- or part-pay basis at such rates and under such regulations as may be established by the Commissioners insofar as such admissions will not interfere with the admission of indigent patients: *Provided further*, That the Commissioners may enter into agreements with the States of Maryland and Virginia, or the political subdivisions thereof, for the care and treatment in such municipal hospitals of emergency patients who are indigent residents of such States or political subdivisions. (June 27, 1942, 56 Stat. 441, ch. 452, § 1.)

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital.

NOTES TO DECISIONS

In general 1 Governmental function 2

1. In general

The District of Columbia government was not included in the Federal Tort Claims Act. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

2. Governmental function

Purpose of District of Columbia general hospital is care of indigent sick, a governmental function, and District was not liable for alleged negligent injury to a patient, irrespective of whether injured patient was a pay

patient. *Calomeris admtr., etc. v. District of Columbia* (1955, 226 F. 2d 266, 96 U. S. App. D. C. 364).

Care for the indigent sick is a "governmental function". *Id.*

§ 32-327. Volunteer services in connection with medical services in Health Department.

On and after Aug. 3, 1951, the Commissioners may without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the maintenance of medical services in the Health Department. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning the Health Department.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

- 1951—July 18, 1950, 64 Stat. 356, ch. 467, § 1.
- 1950—June 29, 1949, 63 Stat. 312, ch. 279, § 1.
- 1949—June 19, 1948, 62 Stat. 546, ch. 555, § 1.
- 1948—July 25, 1947, 61 Stat. 436, ch. 324, § 1.
- 1947—July 9, 1946, 60 Stat. 511, ch. 544, § 1.
- 1946—June 30, 1945, 59 Stat. 282, ch. 209, § 1.
- 1945—June 28, 1944, 58 Stat. 518, ch. 300, § 1.
- 1944—July 1, 1943, 57 Stat. 327, ch. 184, § 1.
- 1943—June 27, 1942, 56 Stat. 439, ch. 542, § 1.

§ 32-328. Volunteer services in connection with Glenn Dale Tuberculosis Sanatorium.

On and after Aug. 3, 1951, the Commissioners may, without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the operation of the Glenn Dale Tuberculosis Sanatorium. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

§ 32-329. Volunteer services in connection with Gallinger Municipal Hospital and the Tuberculosis Hospital.

On and after Aug. 3, 1951, the Commissioners may without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the operation of Gallinger Municipal Hospital and the Tuberculosis Hospital. (Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.)

TRANSFER OF FUNCTIONS

See note under section 32-308 concerning Gallinger Municipal Hospital.

Chapter 4.—SAINT ELIZABETHS HOSPITAL

Sec.

- 32-401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.
- 32-401a. District of Columbia funds—Availability based on residence.
- 32-402. Payment of Federal Treasury of part of expense from appropriations for District.
- 32-403. Payments to superintendent to be credited to appropriations for care and maintenance of patients.
- 32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.
- 32-405. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.
- 32-406. Private patients—Rate of board—Friends to comply with regulations.
- 32-406a. Patients of District of Columbia or Federal Government—Payment for care—Accounting.
- 32-407. Admission of insane convicts.
- 32-408. Authorization to accept gifts.

Sec.

- 32-409. Same—Custody and investment of gifts.
- 32-410. Same—Gifts of intangible personal property.
- 32-411. Same—Gifts of real property.
- 32-412. Admission of applicants.
- 32-413. Applicants' rights of release—Exceptions.
- 32-414. Costs of board, medical care and treatment.
- 32-415. Regulations—Approval of Secretary of Health, Education, and Welfare.
- 32-416. Regulations relating to Board of Public Welfare—District of Columbia.
- 32-417. Commitments by special commissioners of certain United States District Courts.
- 32-417a. Certain officers and employees of United States authorized to apprehend persons believed to be of unsound mind—Proceedings thereafter.
- 32-417b. Admission upon written applications—Right of release.
- 32-417c. Superintendent to receive persons committed or apprehended under §§ 32-417 and 32-417a.
- 32-417d. Examinations—Adjudications—Laws applicable—Expense of care and treatment.
- 32-417e. Military personnel to be transferred.
- 32-417f. Persons entitled to care in a Veterans' Administration facility.
- 32-417g. Superintendent authorized to pay expenses of transfers.

§ 32-401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.

The expense of the indigent persons who may be admitted to Saint Elizabeths Hospital from the District of Columbia shall be paid from the revenues of said District, provided that such indigent persons shall be admitted only upon the order of the executive authority of said District. (Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

CODIFICATION

Provision was made for payment of expenses of indigent persons from revenues of the District instead of payment of one half of such expenses from the treasury of the District to conform to the annual Federal payment provisions of act July 26, 1939, 53 Stat. 1085, ch. 367, title I, set out as section 47-134.

CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

CROSS REFERENCES

Commitment of feeble-minded persons, see § 32-622.
Hospitalization of United States nationals adjudged insane or found mentally ill in foreign countries, see U.S. Code, title 24, §§ 321-329.

Lump-sum appropriation for the District by Federal Government, see § 47-134.

Other provisions concerning insane persons, criminally insane, inquests, commitment, payment of expenses, see §§ 21-301 et seq., 24-301 to 24-303.

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

NOTES TO DECISIONS

1. In general

St. Elizabeths Hospital is a United States government institution, but under appropriate statutes indigent insane persons and insane persons of dangerous tendencies residing in the District of Columbia are admitted to its benefits, and the expense of their support and treatment is chargeable to the District of Columbia. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

§ 32-401a. District of Columbia funds—Availability based on residence.

The funds of the District of Columbia shall not be available for the care of any person admitted on and after June 19, 1948, to Saint Elizabeths Hospital who has not lived in the District of Columbia

for more than one year immediately prior to application for voluntary admission or the filing of the petition provided for in the Act approved June 8, 1938, as amended: *Provided*, That nothing herein shall be construed to limit or otherwise modify any authority of Saint Elizabeths Hospital or its Superintendent pursuant to law to admit, receive, detain, or care for any individual. (June 19, 1948, 62 Stat. 549, ch. 555, § 1.)

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-402. Payment by Federal Treasury of part of expense from appropriations for District.

The expense of the indigent patients admitted to Saint Elizabeths Hospital from the District of Columbia shall be reported to the treasury department, and charged against the appropriations to be paid toward the expenses of the District by the general government, without regard to the date of their admission. (Mar. 3, 1879, 20 Stat. 395, ch. 182, § 1; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

CODIFICATION

Provision was made for payment of expenses of indigent persons from revenues of the District instead of payment of one half of such expenses from the treasury of the District to conform to the annual Federal payment provisions of act July 26, 1939, 53 Stat. 1085, ch. 367, title I, set out as section 47-134.

CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

CROSS REFERENCES

Lump-sum appropriation for the District by Federal Government, see § 47-134.

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-403. Payments to superintendent to be credited to appropriations for care and maintenance of patients.

All sums paid to the Superintendent of Saint Elizabeths Hospital for the care of patients shall be deposited in the Treasury to the credit of the appropriation for the care of patients at the hospital for the year in which such care is provided. (Aug. 4 1947, 61 Stat. 751, ch. 478, § 3.)

CODIFICATION

Section is also classified to U.S. Code, title 24, § 169.

SIMILAR PROVISIONS

- 1948—July 8, 1947, 61 Stat. 272, ch. 210, title II, § 201.
- 1947—July 26, 1946, 60 Stat. 693, ch. 672, title II, § 201.
- 1946—July 3, 1945, 59 Stat. 372, ch. 263, title II.
- 1945—June 28, 1944, 58 Stat. 561, ch. 302, title II, § 1.
- 1944—July 12, 1943, 57 Stat. 509, ch. 221, title II.
- 1943—July 2, 1942, 56 Stat. 585, ch. 475, title II.
- 1942—July 1, 1941, 55 Stat. 493, ch. 269, title II.
- 1941—June 18, 1940, 54 Stat. 460, ch. 395, § 1.
- 1940—May 10, 1939, 53 Stat. 737, ch. 119, § 1.
- 1939—May 9, 1938, 52 Stat. 341, ch. 187, § 1.
- 1938—Aug. 9, 1937, 50 Stat. 615, ch. 570, § 1.
- 1937—June 22, 1936, 49 Stat. 1802, ch. 691, § 1.
- 1936—May 9, 1935, 49 Stat. 215, ch. 101, § 1.
- 1935—Mar. 2, 1934, 48 Stat. 394, ch. 38, § 1.
- 1934—Feb. 17, 1933, 47 Stat. 856, ch. 98, § 1.
- 1933—Apr. 22, 1932, 47 Stat. 131, ch. 125, § 1.
- 1932—Feb. 14, 1931, 46 Stat. 1159, ch. 187, § 1.
- 1931—May 14, 1930, 46 Stat. 324, ch. 273, § 1.
- 1930—Mar. 4, 1929, 45 Stat. 1605, ch. 705, § 1.
- 1929—Mar. 7, 1928, 45 Stat. 242, ch. 137, § 1.
- 1928—Jan. 12, 1927, 44 Stat. 970, ch. 27, § 1.

1927—May 10, 1926, 44 Stat. 494, ch. 277, § 1.

1926—Mar. 3, 1925, 43 Stat. 1183, ch. 462.

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

All collections or reimbursements on account of charges paid or payable by the District of Columbia for the care and support of the insane of said District at Saint Elizabeths Hospital shall be made to the commissioners of the District of Columbia and covered into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 917, ch. 149; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

CROSS REFERENCES

Lump-sum appropriation for the District by Federal Government, see § 47-134.

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-405. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.

All indigent insane persons residing in the District of Columbia at the time they became insane shall be entitled to the benefits of Saint Elizabeths Hospital. An indigent insane person within the meaning of this section shall be one who is insane and unable to support himself and family, or himself, if he has no family, under the visitation of insanity. (R. S., § 4844; Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

CROSS REFERENCES

Lump-sum appropriation for District by Federal Government, see § 47-134.

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

NOTES TO DECISIONS

1. In general

The estate of a patient committed to St. Elizabeths Hospital while a resident of the District of Columbia is liable to the District for his maintenance, and statute of limitations does not run against the District in its claim for such maintenance. *Hart v. Commissioners of District of Columbia* (1946, 155 F. 2d 877, 81 U.S. App. D.C. 154).

Where court committing patient to St. Elizabeths Hospital was of view that patient's estate should be used for support of his family in preference to his own support, when patient's wife and child died and other children became of age or married, that primary obligation ceased and patient's estate thereupon became available for his own maintenance. *Id.*

§ 32-406. Private patients—Rate of board—Friends to comply with regulations.

Whenever there are vacancies, private patients from the District may be received at a rate of board to be determined by the visitors, to be in no case less than the actual cost of their support, and may remain until restored to reason.

The friends of the patient shall comply with the regulations of the hospital in respect to payment of board and in all other respects. (R. S., §§ 4853, 4854.)

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

NOTES TO DECISIONS

1. Effective date of act

The provision that the committee or trustee of an insane person shall reimburse the District for care and expenses up to the time of appointment was intended to relate back to the date of the passage of the act. *Fitzhugh v. District of Columbia* (1940, 109 F. 2d 837, 71 App. D.C. 290).

§ 32-406a. Patients of District of Columbia or Federal Government—Payments for care—Accounting.

Any executive department of the Federal Government (including any agency, independent establishment, or wholly owned instrumentality thereof, and including the District of Columbia) requiring Saint Elizabeths Hospital to care for patients for whom such department is responsible, shall, except to the extent that the expense of such care is authorized to be paid from appropriations to the hospital for the care of patients, pay by check to Saint Elizabeths Hospital, upon the Superintendent's request, either in advance or by way of reimbursement at the end of each calendar month or calendar quarter, such amounts as the Superintendent calculates to be due for such care on the basis of a per diem rate approved by the Bureau of the Budget. Bills rendered by the Superintendent on the basis of such calculations shall not be subject to audit or certification in advance of payment; but proper adjustment of amounts which have been paid in advance on the basis of such calculations shall be made monthly or quarterly, as may be agreed upon by the Superintendent of the hospital and the executive department concerned. (Aug. 4, 1947, 61 Stat. 751, ch. 478, sec. 2.)

CODIFICATION

Previous provisions which were set out under this section were contained in appropriation acts of July 26, 1946, 60 Stat. 693, ch. 672, title II, and July 8, 1947, 61 Stat. 271, ch. 210, title II. The provisions above set out are later in time and appear to have superseded the earlier provisions.

CROSS REFERENCE

Sections 1, 3, 4 and 5 of act Aug. 4, 1947, are classified to sections 195a, 169, 169a, and 185, respectively in title 24, U.S. Code.

§ 32-407. Admission of insane convicts.

Any person becoming insane during the continuance of his sentence in the United States penitentiary shall have the same privilege of treatment in Saint Elizabeths Hospital during the continuance of his mental disorder as is granted in section 211 of title 24, U.S. Code, to persons who escape the consequences of criminal acts by reason of insanity, unless it be the opinion, both of the physician to the penitentiary and the superintendent of the hospital, that such insane convict is so depraved and furious in his character as to render his custody in the hospital insecure, and his example pernicious. (R.S., § 4852; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

CODIFICATION

Section is also classified to U.S. Code, title 24, § 21a.

CHANGE OF NAME

"Government Hospital for the Insane" changed to "Saint Elizabeths Hospital" to conform to act July 1, 1916.

§ 32-408. Authorization to accept gifts.

The Secretary of Health, Education, and Welfare is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the improvement, maintenance, or operation of Saint Elizabeths Hospital in the District of Columbia. Conditional gifts may be so accepted if recommended by the Surgeon General of the Public Health Service, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress. (Nov. 7, 1941, 55 Stat. 760, ch. 469, § 1; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

CODIFICATION

Section is also classified to U.S. Code, title 24, § 181.

TRANSFER OF FUNCTIONS

The office of Federal Security Administrator was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by Reorg. Plan No. 1 of 1953 which established the Department of Health, Education, and Welfare. The plan was made effective Apr. 11, 1953, by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1. See U. S. Code, title 5, § 623.

§ 32-409. Same—Custody and investment of gifts.

Any unconditional gift of money accepted pursuant to the authority granted in section 32-408, the net proceeds from the liquidation (pursuant to section 32-410 or section 32-411) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of Saint Elizabeths Hospital, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The income from such investments shall be available for expenditure in the improvement, maintenance, or operation of Saint Elizabeths Hospital, subject to the same examination and audit as provided for appropriations made for Saint Elizabeths Hospital by Congress. (Nov. 7, 1941, 55 Stat. 760, ch. 469, § 2.)

CODIFICATION

Section is also classified to U.S. Code, title 24, § 182.

§ 32-410. Same—Gifts of intangible personal property.

The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in section 32-408 shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them or may liquidate them whenever in his judgment the purposes of the gifts will be served thereby. The income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in section 32-411. (Nov. 7, 1941, 55 Stat. 761, ch. 469, § 3.)

CODIFICATION

Section is also classified to U.S. Code, title 24, § 183.

§ 32-411. Same—Gifts of real property.

The Secretary of Health, Education, and Welfare shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in section 32-408 and he shall permit such property to be used for the improvement, maintenance, or operation of Saint Elizabeths Hospital or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in section 32-409: *Provided*, That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary of Health, Education, and Welfare for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required for the improvement or operation of the Saint Elizabeths Hospital may be liquidated by the Secretary of Health, Education, and Welfare whenever in his judgment the purposes of the gifts will be served thereby. (Nov. 7, 1941, 55 Stat. 761, ch. 469, § 4; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

CODIFICATION

Section is also classified to U.S. Code, title 24, § 184.

TRANSFER OF FUNCTIONS

The office of Federal Security Administrator was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by Reorg. Plan No. 1 of 1953 which established the Department of Health, Education, and Welfare. The plan was made effective Apr. 11, 1953, by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1. See U. S. Code, title 5, § 623.

§ 32-412. Admission of applicants.

(a) The Superintendent of Saint Elizabeths Hospital may receive therein as a boarder and patient any adult person who appears to the Superintendent to be in need of mental care and treatment in a mental hospital, and who makes written application therefor and who is determined by the Superintendent to be mentally competent to make such application; and any person, under the age of twenty-one years, who appears to the Superintendent to be in need of mental care and treatment in a mental hospital, and whose parent, legal guardian, or other legal representative makes written application on behalf of such minor: *Provided*, That no such person shall be received as a boarder and patient in Saint Elizabeths Hospital under authority of this section unless the certification provided for in subsection (b) of this section shall have been made with respect to him: *Provided further*, That no person shall be permitted to remain in such hospital as boarder and patient after the need for his treatment at a mental hospital has ceased: *And provided further*, That no person shall be permitted to remain in such hospital as a boarder and patient after the Superintendent of Saint Elizabeths Hospital or his authorized representative has been notified that the certification provided for in subsection (b) has been revoked.

(b) Upon request therefor by the Superintendent of Saint Elizabeths Hospital, the Board of Public

Welfare, if it finds that any person with respect to whom the application described in subsection (a) has been made was a resident of and domiciled within the District of Columbia for one year next preceding the time of such application, shall certify to the Superintendent that it will reimburse Saint Elizabeths Hospital the cost of caring for such person as provided in section 32-414; except that if the Board finds that such person, or any other person legally responsible for his care, is able to pay all or any part of the cost of such care, the Board shall not be required to make a certification unless it has, pursuant to section 32-414, made an agreement satisfactory to it for payment to the District of Columbia of the cost of such care or such part of such cost. (June 22, 1948, 62 Stat. 572, ch. 597, § 1.)

EFFECTIVE DATE

Section 6 of the act June 22, 1948, provided that: "This Act [sections 32-412 to 32-416] shall become effective sixty days after enactment [June 22, 1948]."

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and effective Aug. 15, 1953, makes the Director of Public Health responsible for investigation of and payment for all indigent District residents admitted to St. Elizabeths Hospital. The order and Reorganization Plan No. 5 of 1952 are set out in the Appendix to title I, Administration.

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-413. Applicant's rights of release—Exceptions.

Any person received at Saint Elizabeths Hospital for mental care and treatment under section 32-412 shall not be detained there more than three days after having given written notice to the Superintendent thereof requesting his release, or, in the case of any such person who is under the age of twenty-one years, more than three days after he or his parent, legal guardian, or other legal representative gives such notice: *Provided*, That (a) if within such three-day period there shall be filed in the United States District Court for the District of Columbia a petition with respect to such person, as provided by sections 21-301 to 21-325, or (b) if an authorized representative of the Board of Public Welfare, upon receipt of a notice signed by the Superintendent of Saint Elizabeths Hospital or his authorized representative stating that in his opinion said person is of unsound mind and should not be allowed to remain at liberty or go unrestrained, shall within such three-day period file a verified petition for a writ de lunatico inquirendo, or for an order of commitment, accompanied by the aforesaid notice, in the said District Court, alleging upon information and belief that such person is of unsound mind and should not be allowed to remain at liberty or go unrestrained, such person shall be detained by the Superintendent of Saint Elizabeths Hospital until a final judgment is entered by the Court upon any such petition and any petition filed in accordance with clause (b) of this proviso, accompanied by the aforesaid notice, shall forthwith be referred by the Court to the Commission on Mental Health, which said petition and notice shall be sufficient to

initiate proceedings before said Commission. Pending the hearing upon the petition, such person need not be sent to Gallinger Hospital for observation and treatment, but shall be detained in Saint Elizabeths Hospital for observation and treatment. (June 22, 1948, 62 Stat. 572, ch. 597, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE

Section effective sixty days after June 22, 1948, see section 6 of act June 22, 1948, set out as a note under § 32-412.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

See note under section 32-308 concerning Gallinger Municipal Hospital and the Health Department.

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-414. Costs of board, medical care, and treatment.

The cost of board, medical care, and treatment furnished under sections 32-412 to 32-416 shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to Saint Elizabeths Hospital. The District of Columbia is authorized to make such agreement as it deems necessary with any patient seeking board, medical care, and treatment under sections 32-412 to 32-416, or any other person or persons legally responsible therefor, for payment to the District of Columbia of the cost of such board, medical care, and treatment, or for the payment of a part of such cost; and is further authorized to take appropriate steps by legal action or otherwise to enforce such agreement, or, in the absence of an agreement, to recover such cost of board, medical care, and treatment, or any part thereof, from the patient or from any person or persons legally liable therefor. The District of Columbia shall not be charged with the cost of board, medical care, and treatment furnished for any boarder and patient with respect to whom the certification required under section 32-412 shall have been revoked by the Board of Public Welfare, and the said Board is authorized to order revocation of any such certification: (a) When any person fails to make any payment under any agreement entered into under sections 32-412 to 32-416 for the cost of board, medical care, and treatment; or (b) when, after a boarder and patient has been admitted to such hospital under a certification, without any agreement having been entered into for his care and treatment, the said Board determines, upon evidence satisfactory to it, that such boarder and patient is able, or other persons legally liable for his care are financially able, to bear all or part of such cost; or (c) when such certification has been made erroneously: *Provided*, That revocation of such certification shall not take effect until a copy of the order of revocation shall have been served upon the Superintendent of Saint Elizabeths Hospital or his authorized representative. (June 22, 1948, 62 Stat. 573, ch. 597, § 3.)

EFFECTIVE DATE

Section effective sixty days after June 22, 1948, see section 6 of act June 22, 1948, set out as a note under section 32-412.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and effective Aug. 15, 1953, makes the Director of Public Health responsible for investigation of and payment for all indigent District residents admitted to St. Elizabeths Hospital. The order and Reorganization Plan No. 5 of 1952 are set out in the Appendix to Title I, Administration.

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-415. Regulations—Approval of Secretary of Health, Education, and Welfare.

The Superintendent of Saint Elizabeths Hospital, with the approval of the Secretary of Health, Education, and Welfare, is authorized to prescribe such regulations as he shall deem necessary to carry out the provisions of sections 32-412 to 32-416 relating to the hospital. (June 22, 1948, 62 Stat. 574, ch. 597, § 4; 1953 Reorg. Plan No. 1, § 5; eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

EFFECTIVE DATE

Section effective sixty days after June 22, 1948, see section 6 of act June 22, 1948, set out as a note under section 32-412.

TRANSFER OF FUNCTIONS

The office of Federal Security Administrator was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by Reorg. Plan No. 1 of 1953 which established the Department of Health, Education, and Welfare. The plan was made effective Apr. 11, 1953 by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1. See U.S. Code, title 5, § 623.

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-416. Regulations relating to Board of Public Welfare—District of Columbia.

The Commissioners of the District of Columbia are authorized to prescribe such regulations as they shall deem necessary to carry out the provisions of sections 32-412 to 32-416 relating to the Board of Public Welfare and the District of Columbia. (June 22, 1948, 62 Stat. 574, ch. 597, § 5.)

EFFECTIVE DATE

Section effective sixty days after June 22, 1948, see section 6 of act June 22, 1948, set out as a note under section 32-412.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and effective Aug. 15, 1953, makes the Director of Public Health responsible for investigation of and payment for all indigent District residents admitted to St. Elizabeths Hospital. The order and Reorganization Plan No. 5 of 1953 are set out in the Appendix to Title I, Administration.

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-417. Commitments by special commissioners of certain United States District Courts.

Any United States commissioner specially designated for that purpose by the United States District Court for the Eastern District of Virginia or by the United States District Court for the District of Maryland shall have jurisdiction and authority to commit to Saint Elizabeths Hospital in the District of Columbia, for observation and diagnosis, any person found in any place over which the United States has exclusive or concurrent jurisdiction in Arlington County, Fairfax County, or the city of Alexandria, in the State of Virginia, or in Montgomery County or in Prince Georges County, in the State of Maryland, who is alleged, and is believed by the commissioner, to be of unsound mind. Any United States commissioner specially designated for that purpose by the United States District Court for the District of Columbia shall have like jurisdiction and authority in the case of any person temporarily detained in Saint Elizabeths Hospital, pursuant to section 32-417a. Any such commitment shall be for a period not exceeding thirty days and may be made only after a hearing before the commissioner upon the testimony under oath of at least two witnesses who shall testify as to their belief that the said person is of unsound mind and, in addition, upon the testimony under oath or affidavit of two physicians, at least one of whom is skilled in the treatment and diagnosis of nervous and mental disorders, who shall testify or certify in writing that they have examined the said person alleged to be of unsound mind and believe said person to be of unsound mind and not fit to remain at liberty and go unrestrained, and that such person should be in custody in a hospital for the treatment of mental or nervous disorders for his own safety and welfare and for the preservation of the peace and good order. It shall be the duty of the head of the agency of the United States in control of the place where such person is apprehended to forthwith notify the husband or wife or some near relative or friend of the person so apprehended whose address may be known to said agency head or whose address can by reasonable inquiry be ascertained by him: *Provided further*, That in the case of any person described in section 32-417d, the agency head shall notify the head of the department having jurisdiction over the service to which the individual belongs. The agency of the United States in control of the place where such person is apprehended is authorized to employ physicians for the aforesaid purpose and to pay compensation for their services and to pay expenses of witnesses in such proceedings out of funds available therefor. Physicians who are officers or employees of the United States or who are members of the armed forces of the United States are hereby authorized to render such services without additional compensation. (Oct. 11, 1949, 63 Stat. 759, ch. 672, § 1.)

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-417a. Certain officers and employees of United States authorized to apprehend persons believed to be of unsound mind—Proceedings thereafter.

Any officer or employee of the United States authorized to make arrests, and any guard or watchman employed by the United States is hereby authorized and empowered to apprehend and detain any person whom he believes to be of unsound mind and found in any of the aforesaid places and, except as provided in section 32-417b, to bring such person for a hearing before a United States Commissioner for the district where such person was apprehended and designated as provided in section 32-417. If an immediate hearing before a commissioner cannot be had, such officer or employee is authorized and empowered to take such person to Saint Elizabeths Hospital and the Superintendent of Saint Elizabeths Hospital is authorized to detain such person pending a hearing before a United States commissioner for the District of Columbia, designated as provided in section 32-417, for a period not exceeding seventy-two hours. Such commissioner shall hold a hearing as promptly as practicable after the apprehension of such person and in any event not later than seventy-two hours thereafter. Such hearing shall be conducted at Saint Elizabeths Hospital if the Superintendent thereof shall certify that in his opinion it would be prejudicial to the health of the patient or unsafe to produce the patient at a hearing elsewhere. If, after any hearing at a place other than Saint Elizabeths Hospital, the commissioner commits a person to Saint Elizabeths Hospital, any officer, employee, guard, or watchman above-mentioned is authorized to transport such person to Saint Elizabeths Hospital in accordance with the order of the commissioner. (Oct. 11, 1949, 63 Stat. 760, ch. 672, § 2.)

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-417b. Admission upon written application—Right of release.

Any person in any of the places described in section 32-417 may, upon his written application, be admitted for observation and diagnosis to Saint Elizabeths Hospital in the discretion of the Superintendent thereof for a period not exceeding 30 days. Any such person expressing a desire for release from Saint Elizabeths Hospital shall be released within 72 hours thereafter, unless proceedings for his adjudication as a person of unsound mind shall have been instituted as provided for in section 32-417d. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 3.)

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-417c. Superintendent to receive persons committed or apprehended under §§ 32-417 and 32-417a.

The Superintendent of Saint Elizabeths Hospital is hereby authorized and directed to receive for observation and diagnosis any person apprehended or committed as provided in sections 32-417 and 32-417a for the periods therein prescribed, unless such person is sooner discharged or returned to his home or to the State of his residence. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 4.)

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-417d. Examinations—Adjudications—Laws applicable—Expense of care and treatment.

The Superintendent of Saint Elizabeths Hospital shall promptly examine any person committed as provided in sections 32-417 and 32-417a, and (a) if found to be of sound mind, shall forthwith discharge said person, or (b) if found to be of unsound mind, shall return such person to the State of his residence or to his relatives, if practicable. Proceedings for the adjudication of such person, or of any person admitted to the hospital pursuant to section 32-417b, as a person of unsound mind and for the appointment of a committee of his person or property may be instituted in the United States District Court for the District of Columbia by the Secretary of Health, Education, and Welfare or by any party interested. The laws of the District of Columbia shall be applicable to such proceedings. Nothing in sections 32-417 to 32-417g shall be construed as imposing upon the District of Columbia the expense of care and treatment of any person apprehended, detained, or committed under sections 32-417 to 32-417g unless such person be a resident of the District of Columbia as defined in section 21-317. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 5; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

The office of Federal Security Administrator was abolished and the functions of that office transferred to the Secretary of the Department of Health, Education, and Welfare by Reorg. Plan No. 1 of 1953 which established the Department of Health, Education and Welfare. The plan was made effective Apr. 11, 1953, by act Apr. 1, 1953, 67 Stat. 18, ch. 14, § 1. See U.S. Code, title 5, § 623.

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-417e. Military personnel to be transferred.

Any person belonging to the Army, Navy, Air Force, Marine Corps, or Coast Guard arrested, apprehended, detained, or committed under the provisions of sections 32-417 to 32-417g shall, upon the request of the head of the department having jurisdiction over the service to which the individual belongs, be transferred forthwith to the custody of such department. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 6.)

§ 32-417f. Persons entitled to care in a Veterans' Administration facility.

If any person adjudicated to be of unsound mind under the provisions of sections 32-417 to 32-417g is entitled to care and treatment in a Veterans' Administration facility, he may be committed by the United States District Court for the District of Columbia to the custody of the Administrator of Veterans' Affairs for placement in an available facility or may be transferred by the Superintendent of Saint Elizabeths Hospital to any such facility: *Provided*, That nothing in sections 32-417 to 32-417g shall limit, restrict, or deprive the courts of any State or the District of Columbia of jurisdiction to commit to the Veterans' Administration any insane

person entitled to care and treatment by the Veterans' Administration in accordance with the laws so made and provided by such States or the District of Columbia. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 7.)

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-417g. Superintendent authorized to pay expenses of transfers.

The Superintendent of Saint Elizabeths Hospital is authorized to arrange for and pay the expenses of the transfer of any person committed to his custody pursuant to the provisions of sections 32-417 to 32-417g or admitted to the Hospital pursuant to section 32-417b to his relatives or to a hospital in the State of his residence and in connection with such transfer is authorized to pay the transportation and expenses of attendants necessary to insure safe travel. (Oct. 11, 1949, 63 Stat. 761, ch. 672, § 8.)

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

Chapter 5.—INDUSTRIAL HOME SCHOOL

Sec.

- 32-501. Control and management—Board of Public Welfare—Supplies—Disposition of income.
- 32-502. Abolishment of Board of Trustees—Duties transferred to Board of Public Welfare.
- 32-503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.
- 32-504. Receipts from Industrial Home School for Colored Children—Credit.

§ 32-501. Control and management—Board of Public Welfare—Supplies—Disposition of income.

The Board of Public Welfare shall have complete and exclusive control and management of the Industrial Home School. All supplies for said school shall be obtained by requisition upon said commissioners, and all moneys received at said school as income thereof from sale of products and from payments for board and instruction, or otherwise, shall be paid over to said commissioners to be expended by them for the support of the school. (June 11, 1896, 29 Stat. 410, ch. 419; Feb. 28, 1923, 42 Stat. 1361, ch. 148; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

CODIFICATION

The Industrial Home School was established as a "private benevolent charity," and incorporated under the general corporation laws of the District on May 5, 1870, according to "Charitable and Reformatory Institutions in the District of Columbia," by Dr. George M. Kober (Sen. Doc. No. 207, 69th Congress, 2d Session, p. 244 et seq.).

AMENDMENTS

1926—Act Mar. 16, 1926, established the Board of Public Welfare, and placed the Industrial Home School under its control and management.

1923—Act Feb. 28, 1923, abolished Board of Trustees and transferred its powers to Board of Children's Guardians.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

CROSS REFERENCES

Appointment of superintendent of Industrial Home School, see § 3-107.

Powers and duties of Board of Public Welfare in general, see § 3-101 et seq.

§ 32-502. Abolishment of Board of Trustees—Duties transferred to Board of Public Welfare.

Board of Children's Guardians, successors of trustees of the Industrial Home School of the District of Columbia, is abolished, and the powers and duties of such board as specified and restricted by law are transferred to the Board of Public Welfare. (Feb. 28, 1923, 42 Stat. 1361, ch. 148; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

CODIFICATION

This section is a composite of credits in the history line.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

CROSS REFERENCE

Officers, trustees, or directors of charitable institutions may not deal with the institution for financial gain, see § 32-1007.

§ 32-503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.

The Secretary of the Navy is hereby authorized and empowered to convey to the District of Columbia, free from all encumbrances and without costs to the District of Columbia, all right, title, and interest of the United States of America to that portion of the Naval Observatory grounds, with the improvements thereon, lying outside of Naval Observatory Circle and east of Massachusetts Avenue Northwest, Washington, District of Columbia, containing fourteen and four hundred and forty-nine one-thousandths acres, more or less, and also that other portion lying outside of and adjoining said Naval Observatory Circle on the south, containing one and seven hundred and six one-thousandths acres, more or less, in consideration of which the Board of Commissioners of the District of Columbia are authorized and empowered to convey to the United States of America, free from all encumbrances and without cost to the United States of America, all right, title, and interest of the District of Columbia to that portion of the Industrial Home School site, with the improvements thereon, lying within said Naval Observatory Circle, containing approximately six and seventy-six one-hundredths acres: *Provided*, That the said Board of Commissioners are further authorized and empowered on behalf of the District of Columbia to utilize or sell, as they see fit, all of that remaining portion of the said Industrial Home School site with the improvements thereon lying outside of the said Observatory (one-thousand-foot radius) Circle, and also all of the land and improvements thereon east of Massachusetts Avenue and south of said Naval Observatory Circle, hereunder authorized to be acquired from the United States of America: *Provided further*, That if utilized the land shall be used for school, playground, or highway purposes or transferred to the Director of the National Park Service to become part of the park system of the District of Columbia: *Provided further*, That all of the proceeds from the sale of the aforesaid Industrial Home School property and one-half of the proceeds from the sale of any of said lands mentioned as lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to

the credit of the District of Columbia and are made available for the purchase of a site and the erection thereon of suitable buildings for a new Industrial Home School: *Provided further*, That the remaining half of the proceeds from the sale of any of said land lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the Naval Observatory: *And provided further*, That the said Board of Commissioners of the District of Columbia shall be permitted to continue to use all of the Industrial Home School property herein mentioned until such time as it may have acquired another site and constructed suitable buildings thereon in which to house the inmates of said Industrial Home School. The Secretary of the Navy, on behalf of the United States, and the Board of Commissioners, on behalf of the District of Columbia, are hereby authorized to execute and deliver all instruments necessary to accomplish the aforesaid purposes. (Mar. 3, 1927, 44 Stat. 1386, ch. 354, §§ 1, 2.)

TRANSFER OF FUNCTIONS

Office of Public Buildings and Parks has been abolished and its functions transferred to the National Park Service.

CROSS REFERENCE

Execution of instruments generally, see § 1-214.

§ 32-504. Receipts from Industrial Home School for Colored Children—Credit.

All moneys received at the Industrial Home School for Colored Children as income from sale of products and from payment of board or of instruction or otherwise shall be paid into the Treasury of the United States to the credit of the District of Columbia. (Feb. 25, 1929, 45 Stat. 1292, ch. 314.)

Chapter 6.—DISTRICT TRAINING SCHOOL

Sec.

- 32-601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioners of the District of Columbia.
- 32-602. Control and supervision—Board of Public Welfare—Name.
- 32-603. "Feeble-minded person" defined.
- 32-604. Rules and regulations to be prescribed—Annual reports—Inventory.
- 32-605. Superintendent—Appointment and qualifications.
- 32-606. Sale of products—Disposition of proceeds.
- 32-607. Persons received—Age limit.
- 32-608. Petition to District Court by guardian, relative, or reputable citizen, for admission of feeble-minded person—Contents of petition—Verification—Notice—Process.
- 32-609. Summons—Contents—Return day—Service—Cause heard without answer.
- 32-610. Appointment of physicians to examine feeble-minded person—Qualifications—Certificates to be made only after personal examination.
- 32-611. Warrant to take custody of feeble-minded person before hearing—Detention pending hearing—Place of detention.
- 32-612. Hearing—Continuances—Proof to be taken—Jury trial.
- 32-613. Dismissal and discharge if not feeble-minded—Decree placing person in institution if feeble-minded—Controlling purpose of proceedings.
- 32-614. Private and public patients—Bond for support and maintenance—Sufficiency and justification of sureties.
- 32-615. Liability of estate of public patient for maintenance.

Sec.

- 32-616. Proceedings to charge relatives legally responsible for maintenance of public patient—Collector of taxes to collect maintenance payments—Enforcement of order—Liability of deceased's estate.
- 32-617. Public patients may become private patients by filing bond and paying advance.
- 32-618. Restrictions on discharge—Petition for discharge—Causes for discharge—Superintendent to be notified—Notice of variation of order—Denial of one petition not a bar to another.
- 32-619. Violation of provisions of this chapter—Conviction to procure improper commitments—Misdemeanor—Penalty.
- 32-620. Proceeding when child brought before juvenile court appears feeble-minded.
- 32-621. Upon conviction of crime, court may order inquiry hereunder—Procedure.
- 32-622. Transfer to St. Elizabeths Hospital when patient becomes insane.
- 32-623. Separate docket of feeble-minded cases.
- 32-624. Transfer of feeble-minded from National Training Schools for Boys or Girls.
- 32-625. Removal from school of nonresidents of the District of Columbia.
- 32-626. Paroles may be granted—Conditions—Expense—Discretion of Superintendent—Violation—Return.
- 32-627. Citation, order, or process on inmates to be served only by superintendent.
- 32-628. Contracts of inmates to be first approved by District Court.
- 32-629. Separability of provisions.

§ 32-601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioners of the District of Columbia.

The commissioners of the District of Columbia are authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings for a home and school for feeble-minded persons. The title to said land is to be taken directly to and in the name of the United States. But the land so acquired shall be under the jurisdiction of the commissioners of the District of Columbia as agents of the United States. The persons to be admissible to said home and school and the proceedings with reference to securing such admission to be in accordance with law. (Feb. 28, 1923, 42 Stat. 1360, ch. 148.)

§ 32-602. Control and supervision—Board of Public Welfare—Name.

The institution for the custody, care, education, training, and treatment of feeble-minded persons, established by section 32-601, shall be under the control and supervision of the Board of Public Welfare of the District, and shall be known as the District Training School. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

Act Mar. 16, 1926, transferred powers and duties of Board of Charities of District of Columbia to Board of Public Welfare.

Reorganization Order No. 58, as amended, designated the District Training School a component of the Children's Center, and limited its functions to feeble-minded persons not over 45 years of age at time of commitment, including parole supervision for those released. The

order was issued in accordance with Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

General provisions concerning powers and duties of Board of Public Welfare, see § 3-101 et seq.

Officers, trustees, or directors of charitable institutions may not deal with the institution for financial gain, see § 32-1007.

§ 32-603. "Feeble-minded person" defined.

The words "feeble-minded persons" in this chapter shall be construed to mean any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of managing himself and his affairs, or being taught to do so, and who requires supervision, control, and care for his own welfare, or for the welfare of others, or for the welfare of the community, and is not insane or of unsound mind to such an extent as to require his commitment to Saint Elizabeths Hospital, as provided by the Act of April 27, 1904, or other laws in effect on March 3, 1925, with respect to the commitment and custody of insane persons. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 2.)

REFERENCES IN TEXT

Act Apr. 27, 1904, referred to in text, is part of chapter 24 of title 24, U.S. Code.

CROSS REFERENCE

Other provisions concerning incompetent persons, see title 21.

§ 32-604. Rules and regulations to be prescribed—Annual reports—Inventory.

The Board of Public Welfare shall make all necessary rules and regulations for enforcing discipline, for imparting instruction or preserving health, and for the physical, intellectual, and moral training of the inmates of said institution. The said board shall make annually to the Commissioners of the District of Columbia a report for the preceding fiscal year ending the 30th day of June. Said report shall show for such period the number and names of the superintendent, officers, teachers, and all other regular employees, and the salaries paid to each, and what, if any, other emoluments are allowed and to whom. Said board shall also cause a full and accurate inventory to be taken at the close of each fiscal year, showing the number of acres of land and the value thereof, the number, kind, and value of buildings, the various kinds of personal property and the value thereof, and a copy of said inventory, duly verified on oath by the officer making said inventory, shall accompany said report. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 3; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

Act Mar. 16, 1926, abolished the Board of Charities of the District of Columbia and Board of Public Welfare was substituted therefor.

CROSS REFERENCES

Powers and duties of Board of Public Welfare, see § 3-101 et seq.

Rules and regulations for protection of life, health, and property, generally, see § 1-226.

§ 32-605. Superintendent—Appointment and qualifications.

The Board of Public Welfare shall appoint a superintendent, who shall be experienced in the care, training, and treatment of the feeble-minded. He shall be the chief executive officer of the institution and may be removed by the commissioners of the District of Columbia upon recommendation of the board. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 4; Mar. 16, 1926, 44 Stat. 208, 209, ch. 58, §§ 1, 2, and 5.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

Act Mar. 16, 1926, abolished Board of Charities of the District of Columbia and substituted Board of Public Welfare therefor.

CROSS REFERENCE

Other provisions giving Board of Public Welfare power to appoint superintendent, see § 3-107.

§ 32-606. Sale of products—Disposition of proceeds.

The superintendent of the said institution may sell such of the farm, greenhouse, and garden products, and the products of the industrial shops as may not be required in the maintenance and conduct of the home and school, and the funds so secured shall be paid into the treasury of the United States to the credit of the District of Columbia. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 5; Mar. 3, 1925, 43 Stat. 1216, ch. 477; May 10, 1926, 44 Stat. 417, ch. 276; Mar. 2, 1927, 44 Stat. 1297, ch. 271; May 21, 1928, 45 Stat. 645, ch. 659.)

CODIFICATION

This section as originally enacted provided that the funds from sale of produce should be paid into the Treasury "to the credit of the United States and the District of Columbia in the proportion required by law." The several appropriation acts cited in the history line provide for crediting of such income wholly to the United States.

Act June 29, 1922, 42 Stat. 668, ch. 249, which formed the basis for various sections of the code which provide for the 60% payment by the District of certain expenses, was repealed by act May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding title X to act August 17, 1937, 50 Stat. 673, ch. 690. This repealing act does not provide any substitute provision, and consequently the aforesaid sections are left without foundation in the statutes. The aforesaid 1922 act, p. 671, contains a provision repealing all prior inconsistent acts, and, therefore, the prior acts which were the bases for these various sections no longer apply.

§ 32-607. Persons received—Age limit.

There shall be received into the said institution, subject to such rules and regulations as the Board of Public Welfare may adopt and pursuant to the provisions of this chapter, feeble-minded persons of not more than forty-five years of age. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 6; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

Act Mar. 16, 1926, abolished Board of Charities of District of Columbia and substituted Board of Public Welfare.

CROSS REFERENCES

Other provisions for admission of feeble-minded persons, see § 31-1009.

Powers and duties of the Board of Public Welfare generally, see § 3-101 et seq.

§ 32-608. Petition to District Court by guardian, relative, or reputable citizen, for admission of feeble-minded person—Contents of petition—Verification—Notice—Process.

When any person who is a resident of the District of Columbia shall be supposed to be feeble-minded his guardian, or any relative, or any reputable citizen of the District of Columbia may file with the clerk of the United States District Court for the District of Columbia a petition, in writing, setting forth that the person therein named is feeble-minded, and such other facts as are necessary to bring such person within the purview of this chapter; also the name and residence of some person, if any there be, actually supervising, caring for, or supporting such person and of at least one person, if any there be, legally chargeable with such supervision, care, or support, or that such names and residence are unknown to the petitioner, and also the names and residences, or that the same are unknown, of the parents or guardians.

The petition shall also allege whether or not such person has been examined by a qualified physician having personal knowledge of the condition of such alleged feeble-minded person. There shall be indorsed on such petition the names and residences of witnesses known to the petitioner, by whom the truth of the allegations of the petition may be proved, as well as the name and residence of a qualified physician, if any is known to the petitioner, having personal knowledge of the case.

All persons named in such petition or whose names are indorsed thereon shall be notified of such proceedings by proper summons issued by the clerk of said court. The petition shall be verified by affidavit, which shall be sufficient if it states that it is based upon information and belief. Process shall be issued against such persons as are mentioned in the petition but whose names are unknown to the petitioner, by the designation "To all whom it may concern," and such designation and notice shall be sufficient to authorize the court to hear and determine the proceedings as though the parties had been summoned by their proper names. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Insanity inquests, see § 21-306 et seq.

FEDERAL RULES OF CIVIL PROCEDURE

Inapplicability to lunacy proceedings, see Rule 81(a)(1), U.S. Code, title 28, Appendix.

§ 32-609. Summons—Contents—Return day—Service—Cause heard without answer.

The summons shall require all persons upon whom served to personally appear at the time and place stated therein and to bring into court the alleged feeble-minded person. No written answer shall be required to the petition, but the cause shall stand

for hearing upon the petition on the return day of the summons. The summons shall be made returnable at any time within twenty days after the date thereof. No service of process shall be necessary upon any of the persons named in the petition or whose names are indorsed thereon if they appear or are brought before the court personally without service of summons. Summons in proceedings hereunder may be served by any officer authorized by law to serve processes of the United States District Court for the District of Columbia. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 8; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 32-610. Appointment of physicians to examine feeble-minded person—Qualifications—Certificates to be made only after personal examination.

Upon the filing of such petition the court shall appoint two physicians, at least one of whom shall be skilled in the diagnosis and treatment of mental diseases to make an examination of the alleged feeble-minded person to determine his mental and physical condition, and their certificate shall be filed with the court on or before the hearing on the petition. The persons so appointed are empowered to go where such alleged feeble-minded person may be and make such personal examination of him as will enable them to offer an opinion as to his physical and mental condition, and no certificate shall be made by them except after such examination. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 9.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States, for the District of Columbia as the United States District Court for the District of Columbia.

§ 32-611. Warrant to take custody of feeble-minded person before hearing—Detention pending hearing—Place of detention.

Upon the filing of the petition, or upon motion at any time thereafter, if it shall be made to appear to the court by evidence given under oath that it is for the best interest of the alleged feeble-minded person or of other persons or of the community that such person be at once taken into custody, or that the service of summons will be ineffectual to secure the presence of such person, a warrant may issue on the order of the court directing that such person be taken into custody and brought before the court forthwith or at such time and place as the judge may appoint, and, pending the hearing of the petition, the court may make any order for the detention of such feeble-minded person, or the placing of such feeble-minded person under temporary guardianship of some suitable person, on such person entering into a recognizance for his appearance, as the court shall deem

proper. But no such alleged feeble-minded person shall, during the pendency of the hearing of the petition, be detained in any place provided for the detention of persons charged with or convicted of any criminal or quasi-criminal offense. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 10.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States, for the District of Columbia as the United States District Court for the District of Columbia.

§ 32-612. Hearing—Continuances—Proof to be taken—Jury trial.

At any time after the filing of the petition and pending the final disposition of the case the court may continue the hearing from time to time. The court shall in all cases take proofs as to the financial circumstances of the patient and his relatives legally liable for his support, and shall take proofs as to the alleged condition of such person and his personal and family history, and shall fully investigate the facts before making an order, and if no jury is required the court shall determine the question of whether such person is a feeble-minded person. If the court shall deem it necessary, or if such alleged feeble-minded person or any relative or any person with whom he may reside shall so demand, a jury shall be summoned to determine the question of whether such person is feeble-minded. Such jury shall be selected from the jurors in attendance upon the court or a special jury may be summoned to determine such question. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 11.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 32-613. Dismissal and discharge if not feeble-minded—Decree placing person in institution if feeble-minded—Controlling purpose of proceedings.

If the court or the jury shall find such alleged feeble-minded person not to be feeble-minded as defined in this chapter, he shall order the petition dismissed and the person discharged. If the court shall find such alleged feeble-minded person to be feeble-minded and subject to be dealt with under this chapter, having due regard to all the circumstances appearing on the hearing, the guiding and controlling thought throughout the proceedings to be the welfare of the feeble-minded person and the welfare of the community, the court shall enter a decree directing that such feeble-minded person be placed in the said institution, and such decree so entered shall stand and continue binding upon all persons whom it may concern until rescinded or otherwise regularly superseded or set aside. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 12.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 32-614. Private and public patients—Bond for support and maintenance—Sufficiency and justification of sureties.

If at the time of or before the making of such order a bond in the penal sum of \$1,000, executed by a surety company authorized to do business in the District of Columbia, or by two or more sureties to be approved by the court, running to the United States and conditioned for the payment of the support and maintenance of the patient in the manner prescribed by law, shall be delivered to the court, together with the sum of \$50 as an advance payment toward the support of such patient, admission shall be ordered as a private patient, otherwise as a public patient. Such bond and advance payment, together with the order of admission and bond, shall be transmitted by the clerk of the court to the superintendent of the institution. Until such bond and advance payment are delivered to the superintendent the person shall be admitted to the home and training school only as a public patient. At the request of the superintendent, the court shall require the sureties on such bond to justify their responsibility anew or order that a new bond be given in place of the original, which justification or new bond shall be transmitted to the superintendent, and unless such justification or bond shall be delivered to the superintendent within thirty days the patient shall from the time of such request be regarded as a public patient. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 13.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 32-615. Liability of estate of public patient for maintenance.

If the order for admission is as a public patient, and it shall appear then or at any time thereafter that the patient has an estate out of which the Government may be reimbursed for his maintenance, in whole or in part, the court shall order the payment out of such estate of the whole or such part of the cost of maintenance of said patient at said institution as it shall deem just, regard being had for the needs of those having a legal right to support out of said estate, which said order shall remain in full force and effect unless modified by the court. Upon the death of such feeble-minded person while an inmate at such institution or within five years after discharge therefrom, his estate shall be liable to the District of Columbia for the cost of his maintenance at said institution, and the claim of the District of Columbia shall be a preferred claim. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 14; Apr. 28, 1945, 59 Stat. 100, ch. 102.)

AMENDMENT

1945—Act Apr. 28, 1945, amended section generally by making patient liable at any time for cost of his maintenance, and by adding the second sentence respecting liability of estate upon death of inmate.

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 32-616. Proceedings to charge relatives legally responsible for maintenance of public patient—Collector of Taxes to collect maintenance payments—Enforcement of order—Liability of deceased's estate.

If the order for admission is as a public patient and the court at any time finds that the patient has not an estate out of which the District of Columbia may be fully reimbursed for his maintenance, the father, mother, husband, wife, and adult children of such feeble-minded person, if of sufficient ability, shall pay the cost to the District of Columbia of his maintenance at the District Training School, at Laurel, Maryland. The Commissioners of the District of Columbia may petition the United States District Court for the District of Columbia, at any time during the commitment of such feeble-minded person to said institution, to direct any such relative or relatives to pay the District of Columbia, in whole or in part, for his maintenance at said institution: *Provided*, That in no case shall any such relative or relatives be required to pay more than the actual cost to the District of Columbia of the maintenance of such feeble-minded person.

If the United States District Court for the District of Columbia finds that any such relative or relatives is or are able to pay for the maintenance of such feeble-minded person, in whole or in part, it may make an order requiring payment by any such relative or relatives of such sum or sums as it may find he or they are reasonably able to pay and as may be necessary to provide for the maintenance of such feeble-minded person. Said order shall require the payment of such sum or sums to the Collector of Taxes of the District of Columbia annually, semiannually, quarterly, or monthly, as the court may direct. It shall be the duty of the said Collector of Taxes to collect the said sum or sums due under this section and section 32-615, and turn the same into the Treasury of the United States to the credit of the District of Columbia. If any such relative or relatives made liable for the maintenance of such feeble-minded person shall fail to provide or pay for such maintenance, in accordance with the order of court, the court shall issue to such relative or relatives a citation to show cause why he or they should not be adjudged in contempt. The citation shall be served at least ten days before the hearing thereon.

Any such order may be enforced against any property of any such relative or relatives made liable for the maintenance of such feeble-minded person, in the same way as if it were an order for temporary alimony in a divorce case.

Upon the death of any such relative ordered by the court to pay for the maintenance of such feeble-

minded person in whole or in part, the estate of such relative shall be liable to the District of Columbia for the unpaid amount due the District of Columbia under said order of court at the time of the death of said relative, and the claim of the District of Columbia shall be a preferred claim against such estate. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 15; Apr. 28, 1945, 59 Stat. 100, ch. 102; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1945—Act Apr. 28, 1945, amended section generally, and among other changes, enumerated particular relatives, substituted the Collector of Taxes for the Board of Charities, and the procedure whereby the Commissioners petition the court to direct payment by said relatives for provisions which let the court initiate proceedings by show cause order, authorized the court to enforce its orders by contempt proceedings, limited the relatives' liability to not more than the actual cost of maintenance, imposed liability on the estate of any relative under order to pay, and made said liability a preferred claim of the District against the estate.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS

District Training School designated a component of the Children's Center, and functions limited, see note under § 32-602.

The Board of Charities of the District of Columbia was abolished, the Board of Public Welfare was established, and all duties and functions of the Board of Charities was transferred to the Board of Public Welfare by act Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.

§ 32-617. Public patients may become private patients by filing bond and paying advance.

If any person shall be admitted as a public patient, his order for admission may be changed to that of a private patient by executing and delivering to the court the bond and advance payment for his support mentioned in section 32-615. Thereupon the court shall make an order changing the admission of said person from a public to a private patient. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 16.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

§ 32-618. Restrictions on discharge—Petition for discharge—Causes for discharge—Superintendent to be notified—Notice of variation of order—Denial of one petition not a bar to another.

No feeble-minded person admitted to the said institution pursuant to an order of court as herein provided shall be discharged therefrom except as herein provided, except that nothing herein contained shall abridge the right of petition for the writ of habeas corpus. At any time after the admission of the feeble-minded person pursuant to an order of court as herein provided, any of the relatives or friends of the feeble-minded person, or any reputable citizen, or the superintendent of the institution having the feeble-minded person in charge, or the Board of

Public Welfare, may petition the court that entered the order of admission to discharge the feeble-minded person, or to vary the order of the court sending the feeble-minded person to the institution. If on the hearing of the petition the court is satisfied that the welfare of the feeble-minded person or the welfare of others or the welfare of the community requires his discharge or a variation of the order, the court may enter such order of discharge or variation as the court thinks proper. Discharges and variations of orders may be made for either of the following causes: Because the person adjudged to be feeble-minded is not feeble-minded; because he has so far improved as to be capable of caring for himself; because the relatives or friends of the feeble-minded person are able and willing to supervise, control, care for, and support him, and request his discharge, and in the judgment of the superintendent of the institution having the person in charge no evil consequences are likely to follow such discharge; but the enumeration of grounds of discharge or variation herein shall not exclude other grounds of discharge or variation which the court, in its discretion, may deem adequate, having due regard for the welfare of the person concerned or the welfare of others or the welfare of the community. On any petition of discharge or variation the court may discharge the feeble-minded person from all supervision, control, and care, or make such variation of the order as to maintenance as the court thinks fit under all the circumstances appearing on the hearing of the petition. The superintendent of the institution having the feeble-minded person in charge must be notified of the time and place of hearing on any petition for discharge or variation, as the court shall direct, and no order of discharge or variation shall be entered without giving such superintendent a reasonable opportunity to be heard; and the court may notify such other persons, relatives, and friends of the feeble-minded person as the court may think proper of the time and place of the hearing on any petition for discharge or variation of prior order. No person shall be charged with any greater degree of financial responsibility for the support of such feeble-minded person by variation of the order as to maintenance without notice and a reasonable opportunity to be heard. The denial of one petition for discharge or variation shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court in its discretion, discouraging frequent, repeated, frivolous, ill-founded petitions for discharge or variation of prior order. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 17; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

Act Mar. 16, 1926, abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

§ 32-619. Violation of provisions of this chapter—Connivance to procure improper commitments—Misdemeanor—Penalty.

Any person who shall knowingly contrive or who shall conspire to have any person adjudged feeble-minded under this chapter, unlawfully and improperly, or any person who shall violate any provision of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding \$1,000, or imprisoned not exceeding one year, or both, in the discretion of the court in which such conviction is had. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 18.)

§ 32-620. Proceeding when child brought before juvenile court appears feeble-minded.

When a child is brought before the juvenile court of the District of Columbia as a dependent or delinquent child, if it appears to the court, on the testimony of a physician or psychologist or other evidence, that such person or child is feeble-minded within the meaning of this chapter the court may adjourn the proceedings and direct some suitable officer of the court or other suitable reputable person to file a petition under this chapter; and the court may order that pending the preparation, filing, and hearing of such petition the person or child be detained in a place of safety or be placed under the guardianship of some suitable person on that person entering into recognizance for his appearance. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 19.)

§ 32-621. Upon conviction of crime, court may order inquiry hereunder—Procedure.

On the conviction by a court of record of competent jurisdiction of any person of any crime, misdemeanor, or any violation of any ordinance which is in whole or in part a violation of any statute of the District of Columbia, the court, if satisfied on the testimony of a physician or a psychologist or other evidence that the person or child is feeble-minded within the meaning of this chapter, may suspend sentence, or suspend entering an order sending the child to a reformatory, training, or industrial school, and direct that a petition be filed under this chapter. When the court directs a petition to be filed it may order that, pending the preparation, filing and hearing of the petition, the person or child be detained in a place of safety, or be placed under the guardianship of any suitable person on that person entering into a recognizance for his appearance. If upon the hearing of said petition or upon any subsequent hearing under this chapter the person is found not to be feeble-minded, the court shall impose sentence. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 20.)

§ 32-622. Transfer to St. Elizabeths Hospital when patient becomes insane.

When any person shall become insane while confined in said institution and the superintendent shall certify in writing that such patient is insane and is not a fit subject for care and maintenance at said institution, the United States District Court for the

District of Columbia shall issue an order for his admission to Saint Elizabeths Hospital. Such transfer shall not affect the liability on any bond for private support, or any order for reimbursement for public support, but all such bonds and orders for reimbursement shall be liable and in full force for the cost of maintenance at the said asylum. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 21; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Saint Elizabeths Hospital, see U.S. Code, title 24, § 161 et seq.

§ 32-623. Separate docket of feeble-minded cases.

The United States District Court for the District of Columbia shall keep a separate docket of proceedings in feeble-mindedness, upon which shall be made such entries as will, together with the papers filed, preserve a complete and perfect record of each case, the original petitions, writs, and returns made thereto and the reports of commissions shall be filed with the clerk of the court. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 22; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 32-624. Transfer of feeble-minded from National Training Schools for Boys or Girls.

Whenever the superintendent of the National Training School for Boys or of the National Training School for Girls shall certify to the said court that in his opinion any inmate thereof has become or is feeble-minded, the court shall permit such superintendent or any other reputable citizen of the District of Columbia to file a petition as provided in section 32-610. If such inmate shall be found and adjudged to be feeble-minded, the court shall immediately issue an order for his admission as a public patient to the District Training School. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 23.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

TRANSFER OF FUNCTIONS

District Training School designated a component of the Children's Center, and functions limited, see note under § 32-602.

§ 32-625. Removal from school of nonresidents of the District of Columbia.

The District Training School is intended for the benefit of bona fide residents of the District of Columbia. The Board of Public Welfare shall cause any person who has been admitted, but who has not acquired a legal residence in the District, to be removed as soon as possible to the state in which he belongs. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 24; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

District Training School designated a component of the Children's Center, and functions limited, see note under § 32-602.

Act Mar. 16, 1926, abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

§ 32-626. Paroles may be granted—Conditions—Expense—Discretion of Superintendent—Violation—Return.

It shall be within the discretion of the superintendent, under general conditions prescribed by the Board of Public Welfare, to grant paroles to patients where the conditions in the homes in which they are to reside are satisfactory and where such paroles are deemed by the superintendent as not injurious to the interest of the patients or the public. The expense of such a vacation shall in every case be borne by the guardian, relatives, or other persons responsible for the care of such patient while on such vacation. It shall be within the discretion of the superintendent to grant a parole for an indefinite period to a patient who has improved sufficiently to warrant such opportunity and when satisfactory supervision for such patient while on such leave is assured. If the conditions of any parole granted under this chapter are violated, the patient may be taken up and returned the same as an escaped patient. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 25; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

Act Mar. 16, 1926, abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

§ 32-627. Citation, order, or process on inmates to be served only by Superintendent.

Any citation, order, or process required by law to be served on an inmate of the institution shall be served only by the superintendent or by some one designated in writing by him. Return thereof to the court from which the same issued may be made by the person making such service and such service and return shall have the same force and effect as if it had been made by the United States marshal of the District of Columbia or by the sheriff of the county in which the institution is located. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 26.)

§ 32-628. Contracts of inmates to be first approved by District Court.

No public or private patient in said institution shall be allowed to execute any contract, deed, will, or

other instrument unless such execution shall have first been allowed and approved by an order to be entered of record by the said United States District Court for the District of Columbia, and a certified copy of such order shall be furnished to the superintendent at the time of the execution of such instrument. Such order of the court shall be evidence only of the capacity of such patient to make such instrument. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 27; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 32-629. Separability of provisions.

The invalidity of any part of this chapter shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part. (Mar. 3, 1925, 43 Stat. 1141, ch. 460, § 28.)

Chapter 7.—HOME CARE FOR DEPENDENT CHILDREN

§§ 32-701 to 32-710. Repealed. June 14, 1944, 58 Stat. 278, ch. 257, § 17.

Sections, act June 22, 1926, 44 Stat. 758, ch. 647, §§ 1-10, related to the furnishing of home care for dependent children under the age of sixteen years provided for applications for assistance by parent or guardian, empowered the Board of Public Welfare to make investigations, findings, and orders for allowances, conditions, duration, and review of such allowances, visitation by board representatives, the keeping of records, penalties for receiving allowances by fraud or deceit, submission of annual estimates, and appointment, salaries, and removal of employees. See chapter 7A of this title.

Chapter 7A.—AID TO DEPENDENT CHILDREN

Sec.

- 32-751. Congressional declaration—Establishment of system of aid to dependent children.
- 32-752. Definitions.
- 32-753. Eligible children.
- 32-754. Administration by Board of Public Welfare—Rules and regulations—Reports.
- 32-755. Determination of amount and manner of assistance rendered.
- 32-756. Application to Board—Form—Information required.
- 32-757. Investigation by Board.
- 32-758. Granting of assistance—Determination of amount and starting date.
- 32-759. Reconsideration by Board of grants—Alteration or withdrawal of assistance.
- 32-760. Review of Board's action.
- 32-761. Effect of subsequent legislation upon awards.
- 32-762. Cooperation between Board and Social Security Board.
- 32-763. Appropriations.
- 32-764. Payment of expenses.
- 32-765. Penalty for obtaining or receiving allowance by false representation, fraud, or deceit.

§ 32-751. Congressional declaration—Establishment of system of aid to dependent children.

The care and assistance of dependent children is hereby declared to be a special matter of public con-

cern and a necessity in promoting the public health and welfare. To provide such care and assistance at public expense, a system of aid to dependent children is hereby established for the District of Columbia. (June 14, 1944, 58 Stat. 277, ch. 257, § 1.)

SHORT TITLE

Section 16 of act June 14, 1944, provided: "This Act [this chapter] shall be cited as the 'Aid to Dependent Children Act'."

REPEALS

Section 17 of act June 14, 1944, provided: "The Act entitled 'An Act to provide home care for dependent children in the District of Columbia', approved June 22, 1926 [§§ 32-701 to 32-710], and all other provisions of law in conflict with this Act [this chapter], are hereby repealed."

SEPARABILITY OF PROVISIONS

Section 18 of act June 14, 1944, provided that: "If any provisions of this Act [this chapter] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances, shall not be affected thereby."

§ 32-752. Definitions.

The terms "aid" and "assistance" wherever used in this chapter shall be construed to mean money payments with respect to a dependent child or dependent children. As used in this chapter, the term "dependent child" shall be construed to mean a child under the age of eighteen who has been deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt in a place of residence maintained by one or more of such relatives as his or their own home. (June 14, 1944, 58 Stat. 277, ch. 257, § 2.)

§ 32-753. Eligible children.

Aid to dependent children shall be granted with respect to a child who has resided in the District of Columbia for one year immediately preceding the application or who was born in the District of Columbia within one year immediately preceding the application, one or both of whose parents has resided in the District of Columbia for one year immediately preceding the birth. (June 14, 1944, 58 Stat. 277, ch. 257, § 3.)

§ 32-754. Administration by Board of Public Welfare—Rules and regulations—Reports.

The Board of Public Welfare of the District of Columbia shall administer assistance under this chapter. It shall prescribe the form and print and supply the blanks for applications, reports, and affidavits, and such other forms as it may deem advisable, and shall make rules and regulations necessary for the carrying out of the provisions of this chapter and shall make and render any and all reports required by the Social Security Board of the United States Government or otherwise authorized or required by law, and comply with such provisions as the Social Security Board of the United States Government may, from time to time, find necessary to assure the correctness and verification of such reports. (June 14, 1944, 58 Stat. 277, ch. 257, § 4.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-755. Determination of amount and manner of assistance rendered.

The amount of assistance for any child and the manner of providing it shall be determined by the Board of Public Welfare with due regard to the conditions existing in each case, and shall be sufficient when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health. (June 14, 1944, 58 Stat. 277, ch. 257, § 5.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-756. Application to Board—Form—Information required.

Application for assistance under this chapter shall be made to the Board of Public Welfare. The application shall be made in the manner and form prescribed by the Board of Public Welfare, and shall contain information as to the age and residence of the child and such other information as may be required by the Board of Public Welfare. (June 14, 1944, 58 Stat. 277, ch. 257, § 6.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-757. Investigation by Board.

Upon the receipt of an application for assistance, an investigation and record shall be made of the circumstances in order to determine the dependency of the child and to ascertain the facts supporting the application and such other information as may be required by the Board of Public Welfare. (June 14, 1944, 58 Stat. 277, ch. 257, § 7.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-758. Granting of assistance—Determination of amount and starting date.

Upon completion of such investigation the Board of Public Welfare shall decide whether the child is eligible for assistance under the provisions of this chapter, and shall determine the amount of such assistance and the date on which assistance shall begin. (June 14, 1944, 58 Stat. 277, ch. 257, § 8.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-759. Reconsideration by Board of grants—Alteration or withdrawal of assistance.

All assistance grants made under this chapter shall be reconsidered by the Board of Public Welfare as frequently as it may deem necessary. After such further investigations as the Board of Public Welfare may deem necessary, the amount of assistance may be changed, or assistance may be entirely withdrawn if the Board of Public Welfare finds that the child's circumstances have altered

sufficiently to warrant such action. (June 14, 1944, 58 Stat. 278, ch. 257, § 9.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-760. Review of Board's action.

If an application is not acted upon within a reasonable time of the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provision of this chapter, the applicant or recipient may appeal for a hearing to the Board of Public Welfare in a manner and form prescribed by the Board. (June 14, 1944, 58 Stat. 278, ch. 257, § 10.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-761. Effect of subsequent legislation upon awards.

All assistance granted under this chapter shall be deemed to be granted and to be held subject to the provisions of any amending or repealing Act that may hereafter be passed, and no person shall have any claim for compensation or otherwise, by reason of a child's assistance being affected in any way by any amending or repealing Act. (June 14, 1944, 58 Stat. 278, ch. 257, § 11.)

§ 32-762. Cooperation between Board and Social Security Board.

The Board of Public Welfare is hereby authorized and directed to cooperate in all necessary respects with the Social Security Board of the United States Government in the administration of this chapter, and to accept any sums allotted or appropriated by such Board, as are available under the provisions of the Social Security Act. (June 14, 1944, 58 Stat. 278, ch. 257, § 12.)

REFERENCE IN TEXT

Provisions of Social Security Act referred to in text are classified to U.S. Code, title 42, ch. 7.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-763. Appropriations.

Congress shall appropriate annually and make available to the order of the Board of Public Welfare of the District of Columbia such sums as may be needed to pay the share of the District of Columbia for aid to dependent children provided under this chapter together with a sufficient sum to defray its share of administrative expenses to be incurred in connection therewith, and include such sums in the annual District of Columbia Appropriation Act. Should the sum so appropriated, however, be expended or exhausted during the year for the purposes for which it was appropriated, additional sums shall be appropriated by Congress as the case demands to carry out provisions of this chapter. The balance remaining in the appropriation "Home care for dependent children" as contained in the District of Columbia Appropriation Act, 1944, approved July 1, 1943 (Public Law 107, Seventy-eighth Congress, first session), as of June 14, 1944, is hereby made

available to carry out the provisions of this chapter and shall continue available for such purpose through June 30, 1944. (June 14, 1944, 58 Stat. 278, ch. 257, § 13.)

REFERENCES IN TEXT

"District of Columbia Appropriation Act, 1944, approved July 1, 1943 (Public Law 107, Seventy-eighth Congress, first session") referred to in text, refers to act July 1, 1943, ch. 184, 57 Stat. 312.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-764. Payment of expenses.

All necessary expenses incurred by the District of Columbia in carrying out the provisions of this chapter shall be paid in the same manner as other expenses of the District of Columbia are paid. (June 14, 1944, 58 Stat. 278, ch. 257, § 14.)

§ 32-765. Penalty for obtaining or receiving allowance by false representation, fraud, or deceit.

Any adult person who attempts to obtain, or obtains, or aids or assists any child or other person to obtain, by false representation, fraud, or deceit, any allowance under this chapter or who receives for the benefit of any child any allowance knowing it to have been fraudulently obtained, shall upon conviction in the Municipal Court for the District of Columbia, criminal division, be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or by both such fine and imprisonment. (June 14, 1944, 58 Stat. 278, ch. 257, § 15.)

NOTES TO DECISIONS

Evidence 1
Instructions 2
Pattern of conduct 3
Plain error 4
Reversal in part 5

1. Evidence

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, evidence was sufficient to corroborate admission of one of the defendants. *Blackmone and Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

2. Instructions

In prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, jury was entitled to consider all evidence bearing on general plan or scheme of defendant to defraud the Department of Public Welfare, though jury was erroneously limited by trial court's ruling to finding only that plan continue for initial two months after trial court directed a verdict for defendants on counts 3 through 35 of the information. *Blackmone and Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

3. Pattern of conduct

Statute providing that any adult person who attempts to obtain, or obtains or aids or assists any child or other person to obtain, by false representation, fraud, or deceit, any allowance for aid to dependent children, or who receives for benefit of any child, any allowance knowing it to have been fraudulently obtained, shall, on conviction, be subject to fine or imprisonment or both, penalizes a pattern of conduct rather than a series of acts which manifests the pattern, and information with several counts relating to receipt of several monthly payments alleged to have been fraudulently obtained from Department of Public Welfare charged only a single crime. *Blackmone and Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

4. Plain error

Where defendants contended for first time in their brief on their appeal that entry into their house by investigators was illegal because made without a search

warrant and that consequently evidence thereby obtained, including admission of one of the defendants, should have been suppressed in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, and defendants gave no evidence at the trial concerning such incident, and failure to raise the question below left record almost devoid of evidence of any sort bearing on the contention, there was no "plain error" on such an inclusive and sketchy record, and therefore reviewing court would decline to entertain the contention on appeal. *Blackmone and Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

5. Reversal in part

Where defendants were found guilty on two counts of information in prosecution for fraudulently obtaining aid for dependent children from Department of Public Welfare, though offense was not multiple but single, reviewing court would not reverse convictions outright, but would affirm one conviction. *Blackmone and Blackmone v. United States* (D.C. Mun. App. 1959, 151 A. 2d 191).

Chapter 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

Sec.

- 32-781. Purpose of chapter.
- 32-782. Child-placing agency—License.
- 32-783. Appointment of supervisory committee by Commissioners—Composition and tenure—Chairman—Promulgation of rules and regulations.
- 32-784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.
- 32-785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Confidential records.
- 32-785a. Agreements with child placement agencies outside of the District—Authority of Commissioners.
- 32-786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.
- 32-787. Revocation of license of child-placing agency—Notice—Reinstatement.
- 32-788. Penalty for operation as child-placing agency without license—Jurisdiction.
- 32-789. Rules and regulations by Board.
- 32-790. Compensation for services in connection with child placement.
- 32-791. "Commissioners" defined—Delegation of functions.

§ 32-781. Purpose of chapter.

The purpose of this chapter is to secure for each child under sixteen years of age who is placed in a family home, other than his own or that of a relative within the third degree, such care and guidance as will serve the child's welfare and the best interests of the District of Columbia; and to secure for him custody and care as near as possible to that which should have been given him by his parents. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 1.)

EFFECTIVE DATE

Section 11 of act Apr. 22, 1944, provided that: "This Act [adding this chapter and repealing §§ 36-101 to 36-111] shall become effective four months after date of the approval of this Act [April 22, 1944], except section 3 hereof [§ 32-783], which shall become effective on the date of the approval of this Act [April 22, 1944]."

CROSS REFERENCE

Adoption, generally, see § 16-208 et seq.

NOTES TO DECISIONS

1. Purpose

The purpose of this chapter is to regulate procedure for placing children for adoption to protect children and parents from corrupt, irresponsible, careless, or untrained intermediaries. *Goodman v. District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

§ 32-782. Child-placing agency—License.

Any person, firm, corporation, association, or public agency that receives or accepts a child under sixteen years of age and places or offers to place such child for temporary or permanent care in a family home other than that of a relative within the third degree shall be deemed to be maintaining a child-placing agency. No child-placing agency shall be maintained in the District of Columbia without a license issued by the Commissioners of the District of Columbia: *Provided*, That notwithstanding any provisions of section 32-784 such a license shall be issued forthwith to any corporation or association chartered by special Act of Congress and having under its charter the purposes or powers of a child-placing agency as herein defined. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 2.)

EFFECTIVE DATE

Section effective 4 months after Apr. 22, 1944, see section 11 of act Apr. 22, 1944, set out as a note under section 32-781.

NOTES TO DECISIONS

1. Attorneys

Where defendant was requested by adopting mother to handle adoption, defendant arranged with doctor for examination of child, defendant presented natural mother with paper identified as consent to adoption and gave natural mother \$50 obtained from adopting mother, stating that such was a loan, and defendant did not possess a license which authorized him to place or arrange or assist in placing or arranging for placement of any child for adoption, defendant was guilty of violation of Baby Broker Act. *Anderson v. District of Columbia* (D.C. Mun. App. 1959, 154 A. 2d 717).

A lawyer is within his rights under this chapter so long as he gives only legal advice, appears in court in adoption proceedings representing either relinquishing or adopting parents, and refrains from serving as an intermediary, go-between, or placing agent and leaves or refers placement of children and arrangements for their placement to agencies duly licensed for that purpose. *Goodman v. District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

A lawyer, as such in placing children for adoption, is not exempt from this chapter notwithstanding he acts without compensation and with humane motives, and, to place babies for adoption, he must have a license as a child-placing agency. *Id.*

§ 32-783. Appointment of supervisory committee by Commissioners—Composition and tenure—Chairman—Promulgation of rules and regulations.

Within sixty days after June 8, 1954, the Commissioners shall appoint, after consultation with the Department of Public Welfare, a committee to formulate and adopt rules and regulations, subject to the approval of the Commissioners, prescribing standards of placement, care, and services to be required of child-placing agencies, pursuant to the intent and purposes of this chapter. The committee shall be composed of two representatives of the Department of Public Welfare of the District of Columbia, one of whom shall act as chairman, a member of the staff of the Department of Health of the District of Columbia, two representatives from each of the charitable organizations of the District of Columbia licensed to place children in family homes, a member of the legal profession, and a member of the medical profession. The terms of office of each member of the committee shall be three years, except that—

(1) the terms of office of the members first taking office shall expire, as designated by the Commissioners at the time of appointment, ap-

proximately one-third at the end of one year, approximately one-third at the end of two years, and approximately one-third at the end of three years, after June 8, 1954;

(2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(3) upon the expiration of his term of office a member shall continue to serve until his successor is appointed and has qualified.

The rules and regulations prescribing standards of placement, care, and services to be required of child-placing agencies shall be reviewed by the committee annually and, subject to the approval of the Commissioners, may be amended when deemed necessary." (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 3; June 8, 1954, 68 Stat. 246, ch. 273, § 1.)

AMENDMENT

1954—Act June 8, 1954, amended section generally, and, among other changes, increased the representatives from the Department of Public Welfare from one to two, provided for two representatives from each of the charitable organizations of the District licensed to place children in homes, for one representative from both the legal and medical professions, increased terms for the members of the committee from one to three years, staggered such terms, and in the last sentence, following the words "rules and regulations" and preceding "shall be reviewed" inserted "prescribing standards of placement, care, and services to be required of child-placing agencies".

EFFECTIVE DATE OF 1954 AMENDMENT

Section 7 of act June 8, 1954, provided that: "The amendments made by this Act [adding §§ 32-785a and 32-790, and amending this section and §§ 32-784, 32-785, and 32-786] shall take effect four months after the date of its enactment [June 8, 1954], except that the amendment made by the first section [to this section] shall take effect on the date of the enactment of this Act [June 8, 1954]."

EFFECTIVE DATE

Section effective Apr. 22, 1944, see section 11 of act Apr. 22, 1944 (set out as a note under § 32-781).

§ 32-784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.

An application for a license as a child-placing agency shall be made to the Commissioners on forms provided by them and in the manner prescribed. Before such license is issued the Board of Public Welfare shall arrange to have an investigation made of the activities and standards of care of the agency and shall consult with persons having official connection with the agency. If the Board is satisfied as to the good character and intent of the applicant, and that the agency is adequately financed, and that its staff, procedures, and services conform to the established standards of care, said Board shall recommend to the Commissioners that a license be issued.

A provisional license may be issued to any agency which is temporarily unable to conform to all the provisions of the established standards of care upon terms and conditions prescribed by the Commissioners upon recommendation of the Board of Public Welfare.

All licenses shall be issued for one year from the date thereof and may be renewed annually on the application of the agency, except that provisional licenses may be issued for not more than three successive years. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 4; June 8, 1954, 68 Stat. 247, ch. 273, § 2.)

AMENDMENT

1954—Act June 8, 1954, deleted the words "from the date of the passage of sections 32-781 to 32-789" following the words "successive years" in the last sentence.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act June 8, 1954, effective 4 months after June 8, 1954, see section 7 of act June 8, 1954, set out as a note under § 32-783.

EFFECTIVE DATE

Section effective 4 months after Apr. 22, 1944, see section 11 of act Apr. 22, 1944, set out as a note under § 32-781.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Confidential records.

No person other than the parent, guardian, or relative within the third degree, and no firm, corporation, association, or agency, other than a licensed child-placing agency, may place or arrange or assist in placing or arranging for the placement of a child under sixteen years of age in a family home or for adoption. In accordance with the rules and regulations promulgated hereunder, any licensed child-placing agency may accept children for placement in family homes and shall have and maintain care, custody, and control of any such child until returned to the person from whom received or until responsibility for the child is transferred to another child-welfare agency or terminated by the order of a court of competent jurisdiction.

Every such agency shall keep and maintain careful supervision of all children under its care, including those placed in family homes, and its officers or agents shall visit all such homes and families as often as may be necessary to promote the welfare of such child: *Provided*, That legally adopted children shall not be subject to such supervision and visitation, or other supervision or visitation. Every such agency shall keep such records as shall be required by the rules and regulations promulgated hereunder and all records regarding children and all facts learned about children and their parents or relatives shall be deemed confidential.

Records which are deemed confidential shall not be available for inspection by nor disclosed to any person, firm, corporation, association, or public agency, except that such records shall be available for inspection by authorities authorized by law to license child-placing agencies. Such records shall not be subject to judicial subpoena in collateral proceedings, except that the licensed child-placing agency and the Commissioner in accordance with rules and regulations promulgated hereunder, may make such records, or any information contained in such records, available (1) when the Commissioners or such agency determines that any information contained in such records shall promote or protect the interest and welfare of any child the Commissioners or such agency has served, and (2) for the purpose of research if adequate safeguards are taken against the disclosure or publication in any manner of the identity of any person contained in such records." (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 5; June 8, 1954, 68 Stat. 247, ch. 273, § 3.)

AMENDMENT

1954—Act June 8, 1954, amended section by eliminating the last paragraph relating to prohibited compensation and substituting a new paragraph concerning confidential records.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act June 8, 1954, effective 4 months after June 8, 1954, see section 7 of act June 8, 1954, set out as a note under § 32-783.

EFFECTIVE DATE

Section effective 4 months after Apr. 22, 1944, see section 11 of act Apr. 22, 1944, set out as a note under § 32-781.

NOTES TO DECISIONS

1. Attorneys

Where defendant was requested by adopting mother to handle adoption, defendant arranged with doctor for examination of child, defendant presented natural mother with paper identified as consent to adoption and gave natural mother \$50 obtained from adopting mother, stating that such was a loan, and defendant did not possess a license which authorized him to place or arrange or assist in placing or arranging for placement of any child for adoption, defendant was guilty of violation of Baby Brokers Act. *Anderson v. District of Columbia* (D.C. Mun. App. 1959, 154 A. 2d 717).

§ 32-785a. Agreements with child placement agencies outside of the District—Authority of Commissioners.

Notwithstanding the provisions of this chapter, the Commissioners are authorized to enter into agreements with any person, firm, corporation, association, or public agency licensed or authorized by a State or country for the care and placement of minors, permitting such person, firm, corporation, association, or public agency to place nonresident children in foster or adopting homes in the District of Columbia. The Commissioners shall act pursuant to regulations promulgated as provided in section 32-783. (Apr. 22, 1944, ch. 174, § 5A, as added June 8, 1954, 68 Stat. 247, ch. 273, § 4.)

EFFECTIVE DATE

Section effective 4 months after June 8, 1954, see section 7 of act June 8, 1954, set out as a note under § 32-783.

§ 32-786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.

(a) Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of the parent or parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedure. Minority of a natural parent shall not be a bar to such parent's relinquishment to a licensed agency. Any relinquishment of parental rights other than by court order as provided in this subsection may be revoked upon the written consent of all the parties to said relinquishment and any such relinquishment may be transferred from one licensed child-placing agency to another licensed child-placing agency, in which case the second agency shall assume all the rights and duties of the first agency. For the purposes of this section, "licensed child-placing agency" shall mean any child-placing agency licensed pursuant to this chapter or any child-placing agency licensed or authorized by any State, Territory, or

possession of the United States, by the Commonwealth of Puerto Rico, or by any foreign country or any state, province, or other governmental division of any foreign country for the care and placement of minors. Such transfer or relinquishment shall be filed in the domestic relations branch of the municipal court for the District of Columbia, as herein-after provided in this section. Except in proceedings for adoption, no parent may voluntarily assign or otherwise transfer to another his rights and duties with respect to the permanent care and control of a child under sixteen years of age unless such relinquishment of parental rights is made to a licensed child-placing agency. Such relinquishment of parental rights shall be a statement in writing signed by the person relinquishing such parental rights who shall subscribe his name thereto and acknowledge the same before a representative of the licensed child-placing agency in the presence of at least one witness. Said relinquishment of parental rights shall be recorded and filed in a properly sealed file in the domestic relations branch of the municipal court for the District of Columbia. The seal of said file shall not be broken except for good cause shown and upon the written order of a judge of said court.

(b) The Commissioners or their designated agents are empowered to accept permanent care and guardianship of any child by a legally executed relinquishment of parental rights and when vested with such parental rights shall exercise them in the same manner as prescribed herein for a licensed child-placing agency. Such parental relinquishment taken by the Commissioners or their designated agents shall be subject to the same rights and requirements as to form, transfer, and disposition as are prescribed herein for a licensed child-placing agency. (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 6; June 8, 1954, 68 Stat. 248, ch. 273, § 5; Apr. 11, 1956, 70 Stat. 113, ch. 204, § 107(c); Aug. 21, 1959, 73 Stat. 413, Pub. L. 86-177, § 1.)

AMENDMENTS

1959—Act Aug. 21, 1959, amended fourth sentence in subsection (a) by substituting "by any state, Territory, or possession of the United States, by the Commonwealth of Puerto Rico, or by any foreign country or any state, province, or other governmental division of any foreign country for the care and placement of minors" for "by another state or country for the care and placement of minors".

1956—Act Apr. 11, 1956, struck out "Office of the Clerk of the District Court of the United States for the District of Columbia", and "Office of the Clerk of the United States District Court for the District of Columbia" and inserted in lieu of each such phrases "Domestic Relations Branch of the Municipal Court for the District of Columbia".

1954—Act June 8, 1954, amended section by deleting the second sentence relating to the inapplicability of section 16-201 concerning petitions for adoption, inserting in lieu thereof four new sentences relating to relinquishment of a child to a licensed agency as therein defined, filing of such relinquishment, added provision that the minority of a parent would not be a bar to relinquishment of a child to a licensed agency, added subsection (b) and designated the original section, as amended, subsection (a).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Apr. 11, 1956, effective 30 days after the appointment and qualification of three additional judges authorized to be appointed, see note under § 11-758.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act June 8, 1954, effective 4 months after June 8, 1954, see section 7 of act June 8, 1954, set out as a note under section 32-783.

EFFECTIVE DATE

Section effective 4 months after Apr. 22, 1944, see section 11 of act Apr. 22, 1944, set out as a note under section 32-781.

CROSS REFERENCE

For provisions regarding the Domestic Relations Branch of the Municipal Court, see §§ 11-758 to 11-770.

§ 32-787. Revocation of license of child-placing agency—Notice—Reinstatement.

The Commissioners may refuse to reissue or may revoke or suspend the license of any child-placing agency after full hearing on proof of violation of any provisions of this chapter or the rules and regulations promulgated hereunder. Before any license shall be suspended or revoked the holder thereof shall have notice in writing of the charge or charges and shall, at the date and place specified in said notice, which shall be at least five days after the service thereof, be given a hearing by said Commissioners, or their designated agents, with a full opportunity to produce testimony in his, her, or its behalf. Any licensee whose license has been suspended or revoked may, after the expiration of ninety days, on application to the said Commissioners, have the same reinstated or reissued upon satisfactory proof that the disqualification has ceased. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 7.)

EFFECTIVE DATE

Section effective 4 months after Apr. 22, 1944, see section 11 of act Apr. 22, 1944, set out as a note under section 32-781.

§ 32-788. Penalty for operation as child-placing agency without license—Jurisdiction.

Any person, firm, corporation, association, or public agency who conducts a child-placing agency without a license as provided for in this chapter or who violates any of the provisions of this chapter shall, upon conviction, be fined not more than \$300 or imprisoned for not more than ninety days, or both. Prosecution for violations of such sections shall be upon information in the criminal division of the municipal court of the District of Columbia by the corporation counsel of the District of Columbia. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 8.)

EFFECTIVE DATE

Section effective 4 months after Apr. 22, 1944, see section 11 of act Apr. 22, 1944, set out as a note under section 32-781.

NOTES TO DECISIONS

1. Evidence

Evidence authorized conviction of violation of this chapter. *Goodman v. District of Columbia* (D. C. Mun. App. 1947, 50 A. 2d 812).

§ 32-789. Rules and regulations by Board.

The Board of Public Welfare is authorized to make such investigations and inspections as are necessary to carry out the provisions of this chapter. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 9.)

EFFECTIVE DATE

Section effective 4 months after Apr. 22, 1944, see section 11 of act Apr. 22, 1944, set out as a note under section 32-781.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-790. Compensation for services in connection with child placement.

Neither the Commissioners nor any child-placing agency authorized to perform services in connection with placing a child in a family home for adoption may make or receive any charge or compensation whatsoever for such services, except that a licensed child-placing agency which is organized and operated exclusively for religious or charitable purposes and no part of the net earnings of which can inure to the benefit of any private shareholder or individual, may be allowed to charge adoptive parents, within prescribed limits, for such services an amount not to exceed the average costs incurred; such average costs and prescribed limits to be determined in accordance with rules and regulations promulgated by the committee created by section 32-783. Inability of adoptive applicants to pay for all or any part of such costs shall not be a disqualifying factor in determining whether applicants are suitable parents for the child. (April 22, 1944, ch. 174, § 12, as added June 8, 1954, 68 Stat. 248, ch. 273, § 6.)

EFFECTIVE DATE

Section effective 4 months after June 8, 1954, see section 7 of act June 8, 1954, set out as a note under § 32-783.

§ 32-791. "Commissioners" defined—Delegation of functions.

As used in this chapter, the term "Commissioners" means the Board of Commissioners of the District of Columbia or their designated agents. The performance of any function vested by this chapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). (Apr. 22, 1944, ch. 174, § 13, as added Aug. 21, 1959, 73 Stat. 413, Pub. L. 86-177, § 2.)

REFERENCE IN TEXT

Reorganization Plan Numbered 5, referred to in text, is set out in Appendix to Title 1, Administration.

Chapter 8.—NATIONAL TRAINING SCHOOL FOR BOYS

Sec.

- 32-801. Name.
- 32-802. Board of Trustees—Appointment—President.
- 32-803. One Commissioner of District to be trustee.
- 32-804. Two consulting trustees.
- 32-805. Corporate capacity and powers of board.
- 32-806. By-laws, rules, and regulations.
- 32-807. Contracts and purchases—Executive officer—Annual reports.
- 32-808. Superintendent and other employees—Appointment—Compensation.
- 32-809. Treasurer—Bond—Duties.
- 32-810. Superintendent's bond.
- 32-811. Powers and duties of superintendent and subordinate officers.
- 32-812. Superintendent—In charge of lands and other property—Books of account—Register of boys—Examinations of school and accounts.
- 32-813. Report by officers to Commissioners of District—Contents.
- 32-814. Disposition of proceeds of farm and shops.

Sec.

- 32-815. Boys committed—Commitment by court or judge.
- 32-816. Period of detention.
- 32-817. Number of boys limited to number that can be properly accommodated—Notice to court.
- 32-818. Enticing boy from school or harboring escaped boy—Penalty—Arrest and return.
- 32-819. Employment and instruction of boys—Apprenticing—Indentures.
- 32-820. Release on parole of juvenile offenders committed.
- 32-821. Board of Trustees authorized to parole—Attorney General.
- 32-822. Support of boys committed—Accounts—Payment—Rate.

§ 32-801. Name.

The reform school of the District of Columbia shall be known and designated as the National Training School for Boys. (May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

CROSS REFERENCE

Application of provisions of this chapter to National Training School for Girls, see § 32-907.

§ 32-802. Board of trustees—Appointment—President.

The National Training School for Boys shall be in the charge of, and governed and managed by, a board of seven trustees, who shall be appointed by the President of the United States, upon the recommendation of the Attorney General, each for the term of three years, but in such a manner that the terms of not more than three of them shall expire within any one or the same year. One of the trustees shall be elected president of the board, whose duty shall be prescribed by the board. (May 3, 1876, 19 Stat. 49, ch. 90, § 1; May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

CHANGE OF NAME

Act May 27, 1908, changed the name of the Reform School of the District of Columbia to the National Training School for Boys.

TRANSFER OF FUNCTIONS

The Board of Trustees of the National Training School for Boys was abolished and its functions transferred to the Department of Justice to be administered by the Director of the Bureau of Prisons by 1939 Reorg. Plan No. 2, eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431. See U.S. Code, title 5, § 133t, and note thereunder.

CROSS REFERENCE

Attorney General, authority of, see U.S. Code, title 18, § 4082.

§ 32-803. One Commissioner of District to be trustee.

One of the commissioners of the District of Columbia, to be selected by the Board of Commissioners, shall be a trustee, with all the powers, privileges, and duties of other trustees of said school. (June 4, 1880, 21 Stat. 156, ch. 121, § 1.)

§ 32-804. Two consulting trustees.

Two consulting trustees shall be appointed, namely, one Senator of the United States, by the Presiding Officer of the Senate, for the term of four years, and one Member of the House of Representatives, by the Speaker thereof, for the term of two years. (May 3, 1876, 19 Stat. 52, ch. 90, § 16.)

CROSS REFERENCES

Members of Congress acting as trustees, terms of office of, see § 32-1004.

Other provisions concerning term of office, see § 32-1004.

§ 32-805. Corporate capacity and powers of board.

The board of trustees shall be a corporation by the name of the "Board of Trustees of the National Training School for Boys," for the purpose of taking and holding, in trust for the United States property of every description which has been purchased, appropriated, or set apart for the use of the institution, or which may hereafter be purchased, appropriated, or set apart for its use, or given or bequeathed to it, or to the said board, for its use, with all power necessary to carry this purpose into effect, and to protect and preserve such property, including the land and buildings, fences, stock, fruit, crops, and trees of all kinds. (May 3, 1876, 19 Stat. 49, ch. 90, § 2; May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

CHANGE OF NAME

Act May 27, 1908, changed the name of the Reform School of the District of Columbia to the National Training School for Boys.

CROSS REFERENCE

Officers, trustees or directors may not deal with institution for financial gain, see § 32-1007.

§ 32-806. By-laws, rules, and regulations.

The Board of Trustees may make such by-laws, rules, and regulations for their own government and that of the institution, its officers, employees, and inmates, the employment, discipline, instruction, education, removal, and absolute, temporary, or conditional release of all boys committed to the school, as they may deem necessary and proper, and as are not contrary to the Constitution and to the laws of the District of Columbia. (May 3, 1876, 19 Stat. 52, ch. 90, § 15; June 5, 1900, 31 Stat. 267, ch. 715.)

AMENDMENT

1900—Act June 5, 1900, amended section to give the board additional authorization concerning employment, discipline, instruction, education, removal, and absolute, temporary, or conditional release of all boys committed, and added the phrase at the end "and as are not contrary to the Constitution and to the laws of the District of Columbia."

CROSS REFERENCES

Employment or apprenticing of prisoners, see § 32-819.
Imprisonment of criminals general provisions not to apply to National Training School for Boys, see § 24-402.
Rules and regulations generally, see § 1-226.
Transfer of feeble-minded to District Training School, see § 32-624.

§ 32-807. Contracts and purchases—Executive officer—Annual reports.

All contracts and purchases made for or on account of the school shall be made in the name of the board and by whomsoever the board may direct. The president of the board shall be its executive officer, and it shall be his duty to make an annual report to the Attorney General, to be accompanied by the annual report of the superintendent and treasurer. (May 3, 1876, 19 Stat. 51, ch. 90, § 14.)

§ 32-808. Superintendent and other employees—Appointment—Compensation.

The Board of Trustees may appoint a superintendent, two or more teachers or assistants, and a matron whose salaries are fixed by law; they may also employ two or more master mechanics, a farmer, a gardener, and such other persons, as servants and laborers, as may be necessary, and fix their compen-

sation, subject to the approval of the Attorney General. (May 3, 1876, 19 Stat. 49, ch. 90, § 3.)

§ 32-809. Treasurer—Bond—Duties.

The Board of Trustees shall appoint a treasurer, who shall, before entering upon the duties of his office, give a bond to the United States with two or more sureties, to be approved by the General Accounting Office, in the sum of \$20,000, or a larger sum, at the option of the said General Accounting Office, conditioned that he shall faithfully account for all the money received by him as treasurer; and it shall be his duty to keep a clear and full record of his accounts as treasurer, and report an abstract of the same to the Board of Trustees once in every two months, and shall also make an annual report to the Board of Trustees. (May 3, 1876, 19 Stat. 49, ch. 90, § 4; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENT

1921—Act June 10, 1921, provided that the bond be approved by the General Accounting Office instead of the First Comptroller of the Treasury.

§ 32-810. Superintendent's bond.

Before entering upon the duties of his office, the superintendent shall give a bond to the Board of Trustees, with sureties, to be approved by the Attorney General of the United States, in the sum of \$3,000, conditioned that he shall faithfully account for all money received by him, and faithfully perform all the duties incumbent on him as superintendent of said school. (May 3, 1876, 19 Stat. 50, ch. 90, § 5.)

§ 32-811. Powers and duties of superintendent and subordinate officers.

The superintendent shall reside at the institution constantly and he, with such subordinate officers as may be appointed in accordance with section 32-808, shall have the charge and custody of the boys; shall govern them in accordance with such rules and regulations as the Board of Trustees may prescribe in its by-laws; shall employ them in agricultural, mechanical or other labor; shall give them instruction in reading, writing, arithmetic, geography, and such other studies and in such arts and trades as the trustees may direct; and shall employ such methods of discipline as will, as far as possible, reform their characters, preserve their health, promote regular improvement in their studies and employments, and secure in them fixed habits of religion, morality, and industry. (May 3, 1876, 19 Stat. 50, ch. 90, § 6.)

§ 32-812. Superintendent—In charge of lands and other property—Books of account—Register of boys—Examination of school and accounts.

The superintendent shall have charge of the lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining to the institution, within the precincts thereof, under the Board of Trustees, including the farm in possession of the board where the school was first located; and he shall keep in suitable books, regular and complete accounts of all his receipts and expenditures, and of all the property intrusted to him, so as to show clearly the income and expenses of

the institution; and he shall account, in such manner as the trustees may prescribe, for all the money received by him from the proceeds of the institution or otherwise; and he shall keep a register of the names and ages of all boys committed to the institution, with the dates of their admission and discharge, and such particulars of their history before and after leaving the institution as he can obtain.

His books and all documents relating to the school shall at all times, be open to the inspection of the trustees, who shall, once or more in every month, carefully examine his accounts, and the vouchers and documents connected therewith, and make a record of the result of such examination; and, once in every three months, the institution shall be thoroughly examined in all its departments by three or more of the trustees, and a report of such examination shall be made to the board. (May 3, 1876, 19 Stat. 50, ch. 90, § 7.)

§ 32-813. Report by officers to Commissioners of District—Contents.

The officers of said school shall at the end of each fiscal year make a report to the commissioners of the District of Columbia, which shall embrace a full and complete inventory of all the personal property in detail, the number of employees, and number of days each is employed during the year and price paid each, and the amount of garden, field, and other products produced, together with the disposition made of said personal property, products, and so forth. (Mar. 3, 1881, 21 Stat. 459, ch. 134, § 1.)

§ 32-814. Disposition of proceeds of farm and shops.

The net proceeds of the farm and shops shall be covered into the treasury, to the credit of the United States. (Mar. 3, 1905, 33 Stat. 1211, ch. 1483.)

§ 32-815. Boys committed—Commitment by court or judge.

Whenever any boy under the age of seventeen years shall be brought before any court of the District of Columbia, or any judge of such court, and shall be convicted of any crime or misdemeanor punishable by fine or imprisonment, other than imprisonment for life, such court or judge, in lieu of sentencing him to imprisonment in the jail, or fining him, may commit him to said school, to remain until he shall arrive at the age of twenty-one years, unless sooner discharged by the Board of Trustees. Except as otherwise provided in sections 11-909 and 11-910, the judges of the criminal and juvenile courts of the District of Columbia shall have power to commit to said school, any boy under seventeen years of age who may be liable to punishment by imprisonment under any existing law of the District of Columbia, or any law that may be enacted and in force in said District. Except as otherwise provided in sections 11-909 and 11-910, the juvenile court shall have power to commit to said school, first, any boy under seventeen years of age, with the consent of his parent or guardian, against whom any charge of committing any crime or misdemeanor shall have been made, the punishment of which, on conviction, would be confinement in jail or prison; second, any boy under seventeen years of age who is destitute of a suitable home and adequate means of obtaining

an honest living, or who is in danger of being brought up, or is brought up, to lead an idle or vicious life; third, any boy under seventeen years of age who is incorrigible, or habitually disregards the commands of his father or mother, or guardian, who leads a vagrant life, or resorts to immoral places or practices, or neglects or refuses to perform labor suitable to his years and condition, or to attend school. (May 3, 1876, 19 Stat. 50, ch. 90, § 8; June 5, 1900, 31 Stat. 266, ch. 715; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

CODIFICATION

Provision for commitment upon application of a parent, guardian, or relative was omitted, commitment being under the exclusive jurisdiction of the juvenile court.

The juvenile court, created by the act of Mar. 19, 1906, was given jurisdiction over crimes and offenses committed by persons under seventeen, such jurisdiction having formerly been exercised by the police court. See chapter 9, title 11.

AMENDMENT

1900—Act June 5, 1900, raised the age limit for commitment from 16 to 17 years.

CROSS REFERENCE

Commitment by juvenile court, see § 11-915.

NOTES TO DECISIONS

In general 1
Issue on appeal 2
Rehabilitation 3
Sufficiency of findings 4

1. In general

This section and acts amendatory thereto were obviously framed to operate according to the age of the individual who comes within its purview and without consideration of either the property rights of the child or her social status. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

2. Issue on appeal

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

3. Rehabilitation

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

4. Sufficiency of findings

A finding that infant's welfare and the safety and protection of the public could not be adequately safeguarded without removing infant from his home and parents was not sustained by the evidence. *In re Kroll* (D. C. Mun. App. 1945, 43 A. 2d 706).

§ 32-816. Period of detention.

Every boy sent to said school shall remain until he is twenty-one years of age, unless sooner discharged or bound as an apprentice. (May 3, 1876, 19 Stat. 51, ch. 90, § 9; June 5, 1900, 31 Stat. 267, ch. 715.)

AMENDMENT

1900—Act June 5, 1900, deleted provision that "no boy shall be retained after the superintendent shall have reported him fully reformed."

NOTES TO DECISIONS

1. In general

Attempts at escape from institutions are forbidden to all inmates, and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold v. Soileau* (C.C.A. 5, 1933, 67 F. 2d 259).

§ 32-817. Number of boys limited to number that can be properly accommodated—Notice to court.

Whenever there shall be as large a number of boys in the school as can be properly accommodated, it shall be the duty of the president of the Board of Trustees to give notice to the criminal and juvenile courts of the fact, whereupon no boys shall be sent to the school by said courts until notice shall be given them by the president of the board that more can be received. (May 3, 1876, 19 Stat. 51, ch. 90, § 10; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

CODIFICATION

"Juvenile courts" was substituted for "police courts" in view of Act Mar. 19, 1906, creating the juvenile court and transferring jurisdiction over persons under seventeen to such newly created court.

§ 32-818. Enticing boy from school or harboring escaped boy—Penalty—Arrest and return.

If any person shall entice, or attempt to entice, away from said school any boy legally committed to the same, or shall harbor, conceal, or aid in harboring or concealing any boy who shall have escaped from said school, such person shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall pay a fine of not less than \$10 or more than \$100, which shall be paid to the treasurer of the Board of Trustees; and any policeman shall have power, and it is hereby made his duty, to arrest any boy, when in his power so to do, who shall have escaped from said school, and return him thereto. (May 3, 1876, 19 Stat. 51, ch. 90, § 11.)

§ 32-819. Employment and instruction of boys—Apprenticing—Indentures.

The trustees shall have full power to place any boy committed as herein described, during his minority, at such employment and cause him to be instructed in such branches of useful knowledge, as may be suitable to his years and capacity, as they may see fit; and they may, with the consent of any such boy, bind him out as an apprentice during his minority, or for a shorter period, to learn such trade and employment as in their judgment will tend to his future benefit; and the president of the board shall, for such purpose, have power to execute and deliver, on behalf of the said board, indentures of apprenticeship for any such boy; and such indentures shall have the same force and effect as other indentures of apprenticeship under the laws of the District of Columbia, and be filed and kept among the records in the office of the said school and it shall not be necessary to record or file them elsewhere. (May 3, 1876, 19 Stat. 51, ch. 90, § 12.)

§ 32-820. Release on parole of juvenile offenders committed.

Every male juvenile offender who is now or may hereafter be committed to said school, and who has by his conduct given sufficient evidence that he has reformed, may be released on parole as provided in section 32-821. (Feb. 26, 1909, 35 Stat. 657, ch. 217, § 1.)

NOTES TO DECISION

1. Conditional parole

Under the statute providing for parole from the National Training School as provided in statute authorizing the Board of Trustees in its discretion to parole under such conditions as the Board deems proper, a boy may be

paroled from the training school on condition subsequent that he obey the laws of the community and such a parole may be revoked. *Kautter v. Reid* (1960, 183 F. Supp. 352).

§ 32-821. Board of Trustees authorized to parole—Attorney General.

If it shall appear to the satisfaction of the Board of Trustees of said school that there is reasonable probability that any boy detained in the said school will, if conditionally released, remain at liberty without violating the laws, then said Board of Trustees may in its discretion parole such boy under such conditions and regulations as the said Board of Trustees may deem proper. The parole of all such juvenile offenders committed by courts other than those of the District of Columbia shall be subject to the approval of the Attorney General of the United States. (Feb. 26, 1909, 35 Stat. 657, ch. 217, § 2.)

§ 32-822. Support of boys committed—Accounts—Payment—Rate.

For the support of the boys sent to said school, as hereinbefore mentioned, the District of Columbia shall pay to the Board of Trustees the actual per capita cost of maintenance of such boys; and it shall be the duty of the superintendent to make out and render to the proper officers monthly accounts at the close of each month for the support of the boys in said school, which shall be paid on demand; and, if not paid within ten days from the time the account is presented, shall draw interest at the rate of 1 per centum per month until paid. The per capita cost of persons committed from the District of Columbia and maintained in the National Training School for Boys shall be fixed at a rate not less than \$4.50 per week for each person. (May 3, 1876, 19 Stat. 51, ch. 90, § 13; Aug. 1, 1914, 38 Stat. 657, ch. 223, § 1; Mar. 28, 1918, 40 Stat. 494, ch. 28, § 1.)

AMENDMENTS

1918—Act Mar. 28, 1918, provided that the District should pay the actual per capita cost.

1914—Act Aug. 1, 1914, eliminated provision fixing cost at 2 dollars per week per person and added last sentence fixing per capita cost of persons committed from District at \$4.50 per week.

Chapter 9.—NATIONAL TRAINING SCHOOL FOR GIRLS

Sec.

- 32-901. Name.
- 32-902. Authority of Board of Public Welfare—Powers—Property.
- 32-903. Powers of Board.
- 32-904. By-laws, rules, and regulations—Release of girls.
- 32-905. Officers and employees—Appointment—Compensation.
- 32-905a. Compensation of superintendent.
- 32-906. Control over inmates—Segregation of white and colored.
- 32-907. Provisions relating to National Training School for Boys applicable.
- 32-908. Girls committed—Commitment by court or judge.
- 32-908a. Commitments to National Training School stopped—New commitments to be made to Board of Public Welfare—Parole or discharge—Care of girls at institutions or private homes.
- 32-908b. Availability of buildings, grounds, equipment and appropriations for care and training of children.
- 32-909. Period of detention.
- 32-910. Release on parole of juvenile offenders committed.

Sec.

32-911. Board authorized to parole—Attorney General.

32-912. Appropriations—Disbursement.

32-913. Right to amend or repeal chapter.

§ 32-901. Name.

The reform school for girls of the District of Columbia shall be known and designated as the National Training School for Girls. (June 26, 1912, 37 Stat. 171, ch. 182, § 1.)

§ 32-902. Authority of Board of Public Welfare—Powers—Property.

The Board of Public Welfare as the successor to the board of trustees of the National Training School for Girls is authorized and empowered to establish and maintain a training school for girls at any place within the District of Columbia, subject to the approval of the commissioners thereof, and for that purpose may take and receive by gift, grant, or devise, such real estate and personal property as may be necessary for the purposes of said corporation. At the dissolution of said corporation, or if it should cease for the space of six months to maintain a training school for girls, all the property, real and personal, of said corporation shall vest in the United States. (July 9, 1888, 25 Stat. 245, ch. 595, § 2; June 26, 1912, 37 Stat. 171, ch. 182, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

AMENDMENT

1926—Act Mar. 16, 1926, established the Board of Public Welfare as successor to trustees.

CHANGE OF NAME

Act June 26, 1912, changed the name of the Reform School for Girls to National Training School for Girls.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-903. Powers of Board.

The Board of Public Welfare shall have the same power and authority in relation to girls as the Board of Trustees of the National Training School for Boys possess in relation to boys. (July 9, 1888, 25 Stat. 246, ch. 595, § 3; May 27, 1908, 35 Stat. 380, ch. 200, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1.)

AMENDMENT

1926—Act Mar. 16, 1926, substituted Board of Public Welfare for board of trustees.

CHANGE OF NAME

Act May 27, 1908, changed the name of the Reform School of the District of Columbia to the National Training School for Boys.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

CROSS REFERENCES

General provisions concerning imprisonment of criminals do not apply to National Training School for Girls, see § 24-402.

General provisions concerning powers and duties of Board of Public Welfare, see § 3-101 et seq.

Girls under care and custody of Association for Works of Mercy, see § 32-101 et seq.

Other provisions concerning the application of laws relating to the National Training School for Boys, see § 32-907.

Power and authority of the board of trustees of the National Training School for Boys, see § 32-801 et seq.

Transfer of feeble-minded to District Training School, see § 32-624.

§ 32-904. By-laws, rules, and regulations—Release of girls.

The Board of Public Welfare may make such by-laws, rules, and regulations for the government of the institution, its officers, teachers, employees, and inmates, the employment, discipline, instruction, education, removal, and absolute, temporary, or conditional release of all girls committed to the school as they may deem necessary and proper and as are not contrary to the Constitution and to the laws of the District of Columbia; and may from time to time alter, amend, and change the same. (May 3, 1876, 19 Stat. 52, ch. 90, § 15; July 9, 1888, 25 Stat. 246, ch. 595, § 5; Feb. 25, 1901, 31 Stat. 809, ch. 478; Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1.)

AMENDMENT

1926—Act Mar. 16, 1926, substituted Board of Public Welfare for Board of trustees.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

CROSS REFERENCE

Rules and regulations generally, see § 1-226.

§ 32-905. Officers and employees—Appointment—Compensation.

The Board of Public Welfare shall have authority to appoint such officers, agents, teachers, and other employees as may be necessary, and fix the rate of compensation of the same, subject to the approval of the Commissioners of the District of Columbia. (July 9, 1888, 25 Stat. 246, ch. 595, § 4; Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1.)

AMENDMENT

1926—Act of Mar. 16, 1926, substituted Board of Public Welfare for the Board of Trustees.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

CROSS REFERENCES

Appointment of superintendent, see § 3-107.

Officers, trustees, or directors may not deal with institution for financial gain, see § 32-1007.

§ 32-905a. Compensation of superintendent.

The salary of the superintendent of the National Training School for Girls shall be at the rate of \$4,651 per annum. (Sept. 29, 1943, 57 Stat. 569, ch. 249, § 2; June 28, 1944, 58 Stat. 521, ch. 300, § 1; June 30, 1945, 59 Stat. 285, ch. 209, § 1; July 9, 1946, 60 Stat. 513, ch. 544, § 1; July 25, 1947, 61 Stat. 439, ch. 324, § 1; June 19, 1948, 62 Stat. 548, ch. 555, § 1; June 29, 1949, 63 Stat. 303, ch. 279, § 1.)

AMENDMENTS

1949—Act June 29, 1949, amended section by increasing the salary from \$4,526 to \$4,651 annually.

1948—Act June 19, 1948, amended section by increasing the salary from \$4,400 to \$4,526 annually.

1947—Act July 25, 1947, amended section by increasing the salary from \$3,640 to \$4,400 annually.

1946—Act of July 9, 1946, amended section by increasing the salary from \$3,200 to \$3,640 annually.

1945—Act June 30, 1945, amended section by increasing the salary from \$2,700 to \$3,200 annually.

1944—Act June 28, 1944, amended section by reducing salary from \$3,600 to \$2,700 annually.

§ 32-906. Control over inmates—Segregation of white and colored.

The Board of Public Welfare shall have the same power and authority over such girls during the period of their commitment to the school, or while they are being conducted to or from said school, as they possess over such girls within the limits of the District of Columbia. When the buildings authorized to be constructed shall be in readiness to receive girls committed to said school, it shall not be lawful to keep white and colored girls on the same reservations under the control of the Board of Public Welfare as the legal successor to the board of trustees of said school. (Feb. 28, 1923, 42 Stat. 1358, ch. 148, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1.)

AMENDMENT

1926—Mar. 16, 1926, substituted Board of Public Welfare as successor to trustees of the National Training School.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-907. Provisions relating to National Training School for Boys applicable.

All the sections of chapter 8 of this title, not inconsistent with the provisions of this chapter, are hereby made applicable to the National Training School for Girls of the District of Columbia, except the word "girls" shall be understood wherever the word "boys" occurs in said chapter, and the words "eighteen years" wherever the words "sixteen years" occur. (July 9, 1888, 25 Stat. 246, ch. 595, § 6; June 26, 1912, 37 Stat. 171, ch. 182, § 1.)

CHANGE OF NAME

Act June 26, 1912, provided that "Reform School for Girls of the District of Columbia" should hereafter be known as "National Training School for Girls."

AGE OF COMMITMENT TO NATIONAL TRAINING SCHOOL FOR BOYS

The age of commitment for boys was raised from sixteen to seventeen years by act June 5, 1900. See § 32-815.

NOTES TO DECISIONS

1. In general

Under this section, a reform school for girls of the District was authorized, the powers thereof to be exercised by a Board of Trustees, which board was given the same powers and duties relative to girls as were given with respect to boys, by act of May 3, 1876. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

§ 32-908. Girls committed—Commitment by court or judge.

Whenever any girl under the age of seventeen years shall be brought before any court of the District of Columbia or any judge of such court, and shall be convicted of any crime or misdemeanor punishable by fine or imprisonment other than imprisonment for life, such court or judge, in lieu of sentencing her to imprisonment in the jail or fining her, may commit her to the Board of Public Welfare. Except as otherwise provided in sections 11-909 and 11-910, the judges of the criminal and juvenile courts of the District of Columbia shall have power to commit to said school, first, any girl under seventeen years of age who may be liable to punishment by imprisonment under any existing law of the District of Columbia or any

law that may be enacted and in force in said District; second, any girl under seventeen years of age, with the consent of her parent or guardian, against whom any charge of crime or misdemeanor shall have been made, upon probable cause shown to the satisfaction of the court; third, any girl under seventeen years of age who is destitute of a suitable home and adequate means of obtaining an honest living or who is in danger of being brought up, or is brought up, to lead an idle or vicious life; fourth, any girl under seventeen years of age who is incorrigible or habitually disregards the commands of her father or mother or guardian, who leads a vagrant life, or resorts to immoral places or practices, or neglects or refuses to perform labor suitable to her years and condition or to attend school. Girls committed to the Board of Public Welfare may be committed for such periods as the courts may deem proper, subject to earlier discharge by the Board of Public Welfare, but no girl shall be so committed for a period extending beyond her twenty-first birthday. (May 3, 1876, 19 Stat. 50, ch. 90, § 8; July 9, 1888, 25 Stat. 245, ch. 595, § 6; Feb. 25, 1901, 31 Stat. 809, ch. 478; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1; Aug. 3, 1951, 65 Stat. 154, ch. 291, § 3.)

CODIFICATION

"Juvenile courts" was substituted for "police courts" in view of Act Mar. 19, 1906, creating the juvenile court and transferring jurisdiction over persons under seventeen to such newly created court.

AMENDMENTS

1951—Act Aug. 3, 1951, in the first sentence, struck out "Reform School for Girls", substituting in lieu thereof "Board of Public Welfare", deleted from the same sentence the words "to remain until she shall arrive at the age of twenty-one years unless sooner discharged by the Board of Public Welfare" at the end thereof, and added the last sentence with respect to periods of detention.

1926—Act Mar. 16, 1926, substituted Board of Public Welfare for board of trustees.

1901—Act Feb. 25, 1901, changed the age limit of commitment to 17 years.

1888—Act July 9, 1888, made the provisions relating to the National School for Boys applicable to the National School for Girls.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

CROSS REFERENCES

Commitment of juveniles by juvenile court, see § 11-915.

Discontinuance of commitments to the National Training School for Girls, see § 32-908a.

NOTES TO DECISIONS

**In general 1
Marriage of child 2**

1. In general

This section and acts amendatory thereto, were obviously framed to operate according to the age of the individual who comes within its purview, and without consideration of either the property rights of the child or her social status. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

2. Marriage of child

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson v. Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

§ 32-908a. Commitments to National Training School stopped—New commitments to be made to Board of Public Welfare—Parole or discharge—Care of girls at institutions or private homes.

No girl shall be committed to the National Training School for Girls after August 3, 1951. Any girl who, but for the provisions of this Act, would be subject to commitment to such school shall be subject to commitment to the Board of Public Welfare (hereinafter called the "Board"). Girls committed to such school prior to August 3, 1951 shall remain subject to the supervision and care of the Board for the periods of their commitments, but may be removed by it to any other place of detention available to it. The Board is authorized to parole or discharge any girl committed to it or subject to its supervision as provided in this section. In the supervision and care of any girl the Board is authorized, in its discretion, to use any public or private agency or institution, or private family home, either without expense or at a fixed rate of board. (Aug. 3, 1951, 65 Stat. 154, ch. 291, § 1.)

REFERENCE IN TEXT

This Act, referred to in text, means act Aug. 3, 1951, which enacted this section and section 32-908b, and amended sections 11-915 and 32-908.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-908b. Availability of buildings, grounds, equipment and appropriations for care and training of children.

The buildings, grounds, and equipment of the National Training School for Girls shall be available for the care and training of children committed to the Board or received and accepted by it for care under the authority of this or any other Act. Appropriations heretofore or hereafter made for the National Training School for Girls shall be available for the care and training of such children. (Aug. 3, 1951, 65 Stat. 154, ch. 291, § 2.)

REFERENCE IN TEXT

This Act, referred to in text, means act Aug. 3, 1951, which enacted this section and section 32-908a, and amended sections 11-915 and 32-908.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

§ 32-909. Period of detention.

Every girl sent to the National Training School for Girls shall remain until she is twenty-one years of age unless sooner discharged or bound as an apprentice. (May 3, 1876, 19 Stat. 51, ch. 90, § 9; July 9, 1888, 25 Stat. 245, ch. 595, § 6; Feb. 25, 1901, 31 Stat. 810, ch. 478; June 26, 1912, 37 Stat. 171, ch. 182, § 1.)

AMENDMENT

1901—Act Feb. 25, 1901, eliminated provision prohibiting retention in school after person was fully reformed.

CHANGE OF NAME

Act June 26, 1912, changed the name of the Reform School for Girls to National Training School for Girls.

NOTES TO DECISIONS

1. Attempts to escape

Attempts at escape from institution are forbidden to all inmates, and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold v. Soileau* (C.C.A. 1933, 67 F. 2d 259).

§ 32-910. Release on parole of juvenile offenders committed.

Every female juvenile offender who is now or may hereafter be committed to said school, and who has by her conduct given sufficient evidence that she has reformed, may be released on parole as hereinafter provided. (Apr. 15, 1910, 36 Stat. 300, ch. 164, § 1.)

CROSS REFERENCE

Parole and discharge of girls, see, also, § 32-908a.

§ 32-911. Board authorized to parole—Attorney General.

If it shall appear to the satisfaction of the Board of Public Welfare that there is reasonable probability that any girl detained in the said school will, if conditionally released, remain at liberty without violating the laws, then said Board of Public Welfare may, in its discretion, parole such girl under such conditions and regulations as the said Board of Public Welfare may deem proper. The parole of all such juvenile offenders committed by courts other than those of the District of Columbia shall be subject to the approval of the Attorney General of the United States. (Apr. 15, 1910, 36 Stat. 300, ch. 164, § 2; Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1.)

AMENDMENT

1926—Act Mar. 16, 1926, provided for Board of Public Welfare as successor to trustees.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3-102.

CROSS REFERENCE

Parole and discharge of girls, see, also, § 32-908a.

§ 32-912. Appropriations—Disbursement.

Appropriations made for the National Training School for Girls shall be disbursed by the disbursing officer of the District of Columbia in the manner provided by law for expenditure from appropriations for general expenses of the government of said District. (June 5, 1920, 41 Stat. 865, ch. 234, § 1.)

§ 32-913. Right to amend or repeal chapter.

Congress shall have the right to alter, amend, or repeal this chapter at any time. (July 9, 1888, 25 Stat. 246, ch. 595, § 8.)

Chapter 10.—MISCELLANEOUS

Sec.

- 32-1001. Visitation of charities supported in whole or in part by District revenues by Commissioners of the District of Columbia.
- 32-1002. Visitorial power of Commissioners over certain designated organizations.
- 32-1003. Appropriations for charitable and reformatory institutions to be lien on property.
- 32-1004. Terms of Members of Congress while acting as trustees of charitable institutions.
- 32-1005. Compensation of physicians to the poor.
- 32-1006. Voluntary medical service for charitable institutions.
- 32-1007. Trustees of charitable institutions supported by congressional appropriations not to traffic therewith for gain.

Sec.

32-1008. Congressional policy as to appropriations to institutions under sectarian control.

32-1009. Sale of products of Home for Aged and Infirm.

32-1010. Admission of pay patients to Home for Aged and Infirm.

§ 32-1001. Visitation of charities supported in whole or in part by District revenues by Commissioners of the District of Columbia.

The commissioners of the District of Columbia are required to visit and investigate the management of all institutions of charity within the District which may be appropriated for out of the District revenues, in whole or in part, and shall require an itemized report of receipts and expenditures to be made to them, to be transmitted with their annual report to Congress, which report shall also include such recommendations as the commissioners may deem proper concerning the necessity for such institutions, together with a plan for their organization and management, and estimates of appropriations necessary for their maintenance. (July 5, 1884, 23 Stat. 127, ch. 227, § 1.)

CROSS REFERENCE

Supervision by Board of Public Welfare over institutions supported by congressional appropriations, see § 3-111.

§ 32-1002. Visitorial power of Commissioners over certain designated organizations.

The commissioners of the District of Columbia are authorized to visit, investigate the management of, and have a report of the receipts and expenditures of the Columbia Hospital for Women and Lying-in Asylum, the Children's Hospital, Saint Ann's Infant Asylum, National Association for Colored Women and Children, Women's Christian Association, Little Sisters of the Poor, and the German Orphan Asylum, so long as they respectively accept money appropriated by Congress for their aid. (June 4, 1880, 21 Stat. 157, ch. 121, § 1.)

CROSS REFERENCE

Supervision by Board of Public Welfare over institutions supported by congressional appropriations, see § 3-111.

§ 32-1003. Appropriations for charitable and reformatory institutions to be lien on property.

All sums of money appropriated and expended in aid of the purchase of real estate for charitable or reformatory institutions in the District of Columbia, or for buildings or for permanent improvements to buildings thereon, shall (subject to any trust deed, mortgage, or other security or encumbrance existing on such property at the time of its purchase, or created at the time of its purchase) be a lien upon such property, and in case of the dissolution of any such corporation owning such property, or in case of the disposal of such property, by such corporation, entitle the United States to reimbursement in proportion to any other contributions or funds used for such purposes; and the acceptance by any such corporation of any sum of money appropriated for the foregoing purposes shall be deemed an acceptance of and agreement to this provision. (Mar. 3, 1893, 27 Stat. 552, ch. 199, § 1.)

CROSS REFERENCE

General provisions concerning sale of public lands, see § 9-301 et seq.

§ 32-1004. Terms of Members of Congress while acting as trustees of charitable institutions.

In all cases where Members of Congress or Senators are appointed to represent Congress on any Board of Trustees or Board of Directors of any corporation or institution to which Congress makes any appropriation, the term of said Members or Senators, as such trustee or director, shall continue until the expiration of two months after the first meeting of the Congress chosen next after their appointment. (Mar. 3, 1893, 27 Stat. 553, ch. 199, § 1.)

CODIFICATION

Section is also classified to U.S. Code, title 31, § 722.

CROSS REFERENCES

Provisions concerning term of office of Member of Congress or Senator acting as trustee for the National Training School for Boys, see § 32-804.

Term of office of Members of Congress or Senators acting as directors of Columbia Institution for the Deaf, see § 31-1007.

§ 32-1005. Compensation of physicians to the poor.

The compensation of the physicians to the poor shall not exceed forty dollars per month each. (Feb. 25, 1885, 23 Stat. 314, ch. 145, § 1.)

§ 32-1006. Voluntary medical service for charitable institutions.

The Commissioners of the District of Columbia are authorized to accept voluntary medical service for public charitable institutions. (May 18, 1910, 36 Stat. 409, ch. 248, § 1.)

CROSS REFERENCE

General provision forbidding acceptance of voluntary services, see § 1-215.

§ 32-1007. Trustees of charitable institutions supported by congressional appropriations not to traffic therewith for gain.

No member or members of any board or boards of trustees or directors of any charitable institution, organization or corporation in the District of Columbia, which is supported in whole or in part by appropriations made by Congress, shall engage in traffic with said institution, organization or corporation for financial gain, and any member or members of such board of trustees or directors who shall so engage in such traffic shall be deemed legally disqualified for service on said board or boards. (June 11, 1896, 29 Stat. 410, ch. 419, § 1.)

CROSS REFERENCE

Members or employees of Board of Public Welfare may not deal with any institution under its control, inspection, or supervision for financial gain, see § 3-113.

§ 32-1008. Congressional policy as to appropriations to institutions under sectarian control.

It is hereby declared to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; and no money appropriated for charitable purposes in the District of Columbia, shall be paid to any church or religious denomination, or to any institution or society which

is under sectarian or ecclesiastical control. (June 11, 1896, 29 Stat. 411, ch. 419, § 1; Mar. 3, 1897, 29 Stat. 683, ch. 387, § 1.)

NOTES TO DECISIONS

1. Secular corporation

Appropriation for Providence Hospital, a secular corporation created by act of Congress, was not unconstitutional as a law respecting the establishment of religion, even though all the members of the corporation belonged to one religious body. *Bradfield v. Roberts* (1900, 20 S. Ct. 121, 175 U.S. 291, 44 L. Ed. 168).

§ 32-1009. Sale of products of Home for Aged and Infirm.

The commissioners are authorized, under such regulations as they may prescribe, to sell the surplus products of the Home for the Aged and Infirm. All

moneys derived from such sales shall be paid into the Treasury of the United States to the credit of the District of Columbia and the United States in the proportions required by law. (June 5, 1920, 41 Stat. 865, ch. 234, § 1.)

§ 32-1010. Admission of pay patients to Home for Aged and Infirm.

Pay patients may be admitted to the Home for the Aged and Infirm for care and treatment at such rates and under such regulations as may be established by the Board of Public Welfare, insofar as such admissions will not interfere with admission of indigent patients: *Provided, however*, That the rates shall not exceed the estimated per capita cost for the current year. (June 14, 1950, 64 Stat 212, ch. 235.)

33

24

25

TITLE 33.—FOOD AND DRUGS

Chap.	Sec.
1. Adulteration	33-101
2. Candy	33-201
3. Milk, Cream, and Ice Cream.....	33-301
4. Narcotic Drugs.....	33-401
5. Meats and Meat Products.....	33-501
6. Restaurants	33-601
7. Regulation and Control of Certain Drugs Other Than Narcotics.....	33-701

Chapter 1.—ADULTERATION

Sec.
33-101. Adulterated foods or drugs not to be sold or exposed for sale.
33-102. Definition of "drug" and "food"—Best quality to be furnished.
33-103. Adulterated article defined.
33-104. Rules and regulations for collecting and examining drugs and food—Director of public health.
33-105. Complaints to be investigated.
33-106. Drug and food samples furnished to agents of health department.
33-107. Portion of sample analyzed to be sealed and retained for defendant.
33-108. Representative of health department not to be interfered with.
33-109. Prosecutions—Penalties.
33-110. Repeal—Certain prior laws unaffected.
33-111. Special services for detection of adulteration.

§ 33-101. Adulterated foods or drugs not to be sold or exposed for sale.

No person shall, within the District of Columbia, by himself or by his servant or agent, or as the servant or agent of any other person, sell, exchange, or deliver, or have in his custody or possession with the intent to sell or exchange, or expose or offer for sale or exchange, any article of food or drug which is adulterated within the meaning of this chapter. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 1.)

CROSS REFERENCES

Adulteration of candy, see §§ 33-203.
Federal Food, Drug and Cosmetic Act, see U.S. Code, title 21, § 321 et seq.
Implied warranties, see § 28-1115.
Uniform Narcotic Drug Act, see § 33-401 et seq.
Weights and measures, see § 10-101 et seq.

NOTES TO DECISIONS

1. Defense

It is no defense for a druggist prosecuted for selling an adulterated drug to show simply that he was at the time of sale ignorant of the fact that the drug was adulterated, as he must know what he sells, or proposes to sell, and that it conforms to the standard prescribed by law. *District of Columbia v. Lynham* (16 App. D. C. 85).

§ 33-102. Definition of "drug" and "food"—Best quality to be furnished.

The term "drug," as used in this chapter, shall include all medicines for external or internal use, antiseptics, disinfectants, and cosmetics. The term "food," as used in this chapter, shall include confectionery, condiments, and all articles used for food or drink by man, and if there be more than one quality of any article of food or drug known by the

same name the best quality thereof shall be furnished to the purchaser, unless he otherwise requests at the time of making such purchase, or unless he be notified at such time of the inferior quality of the article delivered. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 2.)

§ 33-103. Adulterated article defined.

An article shall be deemed to be adulterated within the meaning of this chapter:

(a) In the case of drugs: First, if, when sold under or by a name recognized in the United States Pharmacopoeia, it differs from the standard of strength, quality, or purity laid down in the edition thereof at the time official; second, if when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in the German, French, or English Pharmacopoeia, it differs from the strength, quality, or purity laid down therein; third, if, when sold as a patented medicine, compounded drug, or mixture, it is not composed of all of the ingredients advertised or printed or written on the bottles, wrappers, or labels of or on or with the patented medicine, compounded drug, or mixture: *Provided*, That if the defendant in any prosecution under this chapter, in respect to the sale of any such patented medicine, compounded drug, or mixture, shall prove to the satisfaction of the court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect; that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution.

(b) In the case of food: First, in the case of cheese, if it is not made exclusively from milk or cream, or both, with or without common salt; second, in the case of coffee, if it is not composed entirely of the seed of the *Coffea arabica*; third, in the case of lard, if it is not made exclusively from the rendered fat of the healthy hog; fourth, in the case of tea, if it is not composed entirely of the genuine leaf of the tea plant not exhausted; fifth, in the case of all kinds of vinegar, if it contains an acidity equivalent to the presence of less than four per centum of absolute acetic acid; and cider vinegar, if it is not made from the pure apple juice and contains less than one and five-tenths per centum of total solids; sixth, in the case of cider, if it is not made from the legitimate product of pure apple juice; in the case of wines and fruit juices, if not made from the pure fruit as represented; and in the case of cider, wines, fruit juices, and malt liquors, if not free from salicylic acid or other preservatives; and in the case of malt liquors, if not free from piric acid, coculus indicus, colchicine, colocynth, aloes, and wormwood; seventh, in the case of glucose, if it contains more than five one-hundredths

per centum of ash; eighth, in the case of flour, if it is not composed entirely of one single ground cereal; ninth, in the case of bread, if there is any addition of alum, sulphate of copper, borax, or sulphate of zinc, or other poisonous or harmful ingredient, and if it contains more than thirty-one per centum of moisture, more than two per centum of ash, and less than six and twenty-five one-hundredths per centum of albuminoids; tenth, in the case of olive oil, if it is not made exclusively from the olive berry (*Olea europæa*), and its specific gravity at fifteen and six-tenths degrees centigrade (sixty degrees Fahrenheit) "actual density" to be not more than nine hundred and seventeen one-thousandths nor less than nine hundred and fourteen one-thousandths: *Provided*, That an offense shall not be deemed to be committed under this section in the following cases, that is to say, first, where the order calls for an article of food or drug inferior to such standard, or where such difference is made known by being plainly written or printed on the package; second, where the article of food or drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure or conceal its inferior quality, if at the time such article is delivered to the purchaser it is made known to him that such article of food or drug is so mixed. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 3; June 30, 1906, 34 Stat. 768, ch. 3915; Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13.)

CODIFICATION

Provisions of subsec. (b), formerly designated as ninth through eighteenth, were redesignated first through tenth in view of acts June 30, 1906, and Feb. 27, 1925. Provision formerly designated as eighth deeming milk to be adulterated when it contains less than three and one-half per centum of fat, less than nine per centum of solids not fat, and contains more than eighty-seven and one-half per centum of water, and cream when it contains less than twenty per centum of butter fat, and part of provision formerly designated as ninth, now designated first, reading "butter or" preceding "cheese" were omitted from the Code as now covered by act Feb. 27, 1925, regulating the sale of milk, cream and ice cream and defining such terms, which is classified to sections 33-301 et seq., and 33-313. Provisions formerly designated as first through eighth deeming food to be adulterated when there is a mixture, extraction, or substitution of substances affecting quality or strength, it is an imitation of or sale under the name of another article, it contains putrid, deceased, decomposed or rotten animal or vegetable matter, it is colored, polished, coated or powdered to conceal damage, it is made to appear better or of greater value than it actually is, it contains poisonous or injurious ingredients, were omitted from the Code as covered by section 7 of the Federal Food and Drugs Act of June 30, 1906, 34 Stat. 769, ch. 3915, and section 402 of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, 52 Stat. 1046, ch. 675, as amended, which is classified to U.S. Code, title 21, § 342, upon repeal of act June 30, 1906 by section 902(a) of act June 25, 1938.

CROSS REFERENCE

Regulation and control of production and sale of milk and milk products, see, also, § 30-301 et seq.

NOTES TO DECISIONS

Construction 1
 Defenses 2
 Interstate commerce 3
 Labels 4
 Review 5

1. Construction

It was never intended that this act should hold manufacturers liable for misstatements as to the curative merits of his goods, and as this is a criminal statute creating a

new offense, should be liberally construed. (*United States v. Johnson* (D.C. Mo. 1910, 177 F. 313).)

2. Defenses

It is no defense for party prosecuted for selling adulterated foods to show that he was ignorant of such fact, as he must know what he sells and that it conforms with the law. *District of Columbia v. Lynham* (16 App. D. C. 85).

3. Interstate commerce

There is nothing in the act to regulate the traffic of foods within the States. Its main purpose was to prevent inferior goods from being sold in interstate commerce. *United States v. Charles L. Heinle Specialty Co.* (D. C. Pa. 1910, 175 F. 299).

4. Labels

Under this act the label on drugs must state the substance from which such derivative is produced. *United States v. Antikamnia Chemical Co.* (1914, 34 S. Ct. 222, 231 U. S. 654, 58 L. Ed. 419).

If the labels on the goods are, in fact, true, then there is no violation of the act, the object of the statute being to protect the public from fraud in the purchase of food. *United States v. Sixty-eight Cases of Syrup* (D.C. Ill. 1909, 172 F. 781).

Where food product is labeled "Compound: pure comb and strained honey and corn syrup," it is not misbranded merely because the percentage of corn syrup is much greater. *United States v. Boeckmann* (C.C.N.Y. 1910, 176 F. 382).

5. Review

Where decree in favor of the United States condemning certain food has been fully executed, and costs against claimant voluntarily paid, the appellate court will not review the case. *Charles v. United States* (C.C.A. 5, 1911, 183 F. 566).

§ 33-104. Rules and regulations for collecting and examining drugs and food—Director of public health.

It shall be the duty of the director of public health of the District of Columbia, under the direction of the commissioners of said District, to adopt such measures as may be necessary to facilitate the enforcement of this chapter, and prepare rules and regulations with regard to the proper method of collecting and examining drugs and articles of food in said District. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

CROSS REFERENCE

Rules and regulations generally, see § 1-226.

§ 33-105. Complaints to be investigated.

It shall be the duty of the director of public health to investigate a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to substantiate such complaint. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-106. Drug and food samples furnished to agents of health department.

Every person offering for sale or delivering to any purchaser any drug or article of food included in the provisions of this chapter shall furnish to any analyst or other officer or agent of the health depart-

ment, who shall apply to him for the purpose and shall tender him the value of the same, a sample sufficient for the purpose of analysis of any such drug or article of food which is in his possession. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 6.)

CROSS REFERENCE

Regulation and control of production and sale of milk and milk products, see § 33-301 et seq.

§ 33-107. Portion of sample analyzed to be sealed and retained for defendant.

In all cases where any drug or article of food shall be taken as a sample to be examined and analyzed the person making the analysis shall reserve a portion of the sample, which shall be sealed, for a period of thirty days from the time of taking such sample, and in case of a complaint the reserved portion alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 7.)

CROSS REFERENCE

Regulation of production and sale of milk and milk products, see § 33-301 et seq.

§ 33-108. Representative of health department not to be interfered with.

No person shall hinder, obstruct, or in any way interfere with any inspector, analyst, or other person of the health department in the performance of his duty in carrying out the provisions of this chapter. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8.)

§ 33-109. Prosecutions—Penalties.

All prosecutions under this chapter shall be in the municipal court of said District, on information brought in the name of the District of Columbia, and on its behalf; and any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than one hundred dollars. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court of said District" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 33-110. Repeal—Certain prior laws unaffected.

All acts and parts of acts inconsistent with this chapter are hereby repealed: *Provided*, That nothing in this chapter contained shall be construed as modifying or repealing any of the provisions of "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886, or of "An Act defining cheese, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of 'filled cheese,'" approved June 6, 1896. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 10.)

REFERENCES IN TEXT

Act June 6, 1896, referred to in text, was act June 6, 1896, 29 Stat. 253, ch. 337.

Act Aug. 3, 1886, referred to in text, was act Aug. 2, 1886, 24 Stat. 209, ch. 840.

§ 33-111. Special services for detection of adulteration.

Amounts to be determined by the Commissioners may be expended for special services in detecting adulteration of drugs and foods, including candy and milk and other products and services subject to inspection by the Department of Public Health. (Apr. 8, 1960, 74 Stat. 21, Pub. L. 86-412, § 1.)

SIMILAR PROVISIONS

1960—July 23, 1959, 73 Stat. 229, Pub. L. 86-104, § 1.
1959—Aug. 6, 1958, 72 Stat. 502, Pub. L. 85-594, § 1.
1958—June 27, 1957, 71 Stat. 197, Pub. L. 85-61, § 1.
1957—June 29, 1956, 70 Stat. 445, ch. 479, § 1.
1956—July 5, 1955, 69 Stat. 251, ch. 272, § 1.
1955—July 1, 1954, 68 Stat. 383, ch. 499, § 1.
1954—July 31, 1953, 67 Stat. 284, ch. 299, § 1.
1953—July 5, 1952, 66 Stat. 380, ch. 576, § 1.
1952—Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.
1951—July 18, 1950, 64 Stat. 347, ch. 467, § 1.
1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 546.
1948—July 25, 1947, ch. 324, § 1, 61 Stat. 436.
1947—July 9, 1946, ch. 544, § 1, 60 Stat. 511.
1946—June 30, 1945, ch. 209, § 1, 59 Stat. 282.
1945—June 28, 1944, ch. 300, § 1, 58 Stat. 519.
1944—July 1, 1943, ch. 184, § 1, 57 Stat. 327.
1943—June 27, 1942, ch. 452, § 1, 56 Stat. 439.
1942—July 1, 1941, ch. 271, § 1, 55 Stat. 517.
1941—June 12, 1940, ch. 333, § 1, 54 Stat. 323.

Chapter 2.—CANDY

Sec.

- 33-201. Adulterated candy not to be made or sold.
- 33-202. Penalty.
- 33-203. Prosecuting attorneys to appear.

§ 33-201. Adulterated candy not to be made or sold.

No person or corporation shall, by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale or knowingly sell or offer to sell any candy adulterated by the admixture of terra alba, barytes, talc, or any other mineral substance, by poisonous colors or flavors, or other ingredients deleterious or detrimental to health. (May 5, 1898, 30 Stat. 398, ch. 241, § 1.)

CROSS REFERENCE

Adulteration generally, see § 33-101 et seq.

NOTES TO DECISIONS

1. Warrant

Complaint alleging that injury to plaintiff, caused by biting a stone contained in a confection, was caused by defendant's breach of warranty, stated a good cause of action and would not be dismissed on motion. *Saunders v. Goldstein* (1940, 30 F. Supp. 150).

§ 33-202. Penalty.

Any person or corporation convicted of violating any of the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. The candy so adulterated shall be forfeited and destroyed under the direction of the court. (May 5, 1898, 30 Stat. 398, ch. 241, § 2.)

§ 33-203. Prosecuting attorneys to appear.

It is hereby made the duty of the prosecuting attorneys of the District of Columbia to appear for the people and to attend to the prosecution of all complaints under this chapter in all the courts of said District. (May 5, 1898, 30 Stat. 398, ch. 241, § 3.)

EFFECTIVE DATE

Section 4 of act May 5, 1898, provided "That this Act [this chapter] shall take effect upon its passage [May 5, 1898]."

Chapter 3.—MILK, CREAM, AND ICE CREAM

NOTES TO DECISIONS

Sec.

- 33-301. Production, transportation, and sales—Restriction.
- 33-302. Dairy requirements—Permit—Application details—Certificate of soundness of cattle—"Person" defined—Application for permit to be acted upon within thirty days if practicable.
- 33-303. Suspension of permit—Statement of reasons—Notice.
- 33-304. Interstate shipments of milk or cream into District for ice cream permitted if conforming to State law requirements.
- 33-305. Permit revocable for refusal to permit inspections.
- 33-306. Milk, cream, and ice cream to be seized if brought to District illegally—Owner to be notified of seizure—Destruction.
- 33-307. Rules and regulations to protect supply—Publication.
- 33-308. Milk wagons to bear name of owner and location of dairy—Trucks bringing milk, cream, or ice cream to District to bear name of owner.
- 33-309. Dealers to keep posted names of persons supplying milk, cream, and ice cream—General distributors to keep record of persons supplying commodities.
- 33-310. Indicative labels required for "skimmed milk," "reconstructed milk," or "reconstructed cream."
- 33-311. Restrictions on sales and use before and after parturition.
- 33-312. Permit holder to report communicable disease in himself, family, or dairy employees.
- 33-313. Definitions and standards of different classes of milk, cream, and ice cream—Health tests.
- 33-314. Milk, cream, or ice cream not to be sold or offered for sale that does not comply with requirements—All containers of milk or cream shall have grade plainly printed thereon.
- 33-315. Pasteurization to be done under regulations of director of public health.
- 33-316. Penalty for interfering with director of public health.
- 33-317. Names of shippers to be posted in receiving station—Record of shipments kept—Reports to director of public health.
- 33-318. Milk and cream to be received only from licensed shippers.
- 33-319. Penalties—Prosecution.
- 33-320. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.
- 33-321. Rules relative to milk supply applicable to States shipping to District.
- 33-322. Automobile allowance for inspectors.

§ 33-301. Production, transportation, and sales—Restriction.

None but pure, clean, and wholesome milk, cream, or ice cream conforming to the definitions herein-after specified shall be produced in or shipped into the District of Columbia or held or offered for sale therein, and then only as hereinafter provided. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 1.)

CODIFICATION

As enacted act Feb. 27, 1925, contained the following additional words preceding the present first word, "That from and after the passage of this Act [Feb. 27, 1925]."

PRIOR LAW

Act Mar. 2, 1895, 28 Stat. 709, ch. 164.

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Filled milk, see U.S. Code, title 21, §§ 61-64.

Importation of milk and cream, see U.S. Code, title 21, §§ 141-149.

In general 1
Hermetically sealed cans 2
Historical 3

1. In general

Moving consideration in the passage of this act was to safeguard the public health, and it is of course within the power of Congress, in the exercise of its police powers in the District, to say how this shall be accomplished. *Leaman v. District of Columbia* (1932, 55 F. 2d 1020, 60 App. D. C. 395).

2. Hermetically sealed cans

Sterilized cream sold in hermetically sealed cans is cream within this section. *Leaman v. District of Columbia* (1940, 55 F. 2d 1020, 60 App. D. C. 395).

3. Historical

The act of 1895 was not in conflict with the Federal Pure Food Act of 1906. The act of 1895 looked primarily to the regulation of the source of supply, while the act of 1906 dealt with the sale of misbranded and adulterated foods, and the later act dealt with it when placed in the market. The former aimed at the regulation of the source of supply to secure sanitary additions and surroundings; the latter operated when the milk reached the District and was subject to tests as to misbranding and adulteration. *District of Columbia v. Simpson* (47 App. D.C. 6).

The act of 1895 is only impliedly repealed by the subsequent act of 1898, so far as the provisions of the latter act are repugnant to it, or so far only as the latter statute, making new provisions is plainly intended as a substitute for provisions contained in the former act. *Weigand v. District of Columbia* (22 App. D.C. 559).

Upon comparing the provisions of the act of 1895 with those of the later act of 1898, it is clear beyond reasonable doubt that section 3 of the former act has been repealed by operation and fair intendment of sections 4, 6, 7, and 8 of the latter act of 1898; and this was affirmed by the last section of the act of 1898, when it declared that all acts and parts of acts inconsistent therewith were thereby repealed. It is conceded that section 7 of the act of 1895 was repealed by the provision of the subsequent act changing the marketable standard of milk, and we think that section 13 of the act of 1895 is also repealed, because inconsistent with the provisions of the latter act and because the provisions of the latter act were intended to furnish the one general and sole rule upon the subject. *Id.*

§ 33-302. Dairy requirements—Permit—Application details—Certificate of soundness of cattle—"Person" defined—Application for permit to be acted upon within 30 days if practicable.

No person shall keep or maintain a dairy or dairy farm within the District of Columbia, or produce for sale any milk or cream therein, or bring or send into said District for sale, any milk, cream, or ice cream without a permit so to do from the director of public health of said District, and then only in accordance with the terms of said permit. Said permit shall be for the calendar year only in which it is issued and shall be renewable annually on the 1st day of January of each calendar year thereafter. Application for said permit shall be in writing upon a form prescribed by said director of public health and shall be accompanied by such detailed description of the dairy or dairy farm or other place where said milk, cream, or ice cream are produced, handled, stored, manufactured, sold, or offered for sale as the said director of public health may require, and shall be accompanied by a certificate signed by an official of the health department of the District of Columbia, the United States Department of Agriculture, or some veterinarian authorized by the United States Department of Agriculture or the health department of the District of Columbia, detailed for

the purpose, certifying that the cattle producing such milk or cream are physically sound, and in the case of milk or cream held, offered for sale, or sold as such shall in addition be accompanied by a certificate signed by one of the officials aforesaid certifying the cattle producing such milk or cream have reacted negatively to the tuberculin test as prescribed by the Bureau of Animal Industry, United States Department of Agriculture, within one year previous to the filing of the application: *Provided*, That the words "person" or "persons" in sections 33-301 to 33-319 shall be taken and construed to include firms, associations, partnerships, and corporations, as well as individuals: *Provided further*, That the director of public health may accept the certification of a state or municipal health officer: *And provided further*, That final action on each application shall, if practicable, be taken within thirty days after the receipt of such application at the health department. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

TRANSFER OF FUNCTIONS

All functions of all officers agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 511 of Title 5, Executive Departments and Government Officers and Employees.

Section 301 of 1947 Reorg. Plan No. 1, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952, provided: "The functions of the following agencies of the Department of Agriculture, namely, the Bureau of Animal Industry, the Bureau of Dairy Industry, the Bureau of Plant Industry, Soils, and Agricultural Engineering, the Bureau of Entomology and Plant Quarantine, the Bureau of Agricultural and Industrial Chemistry, the Bureau of Human Nutrition and Home Economics, the Office of Experiment Stations, and the Agricultural Research Center, together with the functions of the Agricultural Research Administrator, are transferred to the Secretary of Agriculture and shall be performed by the Secretary or, subject to his direction and control, by such officers and agencies of the Department of Agriculture as he may designate." For provisions concerning transfer of records, property, personnel, and funds, see full text of this Plan, set out in note to section 133y-16 of Title 5, Executive Departments and Government Officers and Employees.

§ 33-303. Suspension of permit—Statement of reasons—Notice.

The director of public health is hereby authorized and empowered to suspend any permit issued under authority of sections 33-301 to 33-319, whenever in his opinion the public health is endangered by the impurity of unwholesomeness of the milk, cream, or ice cream supplied by any person, and such suspension shall remain in force until such time as the said director of public health is satisfied the danger no longer continues: *Provided*, That whenever any permit is suspended the director of public health shall furnish in writing to the holder of said permit his reasons for such suspension, and the dealer receiving such milk or cream shall also be promptly notified by the director of public health of such suspension. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-304. Interstate shipments of milk or cream into District for ice cream permitted if conforming to State law requirements.

Nothing in sections 33-301 to 33-319 shall be construed to prohibit interstate shipments of milk or cream into the District of Columbia for manufacturing into ice cream: *Provided*, That such milk or cream is produced or handled in accordance with the specifications of an authorized medical milk commission or a state board of health. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 4.)

§ 33-305. Permit revocable for refusal to permit inspections.

Failure or refusal on the part of any person holding a permit under authority of sections 33-301 to 33-319 to permit the director of public health of the District of Columbia, or his duly appointed representative, to inspect the dairy, dairy farm, cattle, and all appurtenances of such dairy, dairy farm, or other places where said milk, cream, or ice cream are produced, stored, manufactured, handled, offered for sale, or sold may be deemed sufficient to suspend or revoke such permit at the discretion of said director of public health. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-306. Milk, cream, and ice cream to be seized if brought to District illegally—Owner to be notified of seizure—Destruction.

The director of public health or his duly appointed representative is authorized to seize all milk, cream, or ice cream which may, in violation of the provisions of sections 33-301 to 33-319, be brought into the District of Columbia. The owner of any such milk, cream, or ice cream shall be at once notified of such seizure; and if he shall fail within twenty-four hours to direct the removal of the same from the District of Columbia, the director of public health may destroy or otherwise dispose of the said milk, cream, or ice cream. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 6; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-307. Rules and regulations to protect supply—Publication.

The director of public health of the District of Columbia, under the direction of and with the approval of the commissioners of said District, is hereby authorized and empowered to make and enforce all such reasonable regulations, consistent with sections 33-301 to 33-319, from time to time, as he may deem proper, to protect the milk, cream, and ice cream supply of the said District of Columbia: *Provided, however*, That such regulations shall be published once at least thirty days in some daily newspaper in the District of Columbia of general circulation

before any penalty be exacted for violation thereof. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 7; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

CROSS REFERENCES

Pasteurization, rules and regulations, see § 33-315.

Protection of life, health, and property rules and regulations generally, see § 1-226.

§ 33-308. Milk wagons to bear name of owner and location of dairy—Trucks bringing milk, cream, or ice cream to District to bear name of owner.

All milk wagons within the District of Columbia shall have the name of the owner, the number of the permit, and the location of the dairy from which said wagons haul milk or cream painted thereon plainly and legibly: *Provided*, That all trucks or wagons engaged in bringing milk, cream, or ice cream into the said District shall have the name and address of the owner painted plainly and legibly thereon. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 8.)

§ 33-309. Dealers to keep posted names of persons supplying milk, cream, and ice cream—General distributors to keep record of persons supplying commodities.

All persons within the District of Columbia, having or offering for sale, or having in their possession with intent to sell milk, cream, or ice cream, shall at all times keep the name or names of the person or persons from whom the said milk, cream, or ice cream have been obtained posted in a conspicuous place wherever such milk, cream, or ice cream are kept or offered for sale: *Provided, however*, That general distributors of milk, cream, or ice cream shall only be required to keep a record of the name of all persons from whom said distributor is receiving milk, cream, or ice cream, which record shall at all times be open to inspection by the director of public health or his duly authorized representative. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-310. Indicative labels required for "skimmed milk," "reconstructed milk," or "reconstructed cream."

No person shall sell, exchange, or deliver, or have in his possession with intent to sell, exchange, or deliver, any "skimmed milk," or "reconstructed milk," or "reconstructed cream" unless every can, vessel, package, or container is plainly labeled conveying to the purchaser the exact nature of its contents. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 10.)

§ 33-311. Restrictions on sales and use before and after parturition.

It shall be unlawful for any person or persons to sell, offer for sale, or have in their possession with intent to sell, within the District of Columbia, milk or cream taken from cows less than fifteen days before or seven days after parturition, nor shall any

such milk or cream be used in the manufacture of ice cream. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 11.)

§ 33-312. Permit holder to report communicable disease in himself, family, or dairy employees.

Any person or persons holding a permit issued under authority of sections 33-301 to 33-319 being afflicted, or any member of his family, hired help, or other person on said dairy farm being afflicted with a communicable disease, or if he has reason to suspect any such communicable disease, shall report the same to the director of public health of the District of Columbia within twenty-four hours after becoming aware thereof. Wilful violation of this section shall be deemed sufficient cause for revocation of said permit. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 12; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-313. Definitions and standards of different classes of milk, cream, and ice cream—Health tests.

For the purpose and within the meaning of sections 33-301 to 33-319 "milk" shall be held to be the lacteal secretion obtained from the complete milking of cows.

"Cream" is that portion of the milk rich in fat which rises to the surface of the milk on standing or is separated from it by centrifugal force or otherwise, and shall contain not less than 20 per centum of butter fat and shall not be offered for sale or sold unless and until it has been pasteurized under regulations prescribed by the director of public health, and shall be free from pathogenic organisms and from visible dirt.

The term "pasteurized" as used in sections 33-301 to 33-319 shall be held to mean the process of heating every particle of milk or milk products (1) to a temperature of not less than 143 degrees Fahrenheit and, if heated to not more than 159 degrees Fahrenheit holding at such temperature for at least thirty minutes, or (2) to a temperature of not less than 160 degrees Fahrenheit and holding at such temperature for at least fifteen seconds.

"Raw milk" is milk produced from healthy cows as determined by physical examination and by a tuberculin test made within one year previous to the time of filing of the application; said physical examination and tuberculin test shall be made by an official of the health department of the District of Columbia, the United States Department of Agriculture, or some veterinarian authorized by the United States Department of Agriculture or the health department of the District of Columbia, to make such examination and tuberculin test; and said tuberculin test shall be repeated at least one time during each succeeding calendar year; and when reactors are found in any dairy herd licensed under sections 33-301 to 33-319 the tuberculin test shall be repeated semi-annually thereafter until such time as tuberculosis is eradicated from the herd: *Provided*, That no cow or bull shall be added to any dairy herd licensed under sections 33-301 to 33-319 until such cow or bull has first been physically examined and tuberculin tested as hereinbefore provided. The farm on which the

milk is produced shall rate not less than 80 per centum, the dairy from which such milk is sold or distributed not less than 90 per centum, and the cows producing the milk not less than 95 per centum on the rating cards in use at the time by the health department of the District of Columbia, and said milk shall not at any time contain less than 3.5 per centum of butter fat nor less than 11.5 per centum of total solids; nor shall it contain when delivered to the consumer more than twenty thousand bacteria per cubic centimeter total count, and no colon bacilli or other pathogenic organism shall be present in one-fiftieth cubic centimeter, and the milk shall be free from all visible dirt.

"Pasteurized milk" is milk produced from healthy cows, as determined by the physical examination and tuberculin test as hereinbefore provided for "raw" milk. Said milk shall be pasteurized under regulations prescribed by the director of public health. The milk immediately after being pasteurized shall be cooled to a temperature of not more than forty-five degrees Fahrenheit and maintained to at least such temperature. The farm on which the milk is produced must rate not less than 70 per centum, the dairy from which said milk is sold or distributed not less than 85 per centum, and the cows producing the milk not less than 90 per centum on the rating cards in use on February 27, 1925, by the health department of the District of Columbia. It shall not contain less than 3.5 per centum of butterfat or 11.5 per centum total solids; nor shall it contain when delivered to the consumer more than forty thousand bacteria, total count, per cubic centimeter, and be free from colon bacilli and other pathogenic organisms and all visible dirt. No such milk shall be pasteurized more than one time.

"Certified milk" is milk produced and handled in accordance with specifications of an authorized medical milk commission and must be labeled according to the specifications of the commission which certifies to the quality of the product. A copy of the necessary articles of certification must be filed in the health department of the District of Columbia and be approved by the director of public health of said District.

"Reconstructed milk" or "cream" means milk or cream which has been concentrated or dried in any manner and subsequently restored to a liquid state.

"Skimmed milk" is that part of milk from which the fat has been partly or entirely removed and shall contain not less than 9 per centum of milk solids, inclusive of fat.

"Ice cream" means the frozen product or mixture made from pasteurized cream, milk, or product of milk sweetened with sugar, to which has been added pure, wholesome food gelatin, vegetable gum, or other thickener, with or without wholesome flavoring extract, fruits, nuts, cocoa, chocolate, eggs, cake, candy, or confections, and which contains not less than 8 per centum, by weight of milk (butter) fat. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13; Aug. 8, 1946, 60 Stat. 936, ch. 887; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

1946—Act Aug. 8, 1946, amended the definition of "pasteurized" by substituting the words "the process of heating every particle of milk or milk products" for the words

"the heating of milk or cream," designated clause (1) and substituted the language of such clause for the words "to a temperature of not less than one hundred and forty-two degrees Fahrenheit and maintained at such temperature for a period of not less than thirty minutes," eliminated provisions for cooling, and added clause (2).

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-314. Milk, cream, or ice cream not to be sold or offered for sale that does not comply with requirements—All containers of milk or cream shall have grade plainly printed thereon.

No person in the District of Columbia shall handle, sell, offer for sale, or have in his possession with intent to sell, any milk, cream, or ice cream which does not comply with the definitions hereinbefore specified, and all bottles, cans, vessels, or other containers in which said milk or cream is sold or offered for sale shall have plainly and legibly printed thereon the grade of the milk or cream which is contained therein. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 14.)

CROSS REFERENCE

Other provisions regulating milk containers, see § 10-114.

§ 33-315. Pasteurization to be done under regulations of director of public health.

The pasteurization of all milk or cream required under sections 33-301 to 33-319 to be pasteurized shall be done under regulations to be prescribed by the director of public health of the District of Columbia and open to the supervision of said director of public health. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 15; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Other provisions for rules and regulations, see § 33-307.

§ 33-316. Penalty for interfering with director of public health.

Any person who shall molest, hinder, or in any manner prevent said director of public health or his duly appointed agent from performing any duty imposed upon him or them by the provisions of sections 33-301 to 33-319 shall be deemed guilty of violating the provisions of sections 33-301 to 33-319 and be liable to the penalty prescribed therefor. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 16; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-317. Names of shippers to be posted in receiving station—Record of shipments kept—Reports to director of public health.

Every person, or persons, receiving a permit to ship milk or cream into the District of Columbia from any creamery, or receiving station, aforesaid, shall keep posted at all times in such creamery, or receiving station, the names of all persons licensed under

sections 33-301 to 33-319, who are delivering milk or cream at any such creamery, or receiving station, and shall keep a record of all milk and cream received, and furnish from time to time a sworn statement giving such information relative thereto as the said director of public health may require. The director of public health of the District of Columbia shall have power by regulation to include other places than creameries, or receiving stations, under the provisions of this section, from time to time, as may be necessary in his judgment. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 17; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-318. Milk and cream to be received only from licensed shippers.

No person in the District of Columbia licensed under sections 33-301 to 33-319 shall receive any milk or cream from any source until he shall have first ascertained from the health department that the person from whom such milk is obtained holds a license from the director of public health of said District to send milk or cream into the District of Columbia. (Feb. 27, 1925, 43 Stat. 1008, ch. 358, § 18; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

NOTES TO DECISIONS

1. Construction

This section, providing that no person in District of Columbia, licensed under act, shall receive any milk or cream from any source until he shall have first ascertained from health department that person from whom milk is obtained holds license from Director of Public Health of District of Columbia to send milk or cream into District of Columbia, does not prohibit importation of milk, which is sold outside District of Columbia. *Embassy Dairy, Inc. v. Camalier et al.* (1954, 211 F. 2d 41, 93 U.S. App. D.C. 364).

§ 33-319. Penalties—Prosecution.

Any person or persons violating any of the provisions of sections 33-301 to 33-319, or of any of the regulations promulgated under said sections shall, on conviction, be punished for the first offense by a fine of not more than \$10; for the second offense by a fine of not more than \$50, and for any subsequent offenses within one year, a fine of not more than \$500, or by imprisonment in the workhouse for not more than thirty days, or by both such fine and imprisonment, in the discretion of the court, and in addition any license issued under authority of said sections may be revoked. Prosecutions hereunder shall be in the municipal court by the District of Columbia. (Feb. 27, 1925, 43 Stat. 1008, ch. 358, § 19; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

NOTES TO DECISIONS

1. Jurisdiction

In action by dairy company against Commissioners of District of Columbia and Director of Health for declara-

tory and injunctive relief challenging order of commissioners requiring District of Columbia inspection and licensing under Milk Act in connection with processing of milk brought into District of Columbia for processing, though milk is destined for sale to consumers outside District of Columbia, allegations of complaint stated cause for equitable relief, which federal District Court of District of Columbia had jurisdiction to entertain. *Embassy Dairy, Inc. v. Camalier et al.* (1954, 211 F. 2d 41, 93 U.S. App. D.C. 364).

§ 33-320. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.

No officer or employee of the health department shall, during his continuance in office, serve in his private capacity, for fee, gift, or reward, any person licensed to keep or maintain a dairy or dairy farm in said District or to bring or to send milk into said District, or any person who has applied or is about to apply for such license, or any manufacturer or dealer in foods, drugs, or disinfectants, or similar materials: *Provided further*, That every place where milk is sold shall be deemed a dairy under the law for purposes of inspection. (Mar. 2, 1907, 34 Stat. 1145, ch. 2510, § 1.)

§ 33-321. Rules relative to milk supply applicable to States shipping to District.

The examinations, inspection, rules and regulations concerning the milk supply of the District of Columbia shall be applied alike to each state shipping milk into said District. (Mar. 3, 1915, 38 Stat. 915, ch. 80, § 1.)

CROSS REFERENCE

Interstate shipments of milk or cream into District, see § 33-304.

§ 33-322. Automobile allowance for inspectors.

Inspectors of dairy farms may receive an allowance for furnishing privately owned motor vehicles in the performance of official duties at the rate of not to exceed \$312 per annum for each inspector. (June 12, 1940, 54 Stat. 323, ch. 333, § 1.)

Chapter 4.—NARCOTIC DRUGS

Sec.

- 33-401. Definitions.
- 33-402. Acts declared unlawful.
- 33-403. Manufacturers and wholesalers—License required.
- 33-404. Qualifications for licenses—Revocation and suspension.
- 33-405. Use of official written orders.
- 33-406. Sale on written orders—Vendees—"Lawful possession" defined.
- 33-407. Authorized uses.
- 33-408. Sales by apothecaries.
- 33-409. Professional use of narcotic drugs—Return of unused drugs.
- 33-410. Preparations exempted—Conditions—Paregoric.
- 33-411. Records to be kept—Form—Preservation.
- 33-412. Labels.
- 33-413. Authorized possession of narcotic drugs by individuals.
- 33-414. Search warrants—Requirements—Form—Contents—Return—Penalty for interfering with service.
- 33-415. Persons and corporations exempted.
- 33-416. Common nuisances.
- 33-416a. Vagrancy—Narcotic drug user—Penalties—Conditions imposed.
- 33-417. Forfeiture by unlawful possession—Disposition.
- 33-418. Notice of conviction to be sent to licensing board—Revocation, suspension, and reinstatement of license.

Sec.

- 33-419. Inspection of records—Divulging information contained in records.
- 33-420. Obtaining a narcotic drug unlawfully—Communication to physician not privileged—False statements or false personation in procurement—False label—Application to section 33-410.
- 33-421. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.
- 33-422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.
- 33-423. Penalties.
- 33-424. Effect of acquittal or conviction under Federal narcotic laws.
- 33-425. Separability of provisions.

§ 33-401. Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(a) "Person" includes any corporation, association, copartnership, or one or more individuals.

(b) "Physician" means a person authorized by law to practice medicine or osteopathy in the District of Columbia.

(c) "Dentist" means a person authorized by law to practice dentistry in the District of Columbia.

(d) "Veterinarian" means a person authorized by law to practice veterinary medicine in the District of Columbia.

(e) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescription.

(f) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared on official written orders but not on prescription.

(g) "Apothecary" means a licensed pharmacist as defined by the laws of the District of Columbia and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him by the pharmacy laws of the District of Columbia.

(h) "Hospital" means an institution or clinic for the care and treatment of the sick and injured, approved by the director of public health of the District of Columbia as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(i) "Laboratory" means a laboratory approved by the director of public health of the District of Columbia as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(j) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(k) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or

preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(l) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium.

(m) "Cannabis" includes all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including specifically the drugs known as American hemp, marihuana, Indian hemp or hasheesh, as used in cigarettes or in any other articles, compounds, mixtures, preparations, or products whatsoever, but shall not include the mature stalks of such plant; fiber produced from such stalks; oil or cake made from the seeds of such plant; any compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom); fiber, oil or cake; or the sterilized seed of such plant which is incapable of germination.

(n) "Narcotic drugs" means coca leaves, opium, cannabis, isonipecaine, and opiate, and every substance not chemically distinguishable from them, and any compound, manufacture, salt, derivative, or preparation of coca leaves, opium, cannabis, isonipecaine, or opiate, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(o) "Federal narcotic laws" means the laws of the United States and the regulations promulgated thereunder relating to opium, coca leaves, cannabis, and other narcotic drugs.

(p) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law and, if no such order form is provided, then on an official form provided for that purpose by the Board of Pharmacy.

(q) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(r) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

(s) "Board of Pharmacy" means the Board of Pharmacy of the District of Columbia as provided by section 2-608.

(t) "Isonipecaïne" and "opiate" shall have the same meaning as that given to such terms by section 4731 of the Internal Revenue Code of 1954. (June 20, 1938, 52 Stat. 785, ch. 532, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301 (a).)

AMENDMENT

1956—Act July 24, 1956, amended subsec. (n) by including isonipecaine and opiate within the definition of narcotic drugs, and any compound, manufacture, salt, derivative or preparation of the drugs listed, amended subsec. (o) to include regulations, and added subsec. (t).

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

CROSS REFERENCES

Federal Food, Drug, and Cosmetic Act, see U. S. Code, title 21, § 321 et seq.

Federal Narcotic Drugs Import and Export Act, see U. S. Code, title 21, §§ 171-185.

Other provisions concerning sale of dangerous drugs, see §§ 2-610 to 2-615.

§ 33-402. Acts declared unlawful.

(a) It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter.

(b) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for a violation of subsection (a) hereof by police officers, as in the case of a felony, upon probable cause that the person arrested is violating such subsection at the time of his arrest.

(c) No evidence discovered in the course of any such arrest, search, or seizure authorized by subsection (b) hereof, shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating the provisions of this section. (June 20, 1938, 52 Stat. 787, ch. 532, § 2; July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301 (b).)

AMENDMENT

1956—Act July 24, 1956, amended section by designating the original paragraph as subsec. (a), and adding subsecs. (b) and (c).

CROSS REFERENCES

Exemptions, see §§ 33-409, 33-410, 33-415.

Presence or employment in illegal establishments, see § 22-1515.

§ 33-403. Manufacturers and wholesalers—License required.

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Board of Pharmacy. Licenses shall be issued for a period of one year and may be renewed for a like period. A fee of \$10 shall be paid to the Board of Pharmacy for any license so issued or renewed. The said Board of Pharmacy is authorized to have printed such licenses as may be necessary and to be paid for out of the money collected by it for the issuance of licenses. At the close of each fiscal year any funds unexpended in excess of the sum of \$100 shall be paid into the treasury of the United States to the credit of the District of Columbia. (June 20, 1938, 52 Stat. 787, ch. 532, § 3.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Refund of fees when license refused, see § 47-1017.

§ 33-404. Qualifications for licenses—Revocation and suspension.

No license shall be issued under section 33-403 unless and until the applicant therefor has furnished proof satisfactory to the Board of Pharmacy of the following:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves, cannabis, or other narcotic drugs, or to any person who is a narcotic-drug addict.

The Board of Pharmacy may suspend or revoke any license issued by said board under the provisions of this chapter for cause. (June 20, 1938, 52 Stat. 787, ch. 532, § 4.)

§ 33-405. Use of official written orders.

An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be unlawful for a manufacturer or wholesaler to sell, barter, exchange, or give away any preparation or remedy described in section 4702 of the Internal Revenue Code of 1954, which contains not more than two grains of opium, or not more than one-fourth of a grain of morphine, or not more than one-eighth of a grain of heroin, or not more than one grain of codeine, or any salt or derivative of any of them in one fluid or avoirdupois ounce, except in pursuant of a written order, on a form to be issued in blank by the District of Columbia Board of Pharmacy. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid preparations shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer or agent authorized for that purpose.

The Board of Pharmacy shall cause suitable written order forms to be prepared for the purchase of narcotics for which no form is provided by the United States Commissioner of Narcotics, and shall cause the same to be for sale by said board at cost, to those persons who shall have registered under the federal narcotic laws. The Board of Pharmacy shall keep an account of the number of forms sold and the names and addresses of the purchasers and the serial numbers of such forms sold to each purchaser. Whenever the Board of Pharmacy shall sell any such forms it shall cause the name and address of the purchaser thereof to be plainly written or stamped thereon before delivering the same. The said board is authorized and directed to make such rules and regulations, not inconsistent with law, as it may deem necessary for the administration and enforcement of this chapter.

It shall be deemed a compliance with this section if the parties to the transaction have complied with the Federal narcotic laws respecting official order

forms if such order forms are authorized and required by Federal laws, or, if no such order form is required by Federal law and if no such order form is available for purchase as provided in the preceding paragraph of this section, then the parties to the transaction shall comply with the rules and regulations made pursuant to this chapter respecting official order forms and such other records as may be required. (June 20, 1938, 52 Stat. 787, ch. 532, § 5; July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301 (c).)

AMENDMENT

1956—Act July 24, 1956, amended section by substituting "section 4702 of the Internal Revenue Code of 1954," for "section 1041, Title 26, U.S. Code," in the first paragraph, eliminated the words "not to exceed \$1 a hundred" following the word "cost" in the first sentence of the second paragraph, and substituted "required by Federal law and if no such order form is available for purchase as provided in the preceding paragraph of this section, then the parties to the transaction shall comply with the rules and regulations made pursuant to this chapter respecting official order forms and such other records as may be required," for "is provided, then with the rules and regulations of the Board of Pharmacy respecting official order forms." in the third paragraph.

CROSS REFERENCE

Rules and regulations for the protection of life, health, and property, generally, see § 1-226 et seq.

§ 33-406. Sale on written orders—Vendees—"Lawful possession" defined.

(a) A duly-licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

- (1) To a manufacturer, wholesaler, or apothecary;
- (2) To a physician, dentist, or veterinarian;

(3) To a hospital, but only for use by or in that hospital: *Provided*, That the official written order is signed by a physician, dentist, veterinarian, or pharmacist connected with that hospital; and

(4) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(b) A duly-licensed manufacturer or wholesaler may also sell narcotic drugs to any of the following persons:

(1) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States Government or of the District of Columbia, or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(2) To master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some state, territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port: *Provided*, That such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft, or to a physician, surgeon, or retired commissioned medical officer of the United States Army, Navy, or Public

Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(3) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(c) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful only if obtained and used in the regular course of business, occupation, profession, employment, or duty of the possessor. (June 20, 1938, 52 Stat. 788, ch. 532, § 6.)

§ 33-407. Authorized uses.

A person in charge of a hospital or of a laboratory, or in the employ of the District of Columbia or of any state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft who obtains narcotic drugs under the provisions of section 33-406, or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within the District of Columbia, except within the scope of his employment or official duty, and then only for scientific or medical purposes and subject to the provisions of this chapter. (June 20, 1938, 52 Stat. 789, ch. 532, § 7.)

§ 33-408. Sales by apothecaries.

(a) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed, in ink or indelible pencil, on the day when issued, by the physician, dentist, or veterinarian prescribing said narcotic drugs. The prescription when issued shall also state the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription.

(b) An apothecary, in good faith, may sell and dispense on oral prescription of a physician, dentist, or veterinarian such narcotic drugs or compounds thereof as are found by the Secretary of the Treasury or his delegate, pursuant to section 4705 (c) (2) of the Internal Revenue Code of 1954, to possess relatively little or no addiction liability. The oral prescription shall be reduced to a written record by the apothecary before filling, with said written record containing the same information as is required by law or regulation in the case of a written prescription except for the requirement of the written signature of the prescriber.

(c) A written prescription or a written record of an oral prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. The prescription shall not be refilled.

(d) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(e) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 per centum of the complete solution, to be used for medical purposes. (June 20, 1938, 52 Stat. 789, ch. 532, § 8; July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301 (d).)

AMENDMENT

1956—Act July 24, 1956, deleted provisions requiring pharmacy proprietors to retain prescriptions on file for two years and prohibiting the refilling of said prescriptions from subsec. (a), added subsecs. (b) and (c), and redesignated former subsecs. (b) and (c) as subsecs. (d) and (e).

Subsecs. (d) and (e), formerly (b) and (c), so redesignated by act July 24, 1956.

§ 33-409. Professional use of narcotic drugs—Return of unused drugs.

(a) Physicians and dentists.—A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe by a written or oral prescription, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision. Each written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. In issuing an oral prescription, the physician or dentist shall furnish the apothecary with the same information as is required by law or regulation in the case of a written prescription for narcotic drugs and compounds, except for the requirement of the written signature of the prescriber.

(b) Veterinarians.—A veterinarian, in good faith and in the course of his professional practice only and not for use by a human being, may prescribe by a written or oral prescription, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Each written prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal; the species of the animal for which the narcotic is prescribed; and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. In issuing an oral prescription, the veterinarian shall furnish the apothecary with the

same information as is required by law in the case of a written prescription for narcotic drugs and compounds, except for the written signature of the prescriber.

(c) Nothing contained in subsections (a) and (b) of this section shall be construed as authorizing an oral prescription to be furnished by the physician, dentist, or veterinarian to the apothecary, for a narcotic drug or compound other than those narcotic drugs or compounds determined by the Secretary of the Treasury, or his delegate, pursuant to the provisions of section 4705 (c) (2) of the Internal Revenue Code of 1954, to possess little or no addiction liability.

(d) Return of unused drugs.—Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient. (June 20, 1938, 52 Stat. 790, ch. 532, § 9; July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301 (e), (f), (g).)

AMENDMENT

1956—Act July 24, 1956, amended section to include oral prescriptions in subsecs. (a) and (b), added the last sentence in said subsecs., requiring the furnishing of the same information in oral prescriptions as in written prescriptions, added subsec. (c), and redesignated former subsec. (c) as subsec. (d).

Subsec. (d), formerly (c), so redesignated by act July 24, 1956.

§ 33-410. Preparations exempted—Conditions—Paregoric.

Except as otherwise in this chapter specifically provided, said sections shall not apply to the following cases:

(a) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce or, if a solid or semisolid preparation, in one avoirdupois ounce (1) not more than two grains of opium, (2) not more than one-quarter of a grain of morphine or of any of its salts, (3) not more than one grain of codeine or of any of its salts, (4) not more than one-eighth of a grain of heroin or of any of its salts.

(b) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this chapter shall apply to all liniments, ointments, and other preparations that contain coca leaves in any quantity or combination.

(c) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation containing not in excess of 25 per centum of paregoric, in combination with some drug or drugs which confer upon it medicinal properties other than those possessed by paregoric.

The exemptions authorized by this section shall be subject to the following conditions:

(1) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain in addition to the

narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold to any person, or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this chapter.

Manufacturers or wholesalers shall sell tincture opii camphorata, commonly known as paregoric, only in accordance with the provisions of sections 33-405, 33-406, on official written order forms provided for that purpose by the Board of Pharmacy. It shall be unlawful for any person to bring into or have in his possession for sale in the District of Columbia any paregoric unless an official written order form has been issued therefor. No person shall dispense or sell any paregoric at retail to any person without a written or oral prescription from a duly licensed physician, dentist, veterinarian, or other duly authorized person. Prescriptions shall be retained and filed as provided in section 33-408. (June 20, 1938, 52 Stat. 790, ch. 532, § 10; July 24, 1956, 70 Stat. 619, ch. 676, title III, § 301(h); Aug. 25, 1959, 73 Stat. 430, Pub. L. 86-206, § 1; July 14, 1960, 74 Stat. 536, Pub. L. 86-668, § 1.)

AMENDMENTS

1960—Act July 14, 1960, eliminated provisions which related to preparations containing in one ounce not more than one-sixth of a grain of dihydrocodeinone or any of its salts.

1959—Act Aug. 25, 1959, amended last par. of section by substituting "without a written or oral prescription" for "without a written prescription."

1956—Act July 24, 1956, amended subsec. (a) by adding "(5) not more than one-sixth of a grain of dihydrocodeinone or any of its salts." following the matter in numeral (4), added subsec. (c), pertaining to the prescribing, administering, dispensing, or selling of medicinal drugs containing paregoric, and in the third sentence of the last para, substituted the words "without a written prescription" for the words "without a prescription."

§ 33-411. Records to be kept—Form—Preservation.

(a) Physicians, dentists, veterinarians, and other authorized persons.—Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription in accordance with the provisions of subsection (e) of this section. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

(b) Manufacturers and wholesalers.—Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (e) of this section.

(c) Apothecaries.—Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (e) of this section.

(d) Vendors of exempted preparations.—Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 33-410 shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection (e) of this section.

(e) Form and preservation of records.—The form of records shall be prescribed by the Board of Pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or cocoa leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis sativa* L., received, or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. (June 20, 1938, 52 Stat. 791, ch. 532, § 11; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301 (i).)

AMENDMENT

1956—Act July 24, 1956, struck out the last sentence in subsec. (e) which stated that the keeping of records required by federal narcotic laws constituted compliance with section.

§ 33-412. Labels.

(a) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a written or oral prescription under this chapter, shall alter, deface, or remove any label so affixed.

(b) Whenever an apothecary sells or dispenses any narcotic drug on a written or oral prescription issued by a physician, dentist, or veterinarian he shall affix to or place in the container in which such drug is sold or dispensed a label showing his own

name, address, and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal, and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed as long as any of the original contents remain. (June 20, 1938, 52 Stat. 792, ch. 532, § 12; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301(j).)

AMENDMENT

1956—Act July 24, 1956, substituted "a written or oral prescription" for "prescription" in subsecs. (a) and (b), and "affix to or place in" for "affix to", in subsec. (b).

§ 33-413. Authorized possession of narcotic drugs by individuals.

A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed by a physician, dentist, apothecary, or other person authorized under the provisions of section 33-406, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. (June 20, 1938, 52 Stat. 792, ch. 532, § 13.)

§ 33-414. Search warrants—Requirements—Form—Contents—Return—Penalty for interfering with service.

(a) A search warrant may be issued by any judge of the municipal court for the District of Columbia or by a United States commissioner for the District of Columbia when any narcotic drugs are manufactured, possessed, controlled, sold, prescribed, administered, dispensed, or compounded, in violation of the provisions of this chapter, and any such narcotic drugs and any other property designed for use in connection with such unlawful manufacturing, possession, controlling, selling, prescribing, administering, dispensing, or compounding, may be seized thereunder, and shall be subject to such disposition as the court may make thereof and such narcotic drugs may be taken on the warrant from any house or other place in which they are concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, to the major and superintendent of police of the District of Columbia or any member of

the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following in effect: "I, _____, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the municipal court.

(n) Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years. (June 20, 1938, 52 Stat. 792, ch. 532, § 14; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301(k).)

AMENDMENT

1956—Act July 24, 1956, amended subsec. (h), which formerly read: "The judge or commissioner must insert a direction in the warrant, that it be served in the daytime unless the affidavit is positive that the property is

in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.", to read "The judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT
 "Municipal court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCE

Search warrants, see § 23-301 et seq.

NOTES TO DECISIONS

Issuance of search warrant 3
 Search and seizure 1
 Subject of search 2

1. Search and seizure

A defendant charged with violation of narcotics laws had standing to contend that entry and subsequent seizure were unlawful notwithstanding he testified that property seized was not his and that place of arrest was not his home, where to hold that defendant's failure to acknowledge interest in narcotics or premises prevented his attack upon search, would be to permit the Government to have advantage of contradictory positions as basis for conviction, since conviction flowed from defendant's possession of narcotics at time of search, yet fruits of that search, upon which conviction depended, were admitted into evidence on ground that defendant did not have possession of narcotics at that time, so that prosecution subjected defendant to penalties meted out to one in lawless possession while refusing him remedies designed for one in that situation. *Jones v. U.S.* (1960, 80 S. Ct. 725, 362 U.S. 257, 4 L. Ed. 2d 697).

In prosecution for narcotics violation, evidence disclosing that experienced narcotic officer received information from an informant whom he knew to be a narcotics user that defendant and another person had a large quantity of narcotics at a certain address to which defendant would drive in a certain type of automobile and officer went to location and noticed automobile and defendant whom he recognized as one involved in narcotics traffic and saw him enter the premises described, there was probable cause for issuance of search warrant by commissioner. *Brandon v. United States* (1959, 270 F. 2d 311, 106 U.S. App. D.C. 118, certiorari denied 80 S. Ct. 808, 362 U.S. 943, 4 L. Ed. 2d 771).

In prosecution for violation of narcotics statute, trial judge properly denied defendant's motion to suppress evidence on ground of illegal arrest and subsequent search of premises, where articles which defendant desired to be suppressed for use as evidence were not enumerated or described in motion, and where they were not identified at hearing on motion. *O'Neal v. United States of America* (1955, 222 F. 2d 411, 95 U. S. App. D. C. 386).

Where police had warrant for drug peddler's arrest, had reason to believe that peddler lived in certain apartment building, had refrained from arresting peddler earlier only so as to make his arrest coincide with others, did not force any doors to defendant's apartment, were recognized as police without their announcing the fact, and, immediately upon entering defendant's apartment, announced their purpose of seeking peddler, their presence in defendant's apartment did not violate her constitutional rights, and police had right to arrest defendant for narcotics violations committed in their presence, and to seize evidence of those crimes. *O'Neal v. United States* (D. C. Mun. App. 1954, 105 A. 2d 739, affirmed 222 F. 2d 411, 95 U. S. App. D. C. 386).

2. Subject of search

Where, in searching defendant's premises under a valid search warrant authorizing search for alcoholic beverages or any property designed for use in connection with violation of Alcoholic Beverage Control Act, police officer looked behind a movable partition closing off a fireplace and discovered two large clean paper bags in the midst of rubble, and although the feel and weight of such bags indicated to him that they did not contain bottles, the officer looked into the bags and discovered therein a

quantity of marihuana, the officer's action in looking into the bags did not constitute an unreasonable search, but was lawful. *United States v. White* (1954, 122 F. Supp. 664).

3. Issuance of search warrant

Failure of United States Commissioner, who granted application of narcotics agents for a search warrant, to take affidavit or deposition in writing of informant of narcotics agents was not fatal, where evidence before United States Commissioner from trained narcotics agents, who had personally observed known drug addicts and drug peddlers entering and leaving residence of defendant, and who had received information from reliable sources, was ample to support search warrant, without reference to oral statements of informant. *Ward v. United States* (1960, 281 F. 2d 917, 108 U.S. App. D.C. 282).

Where United States narcotics agents had residence of defendant under surveillance for some time prior to certain date, and on that date narcotics agents and detectives observed known drug addicts and peddlers entering and leaving defendant's residence, and at 9 p.m. on that date known drug peddler, shortly after leaving defendant's residence, was arrested and found to have heroin in his possession, and he admitted purchasing the heroin at defendant's residence, a search warrant was properly issued for search of defendant's residence. *Id.*

Where narcotics agents sought search warrant from United States Commissioner, issue was whether narcotics agents were fully warranted as men of reasonable caution in believing that an offense against narcotics laws had been and was being committed, and not whether they had information or evidence which would sustain a conviction or even a charge. *Id.*

If United States Commissioner is satisfied of existence of grounds of application for search warrant or that there is probable cause to believe their existence, he must issue a search warrant. *Id.*

§ 33-415. Persons and corporations exempted.

The provisions of this chapter restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. (June 20, 1938, 52 Stat. 794, ch. 532, § 15.)

§ 33-416. Common nuisances.

Any store, shop, warehouse, dwelling-house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance. (June 20, 1938, 52 Stat. 794, ch. 532, § 16.)

CROSS REFERENCE

Presence or employment in illegal establishments, see § 22-1515.

NOTES TO DECISIONS

Evidence 1
 New trial 2
 Probable cause for arrest 3
 Warrant of arrest 4

1. Evidence

In prosecution for violation of narcotics law, admission of testimony of officer that he found capsules of

heroin hydrochloride on ground outside house and beneath open window of second story apartment where defendant and other persons were assembled, was not grounds for reversal, where there was nothing in record to show that any objection was made to such evidence. *O'Neal v. United States of America* (1955, 222 F. 2d 411, 95 U. S. App. D. C. 386).

This section declaring any place resorted to by narcotic drug addicts for purpose of using such drugs a common nuisance, which no person shall keep or maintain, does not impliedly require evidence that narcotic drugs were or had been kept on premises resorted to by addicts for such purpose in order to prove crime of keeping or maintaining such a nuisance. *United States v. Williams* (1954, 210 F. 2d 687, 93 U. S. App. D. C. 120).

There may be a conviction under this section of keeping a place resorted to by narcotic addicts for purpose of using narcotics, but not of keeping a place used for illegal keeping or selling of such drugs, without proof that narcotics had been kept on premises. *Williams v. United States* (D. C. Mun. App. 1954, 101 A. 2d 843).

2. New trial

Under this section, defining as nuisance a place resorted to by narcotic addicts for purpose of using narcotics, or used for illegal keeping or selling of narcotics, where there was no evidence that narcotics had been kept on premises, but jury were led to believe that they might find defendant guilty of violating either or both provisions of this section, by argument of prosecuting attorney and by trial court's reading entire statute to jury without attempting to differentiate the two features, and where it could not be determined upon which feature verdict of guilty was based, conviction could not stand and would be reversed for new trial. *Williams v. United States* (D. C. Mun. App. 1954, 101 A. 2d 843).

3. Probable cause for arrest

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings v. United States* (1957, 247 F. 2d 784, 101 U.S. App. D. C. 198).

4. Warrant of arrest

Where police had warrant for drug peddler's arrest, had reason to believe that peddler lived in certain apartment building, had refrained from arresting peddler earlier only so as to make his arrest coincide with others, did not force any doors to defendant's apartment, were recognized as police without their announcing the fact, and, immediately upon entering defendant's apartment, announced their purpose of seeking peddler, their presence in defendant's apartment did not violate her constitutional rights and police had right to arrest defendant for narcotics violations committed in their presence, and to seize evidence of those crimes. *O'Neal v. United States of America* (D. C. Mun. App. 1954, 105 A. 2d 739, affirmed 222 F. 2d 411, 95 U. S. App. D. C. 386).

§ 33-416a. Vagrancy—Narcotic drug user—Penalties—Conditions imposed.

(a) The purpose of this section is to protect the public health, welfare, and safety of the people of the District of Columbia by providing safeguards for the people against harmful contact with narcotic drug users who are vagrants within the meaning of this section and to establish, in addition to the Hospital Treatment for Drug Addicts Act for the District of Columbia, further procedures and means for the care and rehabilitation of such narcotic drug users.

(b) For the purpose of this section—

(1) the term "vagrant" shall mean any person who is a narcotic drug user or who has been convicted of a narcotic offense in the District of Columbia or elsewhere and who—

(A) having no lawful employment or visible means of support realized from a lawful occupation or source, is found mingling with others in public or loitering in any park or other public place and fails to give a good account of himself; or

(B) is found in any place, abode, house, shed, dwelling, building, structure, vehicle, conveyance, or boat, in which any illicit narcotic drugs are kept, found, used, or dispensed; or

(C) wanders about in public places at late or unusual hours of the night, either alone or in the company of or association with a narcotic drug user or convicted narcotic law violator, and fails to give a good account of himself; or

(D) is included within one of the classes of persons defined in paragraphs (1) through (9), inclusive, of section 22-3302;

(2) the term "narcotic drug user" shall mean any person who takes or otherwise uses narcotic drugs, except a person using such narcotic drug as a result of sickness or accident or injury, and to whom such narcotic drugs are being furnished, prescribed, or administered in good faith by a duly licensed physician in the course of his professional practice.

(c) Whenever any law-enforcement officer has probable cause to believe that any person is a vagrant within the meaning of this section, he is authorized to place that person under arrest and to confine him in any place in the District of Columbia designated by the Commissioners thereof.

(d) Pending arraignment and without unnecessary delay the person arrested as a vagrant within the meaning of this section shall have the opportunity to be examined by a physician designated by the Commissioners of the District of Columbia, who shall determine whether there is evidence of narcotic drug usage.

(e) If the physician designated by the Commissioners of the District of Columbia is satisfied that the person examined is not a narcotic drug user, or if there is insufficient evidence of narcotic drug usage, the United States Attorney shall, if the said person is not otherwise chargeable as a vagrant within the meaning of this section, bring such matter to the attention of the Corporation Counsel for the District of Columbia for determination as to whether there shall be a prosecution under the provisions of section 22-3302.

(f) Upon affirmative determination that the person arrested is a narcotic drug user, or if the person has been convicted of a narcotic offense in the District of Columbia or elsewhere, and if such person is also a vagrant as hereinbefore defined, he shall be charged with the offense of vagrancy within the meaning of this section and arraigned in the United States branch of the municipal court, where the prosecution shall be conducted in the name of the United States by the United States attorney.

(g) Any person convicted of being a vagrant under the provisions of this section shall be punished by fine of not more than \$500 or imprisonment for not more than one year, or by both such fine and imprisonment.

(h) The court, in sentencing any person found guilty under the provisions of this section, may in its own discretion or upon the recommendation of the probation officer, impose conditions upon the service of any such sentence. Conditions thus imposed by the court may include submission to medical and mental examination, and treatment by proper public health and welfare authorities; confinement at such place as may be designated by the Commissioners of the District of Columbia, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant.

(i) In all prosecutions under the provisions of this section, the burden of proof shall be upon the defendant to show that he has lawful employment or has lawful means of support realized from a lawful occupation or source. (June 20, 1938, ch. 532, § 16A, as added July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301 (l).)

REFERENCE IN TEXT

Hospital Treatment for Drug Addicts Act for the District of Columbia, referred to in text, was act June 24, 1953, 67 Stat. 77, ch. 149, as amended July 24, 1956, 70 Stat. 609, ch. 676.

EFFECTIVE DATE

Section 304 of act July 24, 1956, provided that: "Subsection (l) of section 301 of this title [this section] shall take effect thirty days after the date of its enactment [July 24, 1956]."

NOTES TO DECISIONS

Constitutionality 1
Evidence 2
Identity of names 3
Knowledge 4
Remarks of court 5
Review 6
Vagrancy defined 7

1. Constitutionality

This section, defining "vagrant" as any person who is a narcotic drug user or who has been convicted of narcotic offense and who, having no lawful employment, etc., is found mingling with other narcotic users, etc., which places the burden upon such defendant to show that he has lawful employment or lawful means of support, as construed to require the government first to prove preliminary elements of offense before placing burden of proof upon defendant, is not unconstitutional as restricting a defendant's freedom of movement in stating with whom he can or cannot associate, since it does not unreasonably interfere with any citizen's freedom of movement or association. *Jenkins v. United States* (D. C. Mun. App. 1958, 146 A. 2d 444).

2. Evidence

In prosecution for narcotics vagrancy, evidence failed to establish that house in which the narcotics were found was actually a rooming house rather than a notorious gambling and drinking house. *Harris v. United States* (D.C. Mun. App. 1960, 162 A. 2d 503).

Mere fact that certain narcotics were found outside a house in which defendant, who was charged with narcotics vagrancy, was arrested did not prevent a finding that he was in a house or place where narcotics were kept, in view of fact the narcotics were seen being thrown out of and falling from a window in the house, and in view of fact one metal cap with traces of heroin was found in the house. *Id.*

In vagrancy prosecution under this section, defining "vagrant" as one who is a narcotic drug user or who has been convicted of narcotic offense, evidence was sufficient for jury or issue of defendant's guilt. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

In vagrancy prosecution under this section, defining "vagrant" as one who is a narcotic drug user or one who wanders around in company with narcotic drug user or convicted narcotic law violator, failure to show that de-

fendant knew that the three men with whom he was found were drug users or convicted drug law violators did not preclude conviction, since statute makes no reference to guilty knowledge and it would be wrong for courts to require such proof in such a case. *Id.*

3. Identity of names

In vagrancy prosecution wherein the government was required to prove that defendant was "a narcotic drug user or [one] who has been convicted of a narcotic offense", record of defendant's drug-act conviction was not improperly admitted because his character was not in issue and though there was no verbal testimony that he was the same "William Jenkins" named in certified record of conviction the identity of names will be accepted as prima facie evidence of identity of persons. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

4. Knowledge

Scienter or guilty knowledge is not a necessary element of the crime of narcotics vagrancy, and court, in a prosecution for such crime, did not err in charging jury to that effect. *Harris v. United States* (D.C. Mun. App. 1960, 162 A. 2d 503).

The government need not prove guilty knowledge as an element of the crime of narcotics vagrancy. *Id.*

In proscribing the activities of narcotics vagrants, the law places the burden upon the violator to know the character of his associates and the nature of the places where he visits, and requires him to exercise a degree of care so that narcotics violations are thereby made impossible or improbable. *Id.*

5. Remarks of court

In prosecution for vagrancy wherein jury informed court that it would like to know whether a woman, who was married, by fact of her marriage had a lawful means of support, court's reply that some of world's best known bums were married women was uncalled-for, not responsive to question asked by jury, could well have had a prejudicial effect and required reversal. *Moore v. United States* (D.C. Mun. App. 1959, 156 A. 2d 461).

6. Review

On appeal from judgment of conviction under this section defining a "vagrant" as a narcotic user, etc., who among other things associates with narcotic users or narcotic law violators, where jury charge was not in record and no error had been assigned with reference thereto, Court of Appeals would assume that in instructing jury judge covered the matter of defendant's alleged lack of knowledge that associates were narcotic law violators accurately and satisfactorily. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

7. Vagrancy defined

"Vagrancy" is a status or condition declared wrong by law, and punishment is directed against one who places himself in such status. *Jenkins v. United States* (D.C. Mun. App. 1958, 146 A. 2d 444).

§ 33-417. Forfeiture by unlawful possession—Disposition.

All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which come into the custody of a peace officer shall be delivered promptly to the Secretary of the Treasury or his delegate for disposal in accordance with the provisions of section 4733 of the Internal Revenue Code of 1954, except that narcotic drugs which may be needed as evidence in any criminal or administrative proceeding pursuant to the provisions of this chapter or the provisions of any Federal narcotic law shall, upon delivery to the Secretary of the Treasury, not be so disposed of until the United States attorney for the District of Columbia or any assistant United States attorney shall certify that such narcotic drugs are no longer needed as evidence. (June 20, 1938, 52 Stat. 794, ch. 532, § 17; July 24, 1956, 70 Stat. 621, ch. 676, title III, § 301 (m).)

AMENDMENT

1956—Act July 24, 1956, amended section to substitute provisions requiring delivery of forfeited narcotic drugs to Secretary of Treasury for disposal according to the provisions of section 4733 of the Internal Revenue Code of 1954 [26 U.S.C. § 4733] except for such as may be needed as evidence in criminal or administrative proceedings, for provisions requiring forfeiture and destruction of such drugs on the order of a court or magistrate, records of the place of seizure, kinds and quantities of such drugs, a return under oath reporting destruction by the officer destroying them, delivery to the Board of Pharmacy for destruction or distribution to hospitals not operated for private gain and for the keeping of records by the Board of Pharmacy concerning the drugs received and disposed.

CROSS REFERENCE

Disposition of goods seized under search warrants generally, see § 23-301 et seq.

§ 33-418. Notice of conviction to be sent to licensing board—Revocation, suspension, and reinstatement of license.

On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business, and the said board or officer may in its or his discretion suspend or revoke the license of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing for good cause, said board or officer may reinstate such license or registration. (June 20, 1938, 52 Stat. 795, ch. 532, § 18.)

§ 33-419. Inspection of records—Divulging information contained in records.

Prescriptions, orders, and records, required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal and District of Columbia officers whose duty it is to enforce the laws of the District of Columbia, or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (June 20, 1938, 52 Stat. 795, ch. 532, § 19.)

§ 33-420. Obtaining a narcotic drug unlawfully—Communication to physician not privileged—False statements or false personation in procurement—False label—Application to section 33-410.

(a) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the forgery or alteration of a prescription or of any written order; or (3) by the concealment of a material fact; or (4) by the use of a false name or the giving of a false address.

(b) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such

drug, shall not be deemed a privileged communication.

(c) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this chapter.

(d) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(e) No person shall make or utter any false or forged prescription or false or forged written order.

(f) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(g) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section 33-410, in the same way as they apply to transactions under all other sections. (June 20, 1938, 52 Stat. 795, ch. 532, § 20.)

§ 33-421. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. (June 20, 1938, 52 Stat. 796, ch. 532, § 21.)

§ 33-422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.

It is hereby made the duty of the major and superintendent of police of the District of Columbia to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States relating to narcotic drugs.

The commissioners of the District of Columbia are authorized to employ such personal services for the clerical work of the Board of Pharmacy as may be necessary to carry out the provisions of this chapter and to provide for the expenses of said board, including the cost of preparation and distribution of such official order forms as may be provided by the regulations of the Board of Pharmacy. Salaries of employees shall be fixed in accordance with the Classification Act of 1949. The commissioners of the District of Columbia shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (June 20, 1938, 52 Stat. 796, ch. 532, § 22; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCE IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENT

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

§ 33-423. Penalties.

Any person violating any provision of this chapter, or any regulation made by the Commissioners of the District of Columbia, under authority of its sections, for which no specific penalty is otherwise provided, shall upon conviction be punished, for the first offense, by a fine of not less than \$100 nor more than

\$1,000, or by imprisonment for not exceeding one year, or by both such fine and imprisonment, and for any subsequent offense by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not exceeding ten years, or by both such fine and imprisonment. (June 20, 1938, 52 Stat. 796, ch. 532, § 23; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 301 (n).)

AMENDMENT

1956—Act July 24, 1956, substituted "Commissioners of the District of Columbia" for "Board of Pharmacy" and added the words "for which no specific penalty is otherwise provided" preceding the words "shall upon conviction."

§ 33-424. Effect of acquittal or conviction under Federal narcotic laws.

No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under any United States statute governing the sale or distribution of narcotic drugs, of the same act or omission which, it is alleged, constitutes a violation of this chapter. (June 20, 1938, 52 Stat. 796, ch. 532, § 24.)

§ 33-425. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (June 20, 1938, 52 Stat. 796, ch. 532, § 25.)

Chapter 5.—MEATS AND MEAT PRODUCTS

Sec.

33-501. Horse meat and horse meat products—Labeling or marking—Notification to consumer.

33-502. Same—Director of public health to make regulations.

33-503. Same—Penalties.

§ 33-501. Horse meat and horse meat products—Labeling or marking—Notification to consumer.

After thirty days after the date of enactment of sections 33-501 to 33-503, it shall be unlawful for any person, firm, or corporation, or any officer, agent, or employee thereof, to sell or offer for sale within the District of Columbia to any person any horse meat or food product thereof unless such meat or food product is plainly and conspicuously labeled, marked, branded, or tagged "horse meat" or "horse-meat product", as the case may be, or, in the case of any horse meat or food product thereof which is sold or offered for sale to any consumer at a hotel, restaurant, or similar establishment, unless such consumer is notified that the food which he receives contains horse meat or food products thereof. (July 3, 1943, 57 Stat. 372, ch. 188, § 1.)

REFERENCE IN TEXT

The date of enactment of sections 33-501 to 33-503 referred to in the text means the date of enactment of ch. 188 of act July 3, 1943, approved July 2, 1943.

§ 33-502. Same—Director of public health to make regulations.

The director of public health of the District of Columbia, subject to the approval of the Commis-

sioners of the District of Columbia, is authorized to make such regulations as may be necessary to carry out the purposes of sections 33-501 to 33-503. (July 3, 1943, 57 Stat. 372, ch. 188, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6-101.

§ 33-503. Same—Penalties.

Any person who willfully violates any provision of sections 33-501 to 33-503, or any regulation prescribed thereunder, shall, upon conviction thereof, be fined not more than \$500, or imprisoned for not more than one year, or both. (July 3, 1943, 57 Stat. 372, ch. 188, § 2.)

Chapter 6.—RESTAURANTS

§§ 33-601 to 33-607. Transferred.

Sections transferred to §§ 47-2905 to 47-2911, respectively.

Chapter 7.—REGULATION AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

Sec.

33-701. Definitions.

33-702. Prohibited Acts.

33-703. Drugs exempted.

33-704. Exemption of persons.

33-705. Records.

33-706. Inspection.

33-707. Regulations.

33-708. Penalties.

33-709. Search warrants.

33-710. Arrests without warrant.

33-711. Forfeiture.

33-712. Separability of provisions.

§ 33-701. Definitions.

For the purposes of this chapter—

(1) The term "dangerous drug" means—

(A) amphetamine, desoxyephedrine, or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof which have a stimulating effect on the central nervous system, except preparations intended for use in the nose and unfit for internal use;

(B) barbituric acid, also known as malonylurea, and its salts and derivatives, and compounds, preparations, and mixtures thereof;

(C) other drugs or compounds, preparations, or mixtures thereof which the Commissioners shall find and declare by rule or regulation duly promulgated, after reasonable public notice and opportunity for a hearing, to be habit-forming, excessively stimulating, or to have a dangerously toxic, or hypnotic or somnifacient effect on the body of a human or animal; except that the term "dangerous drug" shall not include any drug the manufacture or delivery of which is regulated by Federal narcotic drug laws, or by the narcotic drug laws of the District of Columbia.

(2) The terms "delivery" and "furnish" mean the selling, dispensing, giving away, sampling, or supplying in any other manner.

(3) The term "patient" means, as the case may be—

(A) the individual for whom a dangerous drug is prescribed, administered, or supplied in the course of professional practice for a legitimate medical purpose; or

(B) the owner or the agent of the owner of the animal for whom a dangerous drug is prescribed or to which or on which a dangerous drug is administered or used in the course of professional practice for a legitimate medical purpose.

(4) The term "person" includes any corporation, partnership, association, or one or more individuals, acting either as principal or agent.

(5) The term "practitioner" means any person duly licensed by appropriate authority and, in conformance with the law, licensed to prescribe dangerous drugs, and to administer and use dangerous drugs in the course of his professional practice.

(6) The term "pharmacist" means a person duly licensed as a pharmacist pursuant to title 2, chapter 6 of this Code.

(7) The term "prescription" means a written or oral order by a practitioner to a pharmacist for a dangerous drug for a particular patient, which specifies the date of issue, the name and address of the patient (and, in the case of prescription for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, the directions for use of such drug, and in case of a written order, the signature and office address of such practitioner, and in the case of an oral order, the District of Columbia or State registration number and office address of such practitioner (and if the practitioner be a member of the Armed Forces of the United States, then he shall give his rank, serial number, and station). Each oral order by a practitioner for a dangerous drug must be promptly reduced to writing by the pharmacist.

(8) The term "hospital" means an institution or dispensary or clinic for the care and treatment of the sick and injured, approved by the Commissioners as proper to be entrusted with the custody of dangerous drugs and the professional use of dangerous drugs under the direction of a physician, dentist, or veterinarian.

(9) The term "laboratory" means a laboratory approved by the Commissioners as proper to be entrusted with the custody of dangerous drugs and their use for medical and scientific purposes, and for purposes of instruction.

(10) The term "manufacturer" means a person or persons, other than pharmacists and practitioners who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, tabletting, or other process, or who repackage such drugs.

(11) The term "wholesaler" means a person or persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in subdivisions (A) and (D), inclusive, of section 33-704.

(12) The term "drug salesman" or "manufacturer's representative" means any person who,

acting in the course of his regular duties, calls upon or visits practitioners or pharmacists in the interest of demonstrating, selling, or detailing the use and sale of dangerous drugs.

(13) The term "warehouseman" means a person, who, in the usual course of business, stores drugs for others lawfully entitled to possess them, and who has no control over the disposition of such drugs except for the purpose of such storage.

(14) The term "Commissioners" means the Commissioners of the District of Columbia, sitting as a board, or their designated agent or agents. (July 24, 1956, 70 Stat. 612, ch. 676, title II, § 202.)

EFFECTIVE DATE

Section 214 of act July 24, 1956, provided that: "This title [this chapter] shall take effect ninety days after the date of its enactment [July 24, 1956]."

SHORT TITLE

Section 201 of act July 24, 1956, provided that: "This title [enacting this chapter] may be cited as the 'Dangerous Drug Act for the District of Columbia'."

CROSS REFERENCES

Narcotic Drugs, see §§ 33-401 to 33-425.

Rehabilitation of users of narcotics, see §§ 24-601 to 24-615.

§ 33-702. Prohibited acts.

(a) Except as otherwise provided by sections 33-703 and 33-704, the following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful:

(1) The delivery of any dangerous drug unless—

(A) such dangerous drug is delivered by a pharmacist, upon a prescription, and there is affixed to the immediate container of such or in which such drug is delivered a label bearing (i) the name and address of the owner of the establishment from which such drug was delivered; (ii) the date on which the prescription for such drug was filled; (iii) the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription; (iv) the name of the practitioner who prescribed such drug; (v) the name and address of the patient, and if such drug was prescribed for an animal, a statement of the species of the animal; and (vi) the directions for the use of the drug, as contained in the prescription; or

(B) such dangerous drug is delivered to a practitioner by a pharmacist for his professional use in his practice; in which case the pharmacist may deliver the drug without affixing any additional label to the original package of such drug and must immediately record such sale and delivery by filing a suitable record of such sale and delivery in the prescription file as maintained for prescriptions for such drugs; or

(C) such dangerous drug is delivered by a manufacturer's representative or drug salesman to a practitioner in the course of calling upon the practitioner; in which case the manufacturer's representative or drug salesman shall immediately record, in a suitable bound notebook (i) the name and quantity of the drug delivered, (ii) the date such drug was delivered, and (iii) the name and address of the practitioner to whom the drug was delivered; or

(D) such dangerous drug is delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name and address of the patient, and, if such drug is prescribed for an animal, a statement of the species of the animal.

(2) The refilling of any prescription for a dangerous drug except as designated on the prescription, or by the consent of the practitioner.

(3) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required by section 33-705.

(4) The possession of a dangerous drug by any person, unless such person obtained such drug on the prescription of a practitioner or in accordance with subparagraph (D) of paragraph (1) of this subsection.

(5) The making or uttering by any person of any false or forged prescription, or false or forged written order for the purpose of obtaining any dangerous drug.

(6) The delivery of any dangerous drug to any person in the District of Columbia not lawfully entitled to receive such drug.

(7) The willful making of or concealment of any material false statement or representation in any prescription, order, report, or record required by this title.

(8) The refusal to make available and to accord full opportunity to check any record or file as required by section 33-706.

(9) The failure to keep records as required by subsections (a) and (b) of section 33-705.

(10) The using by any person to his own advantage, or the revealing, other than to any officer of the Metropolitan Police Department of the District of Columbia in the performance of his official duties, the Commissioners, acting pursuant to authority vested in them, or to a court when relevant in a judicial proceeding under this title, of any information required under the authority of section 33-706, concerning any method or process which as a trade secret is entitled to protection.

(b) Nothing in this section shall be construed to relieve any person with respect to dangerous drugs, from any requirement prescribed by or under the authority of sections 352 and 353 (b) of title 21, U. S. Code. (July 24, 1956, 70 Stat. 613, ch. 676, title II, § 203.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

NOTES TO DECISIONS

1. Voir dire examination

In prosecution for violation of statutes relating to marihuana and dangerous drugs, where defendant's conviction was based on the testimony of an undercover police officer who had befriended him, trial court committed reversible error in refusing defense counsel's request that court ask, on voir dire examination, whether any of the jurors were inclined to give more weight to testimony of a police officer merely because he is a police

officer than any other witness in the case. *Sellers v. United States* (1959, 271 F. 2d 475, 106 U.S. App. D.C. 209).

§ 33-703. Drugs exempted.

Nothing in this chapter shall apply to a compound, mixture, or preparation which is delivered or acquired in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this chapter if—

(1) such compound, mixture, or preparation of barbituric acid, its salts and derivatives shall be declared by rule or regulation duly promulgated by the Commissioners after reasonable public notice and opportunity for hearing to have or to contain no habit-forming properties and not to have a dangerously toxic or hypnotic or somnifacient effect on the body of a human or animal; or

(2) such compound, mixture, or preparation of amphetamine, desoxyephedrine, phenylethylamine, or their salts or derivatives shall be found and declared by rule or regulation duly promulgated by the Commissioners after reasonable public notice and opportunity for hearing to contain in addition to such drug or its salts and derivatives some other drug or drugs causing it to possess other than an excessively stimulating effect upon the central nervous system and to have no habit-forming properties or dangerously toxic effect upon the body of a human or animal. (July 24, 1956, 70 Stat. 614, ch. 676, title II, § 204.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-704. Exemption of persons.

The provisions of subparagraphs (1) (A) and (1) (D) and paragraph (4) of section 33-702 (a) shall not be applicable (1) to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to agents or employees of such persons, for use in the normal or usual course of their business or practice or in the performance of their official duties, as the case may be; or (2) to the possession of dangerous drugs by such persons or their agents or employees for such use:

(A) Pharmacists.

(B) Practitioners.

(C) Persons who procure dangerous drugs (i) for handling by or under the supervision of pharmacists or practitioners, or (ii) for the purpose of lawful research, teaching, or testing and not for resale.

(D) Hospitals which procure dangerous drugs for lawful administration or use by practitioners.

(E) Laboratories which procure dangerous drugs for lawful medical and scientific purposes.

(F) Officers or employees of appropriate enforcement agencies of Federal, State, District of Columbia, or local governments, pursuant to their official duties.

(G) Manufacturers and wholesalers.

(H) Manufacturers' representatives and drug salesmen.

(I) Carriers and warehousemen.

(July 24, 1956, 70 Stat. 615, ch. 676, title II, § 205.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-705. Records.

(a) Persons (other than carriers and practitioners) listed in paragraphs (A) through (I) of section 33-704 shall—

(1) make, within thirty days after the effective date of this chapter, and biennially thereafter, a complete record of all stocks of dangerous drugs on hand, such records to be held for a period of two years, and

(2) retain all such commercial or other records, including invoices, relating to dangerous drugs received or maintained by them in the course of their business or occupation, or as required by this title, for not less than two calendar years immediately following the date of such record.

(b) Pharmacists shall, in addition to complying with the provisions of subsection (a) hereof, retain each prescription or notation of sale to practitioners for a dangerous drug received by them, for not less than two calendar years immediately following the date of the filling of the order or prescription and a complete record of each refilling of such prescription. (July 24, 1956, 70 Stat. 615, ch. 676, title II, § 206).

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-706. Inspection.

Prescriptions, orders and records, required by section 33-705, and stocks of dangerous drugs shall be opened for inspection—

(1) upon written request, to any officer or employee duly designated by the Commissioners at all reasonable hours for the purpose of inspection and copying; and, any person upon whom such request is served shall accord to such officer or employee full opportunity to check the correctness of such files or records, including the opportunity to make inventory of all stocks of dangerous drugs on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness, or

(2) to District of Columbia officers whose duty it is to enforce the laws of the District of Columbia, or of the United States, relating to dangerous drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, in which such prescriptions, orders, or records may be pertinent.

(July 24, 1956, 70 Stat. 616, ch. 676, title II, § 207.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-707. Regulations.

The Commissioners are hereby authorized to promulgate necessary regulations for the administration and enforcement of this chapter. (July 24, 1956, 70 Stat. 616, ch. 676, title II, § 208.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-708. Penalties.

(a) Any person violating any provision of this chapter, or of any regulation made by the Commissioners under the authority of this chapter shall upon conviction be punished, for the first offense, by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not exceeding one year, or by both such fine and imprisonment; and for any subsequent offense by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not exceeding ten years, or by both such fine and imprisonment.

(b) The conviction of any person for a violation of this chapter, or of any regulation made under the authority of this chapter, involving any dangerous drug shall constitute ground for suspension or revocation or denial of renewal of the professional license of such person. Proceedings for such suspension or revocation or denial of renewal shall be had in accordance with the statutes relating to the issuance, revocation, suspension, and denial of renewal of such licenses and in accordance with statutes relating to judicial review of administrative action in connection with the revocation, suspension, or denial of renewal of such licenses.

(c) As used in this section the term "professional license" means a license issued under the following sections: 2-101 to 2-140, 2-301 to 2-331, 2-401 to 2-411, 2-601 to 2-617, 2-701 to 2-719, and 2-801 to 2-812. (July 24, 1956, 70 Stat. 616, ch. 676, title II, § 209.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-709. Search warrants.

(a) A search warrant may be issued upon probable cause, supported by affidavit particularly describing the property to be seized and place to be searched, by any judge of the municipal court for the District of Columbia or by the United States Commissioner for the District of Columbia, to any officer of the Metropolitan Police Department when any dangerous drugs are manufactured, possessed, prescribed, and delivered in violation of the provisions of this chapter, and any such dangerous drugs and any other property designed for use in connection with such unlawful manufacturing, possession, prescribing, or delivery, may be seized thereunder and shall be subject to such disposition as the court may make thereof, and such dangerous drugs may be taken on the warrant from any house or other place in which they are concealed.

(b) Any search warrant issued in accordance with the provisions of subsection (a) of this section may

be served at any time in the day or night and must be executed and returned to the issuing authority within ten days after its date. (July 24, 1956, 70 Stat. 617, ch. 676, title II, § 210.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-710. Arrests without warrant.

(a) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for a violation of any of the provisions of section 33-702 by police officers, as in the case of a felony, upon probable cause that the person arrested is violating such section at the time of his arrest.

(b) No evidence discovered in the course of any such arrest, search, or seizure authorized by this section shall be admissible in any criminal proceeding against the person arrested, unless at the time of such arrest he was violating section 33-702. (July 24, 1956, 70 Stat. 617, ch. 676, title II, § 211.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-711. Forfeiture.

Any dangerous drug seized pursuant to any lawful search or which may have come into the custody of any peace officer, the lawful possession of which cannot be established or the title to which cannot be ascertained, shall be forfeited and destroyed in the same manner provided for narcotic drugs in section 33-417. (July 24, 1956, 70 Stat. 617, ch 676, title II, § 212.)

EFFECTIVE DATE

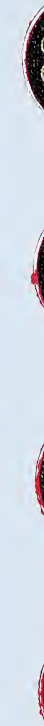
Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.

§ 33-712. Separability of provisions.

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. (July 24, 1956, 70 Stat. 618, ch. 676, title II, § 213.)

EFFECTIVE DATE

Section effective ninety days after July 24, 1956, see section 214 of act July 24, 1956, set out as a note under § 33-701.



34

35

TITLE 34.—HOTELS AND LODGING-HOUSES

Chap.	Sec.
1. Rights and Liabilities.....	34-101

Chapter 1.—RIGHTS AND LIABILITIES

Sec.	
34-101. Hotel proprietors and innkeepers furnishing safe and giving notice not liable for injury to guests' property—When value exceeds \$500—Liability for certain retained property.	
34-102. Liability for baggage stolen from rooms—Effect of printed notice.	
34-103. Lien of boarding-house and Inn-keepers.	
34-104. Enforcement of lien by sale.	
34-105. Enforcement of lien by bill in equity.	

§ 34-101. Hotel proprietors and inn-keepers furnishing safe and giving notice not liable for injury to guests' property—When value exceeds \$500—Liability for certain retained property.

Whenever the proprietor of any hotel or inn in the District of Columbia shall provide in such hotel or inn a suitable safe or vault for the safe-keeping of any money, jewelry, or other articles of value, other than wearing apparel, belonging to or in the custody of guests, and shall notify the guests thereof by keeping conspicuously posted in the office and on the inside of the entrance door of the sleeping-rooms of said hotel or inn a notice printed in distinct English type, such proprietor shall not be liable for the loss of or injury to any such property by theft or otherwise sustained by any guests unless such guest has offered to deliver the same to such proprietor for custody in such safe or vault and such proprietor has omitted or refused to receive it and deposit it in such safe or vault and to give such guest a receipt therefor: *Provided*, That in no case shall such proprietor be liable for the loss or injury to property so deposited in an amount exceeding the sum of \$500, except by special contract in writing, stating the kind and value of property received, the kind and extent of the liability of said proprietor, and the reasonable consideration to be paid for such safe-keeping, not in excess of the customary insurance charge or premium, and which said contract shall be signed by said guest and said proprietor or his clerk: *Provided further*, That nothing herein contained shall apply to such an amount of money and such jewelry or other articles of value as is usual, common, or prudent for guests to retain in their rooms. (Dec. 21, 1920, 41 Stat. 1081, ch. 2, § 1.)

CROSS REFERENCES

Defrauding hotel, see § 22-1301.
 Embezzlement by proprietor, see § 22-1205.
 License fee, hotels, see § 47-2328.
 License fee, lodging-houses, see § 47-2330.

§ 34-102. Liability for baggage stolen from rooms—Effect of printed notice.

Whenever the proprietor of any hotel or inn shall keep posted in a conspicuous manner on the inside

of the entrance door to the sleeping-rooms of said hotel or inn a notice printed in distinct English type requiring the guests occupying said rooms to lock or bolt the door of said room and upon leaving said room to lock the door and deposit the key at the office, the proprietor shall not be liable for any baggage stolen from said room if it shall appear that said room was left by the guest unlocked or unbolted, or that the key was not so deposited at the office at the time of the loss of said baggage, unless the loss is directly or indirectly caused by or attributable to the proprietor or his employee or employees. (Dec. 21, 1920, 41 Stat. 1082, ch. 2, § 2.)

§ 34-103. Lien of boarding-house and inn-keepers.

Every inn-keeper, keeper of a boarding-house, or house of private entertainment shall have a lien upon and may retain possession of the baggage and effects of any guest or boarder for the amount which may be due him from such guest for board and lodging until such amount is paid. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1261.)

CROSS REFERENCE

Fraudulent representations to obtain accommodations, fraudulent removal of baggage, criminal penalty, see § 22-1301.

§ 34-104. Enforcement of lien by sale.

If the amount due and for which a lien is given by section 34-103 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

§ 34-105. Enforcement of lien by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)

TITLE 35.—INSURANCE

Chap.	Sec.
1. Insurance Department—General Provisions	35-101
2. Provisions Applicable to More Than One Kind of Insurance.....	35-201
3. Life Insurance—Definitions.....	35-301
4. Department of Insurance With Respect to Life Companies.....	35-401
5. Domestic Life Companies.....	35-501
6. Foreign and Alien Life Companies.....	35-601
7. Provisions Relating to All Life Insurance Companies	35-701
8. Life Insurance—Penalties—Testimony—Separability	35-801
9. Fraternal Benefit Associations.....	35-901
10. Industrial Life Insurance.....	35-1001
11. Marine Insurance.....	35-1101
12. Insurance Agents Other Than Life.....	35-1201
13. Fire, Casualty, and Marine Insurance....	35-1301
14. Regulations of Fire Insurance Rates....	35-1401
15. Regulation of Casualty and Other Insurance Rates.....	35-1501

Chapter 1.—INSURANCE DEPARTMENT—GENERAL PROVISIONS

- Sec.
- 35-101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioners.
- 35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.
- 35-103. Annual statements—Statement to be published in newspaper.
- 35-104. Companies organized outside of United States to file and publish statements.
- 35-105. Statement of business in District of Columbia.
- 35-106. Superintendent to make annual report.
- 35-107. Superintendent's reports to be bound.
- 35-108. Inquiries as to District companies.

§ 35-101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioners.

There shall be, and is hereby, established in the District a Department of Insurance, under the direction of the commissioners of the District. The said commissioners are authorized and directed to appoint a Superintendent of Insurance and one clerk. The said superintendent and clerk shall devote their services exclusively to the business of said department. Said superintendent shall have supervision of all matters pertaining to insurance, insurance companies, and beneficial orders and associations, subject only to the general supervision of the commissioners. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 645; June 30, 1902, 32 Stat. 534, ch. 1329.)

CODIFICATION

Act June 30, 1902, increased the salary of the superintendent to \$3,500, which provisions were omitted as superseded by the Classification Act of 1949, which prescribes the salary of many employees of the District of Columbia. See U.S. Code, title 5, ch. 21.

TRANSFER OF FUNCTIONS

Reorg. Order No. 43 established under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. This order was issued pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

LIFE INSURANCE ACT

Any provision of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, has been repealed by § 4, Ch. VI of said act which is set out as a note under § 35-301.

FIRE AND CASUALTY ACT

Any provisions of this chapter in conflict with the "Fire and Casualty Act", classified to chapter 13 of this title, have been repealed by § 46 of said act which is set out as a note under § 35-1301.

CROSS REFERENCES

Application of this chapter to marine insurance companies, see § 35-1102.

Department of Insurance and its powers and duties with respect to,

Fire, casualty, and marine insurance, see §§ 35-1301 to 35-1350.

Life insurance, see §§ 35-401 to 35-532.

NOTES TO DECISIONS

1. Superintendent

Superintendent of insurance is a subordinate official, appointed by and under the supervision and control of the Commissioners of the District. *Griffithe v. Rudolph* (1924, 298 F. 672, 54 App. D.C. 350).

§ 35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

It shall be the duty of said superintendent to see that all laws of the United States relating to insurance or insurance companies, benefit orders, and associations doing business in the District are faithfully executed; to keep on file in his office copies of the charters, declarations of organization, or articles of incorporation of every insurance company, benefit association, or order, including life, fire, marine, accident, plate-glass, steam-boiler, burglary, cyclone, casualty, livestock, credit, and maturity companies or associations doing business in the District; and before any such insurance company, association, or order shall be licensed to do business in the District it shall file with said superintendent a copy of its charter, declaration of organization, or articles of incorporation, duly certified in accordance with law by the insurance commissioners or other proper officers of the state, territory, or nation where such company or association was organized; also a certificate setting forth that it is entitled to transact

business and assume risks and issue policies of insurance therein, and such other information as said superintendent may require; and if its principal office is located outside the District it shall appoint some suitable person, resident in said District, as its attorney, upon whom legal process may be served: *Provided, however,* That should said company or association neglect or refuse to appoint such attorney, or should such attorney absent himself from the District, said legal process may be served upon the Superintendent of Insurance of the District of Columbia. Said superintendent shall have power to make such rules and regulations, subject to the general supervision of the commissioners, not inconsistent with law, as to make the conduct of each company in the same line of insurance conform in doing business in the District. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 646; Jan. 17, 1912, 37 Stat. 53, ch. 11.)

CODIFICATION

This section as enacted also contained at the end of the first sentence "and the fees for filing with the superintendent such papers as are required by this section shall be ten dollars, to be paid to the collector of taxes, and no other license fee shall be required of such insurance companies or associations except as provided in sections six hundred and fifty-four (§ 35-1201) and six hundred and fifty-five (§ 35-1202) of this subchapter", which provisions were omitted as superseded by § 35-1113 providing for fees of marine insurance companies, § 35-1345 providing for fees of fire, marine, and casualty insurance companies, § 35-402 providing for fees of life insurance companies, and § 47-1901 providing for an annual license fee upon all insurance companies.

AMENDMENT

1912—Act Jan. 17, 1912, inserted "and such other information as said superintendent may require" following "a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein," and added the proviso authorizing service of process upon the Superintendent.

CROSS REFERENCES

IN GENERAL

Enlargement of department, for purpose of administering laws regulating marine insurance, see § 35-1130.

Insurance under Employees' Compensation Act, see § 35-205.

Liability policy or bond for motor carriers, see § 44-301.

REVOCATION OR SUSPENSION OF LICENSES, CERTIFICATES, AND PERMITS

Failure of domestic company to keep books, records, and files within the District, see § 35-204.

Failure to file annual statements, see §§ 35-103, 47-1805.

Failure to pay taxes, see § 35-105.

Impairment of capital, see § 35-202.

License or certificate of authority of life insurance companies, see § 35-405.

Life insurance agents, see § 35-425 et seq.

Marine insurance agents, see § 35-1124.

Revocation or suspension of

Certificate of authority of fire, casualty, or marine insurance company, see § 35-1306.

License of fire, casualty, or marine insurance agent, see § 35-1340.

Revocation or suspension of organization permits, see § 35-506 et seq.

RULES AND REGULATIONS

Administration of the "Fire and Casualty Act," see § 35-1304.

Governing annual statements, see § 35-103.

Governing election to convert stock to mutual company, see § 35-519.

Liquidation of life insurance companies, see § 35-419.

NOTES TO DECISIONS

Domestic corporations 1
Group health association 2
Interpretation of laws 3
Rules and regulations 4

1. Domestic corporations

Sections 646 and 647 of 1901 code (§§ 35-102, 35-103), "were intended to apply to companies organized without the District and doing business within the District." *American Home Life Ins. Co. v. Drake* (30 App. D.C. 263).

2. Group health association

When Group Health Association was not engaged in the business of insurance or indemnity, and not specifically exempted from the regulations pertaining to them, the superintendent could not challenge generally and without regard to features of insurance or indemnity as to validity of the incorporation. *Jordan v. Group Health Assn.* (1940, 107 F. 2d 239, 71 App. D.C. 38).

Apart from any specific exemption, the business of a Group Health Association was not that of insurance so as to bring it within meaning of this act. *Id.*

3. Interpretation of laws

"No provision of the law conferred or attempted to confer upon the superintendent of insurance the power to make and enforce an interpretation of the laws relating to insurance companies, agents, or brokers. Such power is a judicial one, that can be exercised by the courts alone." *Drake v. United States ex rel. Bates* (30 App. D.C. 312).

4. Rules and regulations

Superintendent's power to promulgate regulations for the proper enforcement of the law. *Drake v. United States ex rel. Bates* (30 App. D.C. 312).

There is neither express nor implied authority in the superintendent to make rules or to apply the drastic provisions of those rules solely to mutual companies, and without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D.C. 174).

§ 35-103. Annual statements—Statement to be published in newspaper.

The said superintendent shall furnish, in December of each year, to every insurance company or association, local, domestic, and foreign, doing business in the District of Columbia, or its agent or attorney in the District, the necessary blank forms for the annual statements for such company or association, which shall be returned to the superintendent on or before the first day of March in each year, signed and sworn to by the president or vice-president and secretary or assistant secretary, or, if a foreign company, by its manager or proper representative within the United States, showing its true financial condition as of the next preceding 31st day of December, which shall include a statement of its assets and liabilities classified according to regulations made by the Superintendent of Insurance on that day, the amount and character of business transacted, losses sustained, and money received and expended during the year, and such other information as the said superintendent may deem necessary. Such annual statements shall be printed in at least one daily newspaper published in the District of Columbia, in the month of March in each year; and any such company or association failing to comply with the provisions aforesaid shall have its license to do business in the District revoked. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 647; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 18, 1911, 37 Stat. 22, ch. 26.)

AMENDMENTS

1911—Act Aug. 18, 1911, substituted "local, domestic, and foreign, doing business in the District of Columbia"

for "hereinbefore mentioned", and omitted "classified" following "include a."

1902—Act June 30, 1902, substituted "classified" for "detailed" following "include a", and inserted "or vice-president" after "president" and "or assistant secretary" after "secretary."

CROSS REFERENCES

Fire, casualty, and marine insurance companies, see § 35-1311.
Health, accident, and life insurance companies, see § 35-202.
Lloyd's plan, companies operating upon, see § 35-1324.
Revocation or suspension of license, see § 35-102.
Rules and regulations, see § 35-102.
Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

NOTES TO DECISIONS

1. Revocation of license

Under this section, there is authority in the Superintendent to revoke a company's license for failure on its part promptly to furnish him with an annual statement of its true financial condition. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D. C. 174).

§ 35-104. Companies organized outside of United States to file and publish statements.

The financial statements of insurance companies or associations, required hereby to be filed annually with the Superintendent of Insurance, shall set forth specifically the assets, liabilities, and conduct of the affairs within the United States of companies or associations organized outside of the territorial limits of the United States, and such statement shall be verified under oath by the manager and assistant manager or other proper officers of such companies or associations within the United States; and so much of this chapter as requires the publication of annual statements shall only extend to the statements respecting the affairs of such foreign companies or associations within the United States. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 649.)

CODIFICATION

This section as enacted contains at the beginning the following provision: "No insurance company or association organized outside the territorial limits of the United States shall be licensed to do business in the District until it shall have complied with the laws of some one of said States requiring a deposit of not less than one hundred thousand dollars, or deposited in the registry of the supreme court of the District, United States or municipal bonds, the market value of which shall not be less than one hundred thousand dollars, to be approved by the superintendent of insurance and the Commissioners of the District, to be held and maintained unimpaired in the registry of said court as a reserve fund for the liquidation of any judgment or judgments that may be obtained against such insurance company or association in said court or any inferior court of competent jurisdiction in said District." However, § 35-1105 of this code provides for deposits by foreign marine insurance companies, § 35-601 provides that foreign life insurance companies should have investments of a specified quality, and if stock companies, a specified surplus, and § 35-1326 provides the requirements for issuance of a certificate of authority to foreign fire, marine, and casualty insurance companies.

CROSS REFERENCES

Annual statement and taxes, see §§ 35-103, 35-202.
Revocation or suspension of license, see § 35-102.
Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

§ 35-105. Statement of business in District of Columbia.

Every insurance company and association doing business in the District of Columbia shall, through

its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to two per centum of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections 35-1201 and 35-1202; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against the company, which, together with said taxes, shall be collected before said company shall be allowed to resume business. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6.)

CODIFICATION

"Two per centum" was substituted for "one and one-half per centum" to conform to act Aug. 17, 1937, relating to taxation of insurance companies. See § 47-1806.

CROSS REFERENCES

Annual statement and taxes, see §§ 35-103, 35-202.
Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.
Taxation of marine insurance companies, see § 35-1111.

NOTES TO DECISIONS

Assessment companies 1
Group health association 2
Section construed 3

1. Assessment companies

This section does not apply to assessment companies organized solely for mutual protection. *American Home Life Ins. Co. v. Drake* (30 App. D. C. 263).

2. Group health association

Apart from any specific exemption, the business of appellee Group Health Association is not that of insurance to bring it within this section of statute. *Jordan v. Group Health Assn.* (1940, 107 F. 2d 239, 71 App. D.C. 38).

3. Section construed

Section construed relative to taxation of banks, gas, electric, and telephone companies, and continuing taxation on insurance companies. *District of Columbia v. Georgetown Gas Light Co.* (45 App. D.C. 63).

§ 35-106. Superintendent to make annual report.

The Superintendent of Insurance shall report annually to the commissioners of the District, on or before the thirty-first day of March, the financial condition of each insurance company and association doing business in said District, as of the thirty-first day of December next preceding. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 651.)

§ 35-107. Superintendent's reports to be bound.

After May 18, 1910, the annual reports of the Superintendent of Insurance shall be printed and

bound in one volume, and shall be ready for distribution not later than the first day of the next regular session of Congress thereafter. (May 18, 1910, 36 Stat. 379, ch. 248, § 1.)

§ 35-108. Inquiries as to District companies.

It shall be the duty of the said Superintendent of Insurance to ascertain whether the capital required by law or the charter of each insurance company or association organized under the laws of the District of Columbia has been actually paid up in cash and is held by its board of directors subject to their control, according to the provisions of their charter, or has been invested in property worth not less than the full amount of the capital stock required by its charter; or, if a mutual company, that it has received and is in actual possession of securities, as the case may be, to the full extent of the value required by its charter; and the president and secretary of such company or association shall make a declaration under oath to said superintendent, who is hereby empowered to administer oaths when hereby required, that the tangible assets exhibited to him represent bona fide the property of the company or association, which sworn declaration shall be filed and preserved in the office of said superintendent; and any such officer swearing falsely in regard to any of the provisions hereof shall be deemed guilty of perjury and shall be subject to all the penalties prescribed by law in the District of Columbia for that crime. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 652.)

CROSS REFERENCES

Capital stock to be fully paid in cash, amount of capital, see § 35-202.

Impairment of capital, see § 35-201.

Inspection and examination of insurance companies, see §§ 35-201, 35-202, 35-418, 35-903, 35-1313.

Perjury, see § 22-2501.

Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

Sec.

- 35-201. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.
- 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to commissioners—Fraternal beneficial and certain other organizations exempt.
- 35-203. Copy of application to be delivered with policy—Statements in application as defense.
- 35-204. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.
- 35-205. Compensation insurance regulations—Facts to be filed with Superintendent of Insurance—Approval required—Withdrawal of approval—Petition for review—Time for filing.

§ 35-201. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.

All life and fire insurance companies or associations licensed to do business in said District shall be

required to maintain a reinsurance reserve fund; and whenever any such company or association not excepted from the operations hereof shall become insolvent or impaired to the extent of twenty-five per centum of its capital stock it shall be the duty of the superintendent to suspend its license; and unless such impairment or insolvency shall be made good within sixty days thereafter, it shall be the duty of the Superintendent of Insurance to revoke its license to do business in the District; and it shall be unlawful for any insurance company, association, or order to do business in the District without a license, or to continue business after the revocation of its license, and any such company or association violating this provision shall be liable to a penalty of twenty dollars for each day it transacts business without such license, to be recovered by the commissioners of the District by an action of debt in any court of the District of competent jurisdiction. And any person who shall aid in carrying on the business of any such company, or shall act as agent or solicitor for any company not licensed to do business in said District, or whose license is revoked, shall be guilty of a misdemeanor, and on conviction thereof in the Municipal Court for the District of Columbia shall be punished by a fine not exceeding one hundred dollars, or, in default of payment thereof, by imprisonment in the jail of the District for not less than ten nor more than sixty days. And the Superintendent of Insurance shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of section 35-102, subject, however, to the provisions of sections 35-1201, 35-1202: *Provided*, That the Superintendent of Insurance shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia, or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 648; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CODIFICATION

This section as enacted contains the following at the beginning: "No fire insurance company, except mutual fire insurance companies organized in the District of Columbia under special act of Congress or the general laws of said District, or mutual companies of other States licensed to do business in the said District, which has a paid-up capital of less than one hundred thousand dollars, shall be permitted to do business therein, and." Sections 35-1103 and 35-1316, provide for the paid-in capital stock of fire insurance companies.

LIFE INSURANCE ACT

Provisions of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, are repealed by section 4 of chapter VI of said act which is set out as a note under § 35-301.

FIRE AND CASUALTY ACT

Any provision of this chapter in conflict with the "Fire and Casualty Act," classified to chapter 13 of this title, have been repealed by § 46 of said act which is set out as a note under § 35-1301.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Application of this chapter to marine insurance companies, see § 35-1102.

Benefits from health and accident insurance are not subject to claims of creditors, see § 35-717.

Capital and surplus of fire, casualty, and marine insurance companies, see § 35-1316.

Capital, reserves, and deposits of life insurance companies, see §§ 35-415 to 35-417.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Impairment of capital, see § 35-202.

Insolvency or impairment of capital or surplus of fire, casualty, or marine companies, receivership, see §§ 35-1306, 35-1308 to 35-1310.

Inspection and examination of insurance companies, see §§ 35-108, 35-202, 35-418, 35-903, 35-1313.

Licensing fire, casualty, and marine insurance companies, see § 35-1305.

Life insurance companies may reinsure, see § 35-537.

Minors may contract for health and accident insurance, see § 35-430.

§ 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioners—Fraternal beneficial and certain other organizations exempt.

Every corporation, joint-stock company, or association not exempt herein, transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as "health, accident, and life insurance companies or associations." No such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than twenty-five thousand dollars as a capital or guarantee fund; which assets may be invested in United States, State, county, municipal bonds, and bonds of the District of Columbia, or railroad bonds; but investments in the bonds of railroads shall be limited to the bonds of those railroads which have paid dividends on their capital stock for the ten years immediately previous to the date of the investment; or in improved real estate, or in first mortgages on improved real estate; but no loan on real estate shall be made for an amount exceeding seventy per centum of its assessed value, such investments to be approved by the Superintendent of Insurance of the District of Columbia. No such health, accident, and life insurance company or association, transacting on August 15, 1911, or thereafter the business of health, accident, and life insurance, or either or all said kinds of insurance, in the District of Columbia shall issue policies or certificates providing, either singly or in aggregate, a greater accident or death benefit than five hundred dollars, or a greater weekly indemnity than twenty dollars, on any one person unless such company or association has in assets or in capital stock fully paid up in cash, or in both together, not less than one hundred thousand dollars invested and approved as aforesaid. Every such company or association shall pay to the collector of taxes for the District of Columbia a sum of money, as tax, equal to one per centum of all

moneys received from members of policy or certificate holders within the District of Columbia, said tax to be paid on or before the 1st day of March of each year on the amount of such income for the year ending December 31st next preceding; and shall also file annually with said Superintendent of Insurance, on or before the 1st day of March of each year, a sworn statement, on blanks furnished by said Superintendent of Insurance, showing its true financial condition, income, disbursements, assets, and liabilities on the 31st day of December next preceding, and such other information as said Superintendent of Insurance may require; and shall pay to the said collector of taxes ten dollars for filing such statement. Said Superintendent of Insurance shall examine from time to time and at least as often as once a year all companies or associations described herein; and when he finds the capital stock of any such company impaired or its assets reduced in value to an amount less than required by the provisions hereof he shall at once give notice of said fact to said company or association, and unless said impairment is made good within sixty days after said notice, it shall be the duty of said superintendent to revoke or suspend the license of said company or association until such impairment shall have been made good; and any company or association that issues policies or certificates of insurance as described herein without a license from said superintendent or during a suspension thereof, as herein provided, shall be fined not less than twenty dollars nor more than one hundred dollars per day: *Provided*, That if any such company or association shall feel aggrieved by the decision of said superintendent concerning the investment or impairment of its assets or capital stock, it shall have the right to appeal, within ten days, from the decision of said superintendent to the Board of Commissioners of the District of Columbia, who shall prescribe rules and regulations for the hearing of said appeal, and their decision shall be final: *Provided also*, That when any such company or association shall have complied with the provisions contained herein, the Superintendent of Insurance shall issue to it a license to transact its business in the District of Columbia: *Provided, however*, That nothing contained herein shall interfere with or abridge the rights of any fraternal beneficial association licensed to transact business under sections 35-901 to 35-917, or incorporated by special act of Congress: *And provided further*, That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States government service, or solely of employees of any individual, company, firm, or corporation. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 653; Aug. 15, 1911, 37 Stat. 16, ch. 12, § 1.)

CODIFICATION

A provision making the prohibition against doing business in the District without meeting the asset and capital stock requirements effective ninety days after Aug. 15, 1911, was omitted as obsolete.

AMENDMENT

1911—Act Aug. 15, 1911, amended section generally, and among other changes defined health, accident, and

life insurance companies, stated asset and capital stock requirements, limited the amounts of policies, set a tax on monies received, provided for reports to, and examination by, the Superintendent of Insurance, and for appeal from the Superintendent's decision to the Commissioners, exempted certain fraternal beneficial and other organizations, and struck out the former section which related to companies transacting insurance on the assessment plan, exempted them from the provisions of § 35-108, and provided that they furnish annual statements to the Superintendent.

REPEAL OF INCONSISTENT PROVISIONS

Section 2 of act Aug. 15, 1911, provided: "That all Acts and parts of Acts inconsistent herewith be and the same are hereby repealed: Provided, That nothing herein contained shall repeal or affect the other provisions of subchapter five of chapter eighteen of the Code of Law for the District of Columbia [§§ 35-101 to 35-108, 35-201, 35-203, 35-1133, 35-1201, and 35-1202] regulating foreign corporations, or corporations, associations, or companies who are nonresidents of the District of Columbia (to whom the provisions of this Act shall also be applicable), or the provisions of section six hundred and fifty-two of said code [§ 35-108] relating to inquiry into the affairs of District companies."

CROSS REFERENCES

Annual statement and taxes, see §§ 35-103 to 35-105, 35-1311, 47-1801 et seq.

Appeals under Fire and Casualty Act, see §§ 35-1348, 35-1349.

Capital and surplus of fire, casualty, and marine insurance companies, see § 35-1316.

Capital, reserves, and deposits of life insurance companies, see §§ 35-415 to 35-417.

Excepted from application of marine insurance provisions, see § 35-1103.

Health and accident insurance may be written under the Fire and Casualty Act, see § 35-1314.

Inspection and examination of insurance companies, see §§ 35-108, 35-201, 35-418, 35-903, 35-1313.

Investments,

Fire, casualty and marine insurance companies, see § 35-1321.

Life insurance companies, see § 35-535.

Marine insurance companies, see §§ 35-1118, 35-1119.

Provisions for formation of companies, see § 35-501.

Required policy provisions for health and accident insurance, see §§ 35-712, 35-1332.

NOTES TO DECISIONS

Benefit order 1
Group health association 2
Payment of indemnity 3
Report by receivers 4
Reserves 5

1. Benefit order

Grand Lodge of Brotherhood of Railroad Trainmen is a benefit order, within the meaning of the section, as amended, and subject to its provisions. *Brotherhood of Railroad Trainmen v. Groves* (48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

2. Group health association

Apart from any specific exemption, the business of appellee Group Health Association is not that of insurance to bring it within this section of statute. *Jordan v. Group Health Assn.* (1940, 107 F. 2d 239, 71 App. D.C. 38).

The appellee Group Health Association held to be a distributing, not an accumulating agency, and to require it to maintain a guarantee fund was not the intent of Congress. *Id.*

It is not necessary to decide whether the exemption or definition of health and accident insurance companies has any effect upon the regulations prescribed by other sections of the code. Apart from any specific exemption the business of the Group Health Association is not that of insurance so as to bring it within those sections. *Id.*

3. Payment of indemnity

This provision does not include all "insurance" companies, but only those which provide for the "payment of indemnity on account of sickness." The statute does not include necessarily contracts "to indemnify," but is

limited to those which provide for the "payment" of indemnity. The word "payment" is not used as equivalent to "indemnify." *Group Health Assn. v. Moor* (1938, 24 F. Supp. 445).

4. Report by receivers

Where business of insurance association has been so injured by ill will and protracted litigation among the stockholders that it has become insolvent, and its capital and reserve have been seriously impaired, receivers pendente lite were properly appointed to take possession of its assets and to report on the condition of its affairs. *Provident Relief Assn. v. Vernon* (1927, 19 F. 2d 709, 57 App. D.C. 235).

5. Reserves

There is no provision of the general law broad enough to cover regulations governing in the minutest detail the operation and business of an insurance company, but the statute itself makes a clear distinction between stock companies and mutual companies with respect to maintaining a reserve. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D.C. 174).

§ 35-203. Copy of application to be delivered with policy—Statements in application as defense.

Each life insurance company, benefit order, and association doing a life insurance business in the District of Columbia shall deliver with each policy issued by it a copy of the application made by the insured so that the whole contract may appear in said application and policy, in default of which no defense shall be allowed to such policy on account of anything contained in, or omitted from, such application. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 657; June 30, 1902, 32 Stat. 534, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted "benefit order and association" following "life insurance company", "life insurance" before "business", and added "in default of which no defense shall be allowed to such policy on account of anything contained in, or omitted from, such application."

CROSS REFERENCES

Standard provisions,

Annuities and pure endowment contracts, see § 35-705.

Group life insurance policies, see § 35-711.

Life insurance policies, see § 35-703.

NOTES TO DECISIONS

In general 1
Defense not based on application 2
Entire application 3
Fraudulent representations 4
Incorporation by reference 5
Misstatement of age 6
Oral application 7
Policy constituting contract 8
Preliminary report of agent 9
Provisions outside contract, 10
Purpose 11
Reinstatement of policies 12

1. In general

Prior to the amendment by the act of June 30, 1902, this section "did not cover policies (certificates) issued by fraternal beneficial associations." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

"This section was intended to remedy a mischief and is to be given a liberal interpretation to that end." *Metropolitan Life Ins. Co. v. Burch* (39 App. D. C. 397).

Where voidability provision of life policy required company to prove that applicant had received medical treatment, but insurer did not attach written application, if any, to policy, insurer could not defend on account of anything contained in or omitted from application, and was barred from declaring policy void on account of alleged nondisclosure in application. *Walton et ano. v. Sun Life Insurance Company of America* (D. C. Mun. App. 1955, 115 A. 2d 310).

2. Defense not based on application

In action on an industrial life policy declaring that it expressed the entire agreement between the parties, where insurer used testimony of the agent as to answers given or evaded by claimant to prove bad faith in making an application for the policy and questions relating to policy provisions that had no relation to the application not attached to the policy, a defense based on such questions and on the claimant's responses thereto would not be disallowed under this section. *Walton et ano. v. Sun Life Insurance Company of America* (D. C. Mun. App. 1955, 115 A. 2d 310).

3. Entire application

Copy of entire application must be attached; "It is not left to the discretion of the insurer to select such parts of the application as it may deem material for delivery with its policy." *Metropolitan Life Inc. Co. v. Hawkins* (31 App. D.C. 493).

4. Fraudulent representations

This section applies to fraudulent representations in application for previous policy made part of second policy. *Northwestern Mut. Life Ins. Co. v. Gott* (1934, 68 F. 2d 426, 62 App. D.C. 379).

5. Incorporation by reference

This section could not be satisfied by making a section of the constitution of the insurer a part of the contract by reference, for it requires an actual incorporation in the certificate and application of every element of the agreement "so that the whole contract may appear in said application and policy." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

6. Misstatement of age

Misstatement of age is no defense where copy of application was not delivered "with the policy or at any other time." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

7. Oral application

This provision does not extend to an oral application *Washington Fidelity Nat. Ins. Co. v. Burton* (1932, 53 S. Ct. 26, 287 U. S. 97, 77 L. Ed. 196).

In action on industrial life policy declaring that it expressed the entire agreement between the parties, a defense open to insurer if no written application existed was not precluded by this section and the insurer could defend on violation of policy provisions having no relation to the application. *Ferguson v. Quaker City Life Ins. Co.* (D. C. Mun. App. 1957, 129 A. 2d 189).

8. Policy constituting contract

Where a life policy by its terms constitutes the entire agreement, this section does not prevent an insurer from basing a defense on a policy provision stating that if within two years of date of issue insured has received treatment or has been attended by any physician for any serious disease, the policy should be voidable unless reference to such treatment is endorsed on the policy, even though the policy was issued on a written application and no copy of the application was delivered with the policy. *Pullen v. Sun Life Ins. Co. of America* (1941, 121 F. 2d 110, 74 App. D. C. 197, certiorari denied 62 S. Ct. 112, 314 U. S. 613, 86 L. Ed. 494).

Where written application, if there was one, was not delivered with industrial life policy, but policy by its terms constituted the entire agreement, this section did not prevent insurer from making any defense that it had under the terms of the policy. *Eureka-Maryland Assur. Co. v. Gray*, (1941, 121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

9. Preliminary report of agent

A preliminary report, signed only by the agent, intended for the general information of the company and not referred to in the policy, is no part of the contract of insurance and need not be attached thereto. *Griffin v. Metropolitan Life Ins. Co.* (36 App. D. C. 8).

10. Provisions outside contract

"No provision in the rules or elsewhere of an insurance company or fraternal order which was not physically embodied in the policy or application should be regarded as

a part of the contract." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D. C. 151, certiorari denied 39 S. Ct. 184, 248 U. S. 587, 63 L. Ed. 434).

11. Purpose

Purpose in adopting this section was to compel insurance companies, whether old line or fraternal, to state the entire contract either in the policy or the policy and application, so that the insured would be able to find the terms defining his obligations and rights as a policyholder in not more than two papers. *Brotherhood of Railroad Trainmen v. Groves* (48 App. D.C. 151, certiorari denied 39 S. Ct. 184, 248 U.S. 587, 63 L. Ed. 434).

12. Reinstatement of policies

This provision applies to an application for the reinstatement of a lapsed policy. *Metropolitan Life Ins. Co. v. Burch* (39 App. D.C. 397).

§ 35-204. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.

Any corporation now or hereafter formed or organized under any provision of law in force and effect in the District of Columbia to engage in an insurance business shall maintain its principal office within said District and shall keep its books, records, and files therein, and shall not remove from said District either its principal office or its books, records, or files without the permission of the Commissioners of the District of Columbia first had and obtained: *Provided, however*, That nothing contained in this section shall be construed to apply to the books, records, and files of any such corporation kept in a branch-office agency of such corporation, which books, records, and files relate solely to the business transacted by the said branch-office agency: *And provided further*, That any insurance corporation created by special Act of Congress is authorized upon resolution of its board of directors or trustees to reincorporate under the laws of any State of the United States, a certified copy of such resolution of such board of directors or trustees having first been filed in the office of the Superintendent of Insurance of the District of Columbia and recorded in the office of the Recorder of Deeds of the District of Columbia. Upon compliance with the above conditions, the assets of the said corporation shall thereby become vested in the new corporation. Said new corporation shall faithfully carry out any and every right, obligation, and liability of said original corporation.

Any corporation violating any of the provisions of this section shall forthwith forfeit its charter, which forfeiture shall operate as a revocation of its license to do business within said District.

Any officer, agent, or employee of any such corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall pay a fine of not less than \$300 or be imprisoned for not more than ninety days, or by both such fine and imprisonment. All prosecutions under this section shall be upon information filed in the Municipal Court for the District of Columbia in the name of the District of Columbia by the corporation counsel thereof or any of his assistants. (May 17, 1932, 47 Stat. 158, ch. 189; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CODIFICATION

These provisions were added to Chapter 18 of the Code of Law of the District of Columbia, act Mar. 3, 1901, ch. 854, without section designation.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 35-205. Compensation insurance regulations—Facts to be filed with Superintendent of Insurance—Approval required—Withdrawal of approval—Petition for review—Time for filing.

Every insurance corporation or association authorized to transact business in the District of Columbia, which insures employers against liability for compensation under the Employees' Compensation Act, shall file with the Superintendent of Insurance its manual of classifications and underwriting rules, together with basic rates for each class, and also merit rating plans designed to modify the class rates, none of which shall take effect until the Superintendent of Insurance shall have approved the same as adequate and reasonable for the group of risks to which they respectively apply. The Superintendent of Insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association, if, in his judgment, such premium rate or schedule is inadequate or unreasonable: *Provided*, That upon petition of the company or association or any other party aggrieved the opinion of the Superintendent of Insurance shall be subject to review by the United States District Court for the District of Columbia: *Provided further*, That any petition for review shall be filed with said court within thirty days after the rendition of opinion by the Superintendent of Insurance. (April 16, 1934, 48 Stat. 592, ch. 144; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

REFERENCE IN TEXT

Employees' Compensation Act, referred to in the text, is classified to § 1-311.

CODIFICATION

These provisions were added to Subchapter 5 of Chapter 18 of the Code of Law of the District of Columbia, act Mar. 3, 1901, ch. 854, without section designation.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Chapter 3.—LIFE INSURANCE—DEFINITIONS

Sec.

35-301. Short title—Application of law.

35-302. Definitions.

§ 35-301. Short title—Application of law.

Chapters 3 to 8 of this title shall be known as the "Life Insurance Act." All life-insurance companies now or hereafter incorporated or formed by authority of any general or special law of this District or by other Act of Congress, and all foreign and alien companies authorized to do business in this District, shall be subject to said chapters. (June 19, 1934, 48 Stat. 1127, ch. 672, Ch. I, § 1.)

EFFECTIVE DATE

Section 5 of Ch. VI of act June 19, 1934, provided that: "This Act [chapters 3 to 8 of this title] shall become effective immediately upon passage and approval [June 19, 1934]."

REPEAL OF INCONSISTENT PROVISIONS

Section 4 of Ch. VI of act June 19, 1934, provided that: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any of the provisions of this Act [chapters 3-8 of this title] are hereby repealed."

CROSS REFERENCE

Application to existing companies, see § 35-520.

NOTES TO DECISIONS

1. Navy Mutual Aid Association

The Navy Mutual Aid Association formed to aid families of deceased members, by providing a substantial sum for their relief at as near actual net cost of insurance as possible, and by securing for them without cost, pensions to which they may be entitled, was subject to the provisions of the Life Insurance Act, chapters 3 to 8 of this title, but not subject to the tax on insurance companies. *Fechteler et al. v. Jordan* (1955, 218 F. 2d 865, 95 U. S. App. D. C. 54).

§ 35-302. Definitions.

In chapters 3-8 of this title, unless the context otherwise requires—

"District" means the District of Columbia;

"Commissioners" means the commissioners of the District of Columbia;

"Superintendent" means the Superintendent of Insurance of the District of Columbia, or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan Numbered 5 of 1952.

"Department" means the Department of Insurance of the District of Columbia;

"Company" means any life insurance company and includes a corporation, company, or association of persons engaged in or proposing to engage in the business of life insurance;

"Domestic company" means an insurance company organized under the laws of the District, or formed or organized under an Act of Congress;

"Foreign company" means an insurance company organized under the laws of any State of the United States, or of any Territory or insular possession of the United States;

"Alien company" means a company organized under the laws of any country other than the United States or a Territory or insular possession thereof;

"Person" includes individuals, corporations, associations, and partnerships; personal pronouns include all genders; the singular includes the plural, and the plural includes the singular;

The term "general agent" in chapters 3-8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums, and/or issue policies in its behalf.

The term "agent" in chapters 3-8 of this title shall include any individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums in its behalf.

The term "solicitor" in chapters 3-8 of this title shall include any individuals authorized in writing by a duly-licensed agent to solicit risks and collect premiums in behalf of said agent.

The terms "agent" and "solicitor" shall not include officers or salaried employees of any company, association, or exchange which is authorized to transact business in the District, who do not solicit, negotiate, or place risks.

The term "broker" in chapters 3-8 of this title shall include consultant, surveyor and/or any person, partnership, association, or corporation who, for money, commission, or anything of value, acts or aids in any manner on behalf of the insured in negotiating contracts of insurance or placing risks or taking out insurances, including surety bonds;

"Net premium receipts" means gross premiums received less the sum of the following:

1. Premiums returned on policies canceled or not taken;

2. Premiums paid for reinsurances where the same are paid to companies duly licensed to do business in the District; and

3. Dividends paid in cash or used by policyholders in payment of renewal premiums or in purchase of paid-up additional insurance.

"Surplus" means the excess of admitted assets over liabilities and capital, in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock;

"Liabilities" means all debts, due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by chapters 3-8 of this title;

"Industrial life insurance" means that form of life insurance, either (a) under which the premiums are payable weekly, or (b) under which the premiums are payable monthly or oftener, if the face amount of insurance provided in the policy is less than \$1,000, and the words "industrial policy" are plainly printed upon the policy as a part of the descriptive matter. (June 19, 1934, 48 Stat. 1128, ch. 672, ch. I, § 2; July 16, 1953, 67 Stat. 172, ch. 196, § 2.)

AMENDMENT

1953—Act July 16, 1953, included in the definition of "Superintendent", officers or agencies succeeding to his functions under Reorg. Plan Numbered 5 of 1952.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 3 of act July 16, 1953, provided that: "This Act [amending §§ 35-302 and 35-712] shall take effect ninety days after approval [July 16, 1953]. A policy, rider, or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in the District immediately before the effective date of this Act, may be used or delivered or issued for delivery to any such person during three years after the effective date of this Act without being subject to the provisions of subsection (2), (3), or (4) of section 12 [§ 35-712]; *Provided, however,* That when any provision in such policy is in conflict with any provision of such section, the obligations of the insurer shall be governed by the provisions of such section."

Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

Sec.

35-401. Insurance department—Superintendent of Insurance—Oath—Bond—Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

35-402. Fees and charges.

35-403. Refunds of excess in fees, charges, or taxes.

35-404. Certificate of authority—Investigation of Qualifications—Effect—Issuance.

Sec.

35-405. Revocation or Suspension of certificate of authority—Notice—Alternate Penalty—Oaths.

35-406. Annual statement forms to be furnished by superintendent.

35-407. Annual statement—Verification—Failure to make.

35-408. Penalty for false statement.

35-409. Deceptive statements prohibited.

35-410. Contents of advertisements—Penalty for violation.

35-411. Defamation of companies—Penalty.

35-412. Superintendent to have power to issue subpoenas—Enforcement.

35-413. Enforcement of superintendent's orders or actions.

35-414. False statements in application for insurance.

35-415. General deposit—Amount—Deposits outside District.

35-416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.

35-417. Withdrawal of general deposits—Notice—Examination—Bond—Reinsurance—Notice.

35-418. Examinations—Reports—Verification—Hearing upon—Publication—Expense.

35-419. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.

35-420. When company to be deemed insolvent.

35-421. Reinsurance by superintendent.

35-422. Valuation of assets—Rule—Discretion of superintendent.

35-423. Superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.

35-424. Political contributions prohibited—Penalty—Immunity of witnesses.

35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.

35-426. Suspension or revocation of license—Grounds for—Hearing—Penalty.

35-427. Appeal from rulings of superintendent—Procedure—Costs and supersedeas bond—Liability of superintendent.

35-428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.

35-429. Premiums paid to agent—Agent trustee—Embezzlement—Penalty.

35-430. Contract of minors for life, health, and accident insurance—Beneficiaries—Surrender and discharge.

35-431. Assessment companies shall not be formed, admitted or licensed.

35-432. Appeal from superintendent to Commissioners.

§ 35-401. Insurance department—Superintendent of Insurance—Oath—Bond—Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

There shall be continued in the District a department charged with the execution of the laws relating to insurance, to be called the "Department of Insurance of the District of Columbia." At the head of such department there shall be a Superintendent of Insurance, who shall devote his entire service to the department. He shall be appointed by and hold his office at the pleasure of the commissioners. The superintendent, during his term of office, shall not

be interested in the business of any insurance company except as a policyholder. He shall take and subscribe an oath of office which shall be filed with the commissioners. In said department there shall be also two deputy superintendents and such other personnel as may be necessary within appropriations annually made by Congress for said department. The compensation of the superintendent, deputy superintendents, and other personnel shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended.

In case of the absence or inability of the superintendent, or in the event of the removal of the superintendent, and pending the appointment of his successor, one of the deputy superintendents shall perform the duties of the superintendent.

The commissioners shall provide the department with an official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear "Department of Insurance of the District of Columbia."

Every certificate and other document or paper executed by such superintendent, or his deputies, in pursuance of any authority conferred upon him by law and sealed with the seal of his office, and all copies of papers certified by him or by his deputies and authenticated by said seal, shall, in all cases, be evidence equally and in like manner as the original thereof and shall have the same force and effect as would the original in any suit or proceeding in any court of this District.

The office of the superintendent shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as it may be provided otherwise herein.

The superintendent shall report annually to the commissioners his official transactions, and shall include in such report abstracts of the annual statements of the several companies and an exhibit of the financial condition and business transactions of the same as shown by their annual statements. He shall also include therein a statement of the receipts and expenditures of the department for the preceding year and such recommendations relative to insurance and the insurance laws of the District as he shall deem proper.

The superintendent is authorized to attend and participate in the meetings of the national convention of insurance commissioners and of the committees thereof; he is also authorized to visit the insurance departments of the various states when in his judgment such visits are necessary for the proper conduct of his official office; and he may require such of his assistants as he may designate to attend and participate in such meetings, all subject to the prior approval of the commissioners. The actual expense of such attendance by the superintendent and his assistants shall be paid in like manner as other expenses of the District are paid. (June 19, 1934, 48 Stat. 1129, ch. 672, ch. II, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENT

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

CROSS REFERENCE

Application to existing companies, see § 35-520.

§ 35-402. Fees and charges.

All charges and fees provided for in this section shall be paid to the collector of taxes of the District of Columbia and deposited in the treasury of the United States to the credit of the District.

For filing charter or articles of incorporation or association, or deed of settlement or copy thereof, required by law, \$10; for each company certificate of authority, \$10; for license of each general agent, \$50; for license of each agent or solicitor, \$5; for license of each broker, \$50. All licenses for brokers, insurance companies, their agents or solicitors, who may apply for permission to do business in the District of Columbia, shall date from the first of the month in which application is made and expire on the 30th day of April following, and payment shall be made in proportion. (June 19, 1934, 48 Stat. 1130, ch. 672, Ch. II, § 2.)

CROSS REFERENCES

Licensing.

Agents, see § 35-425 et seq.

Brokers, see § 35-428.

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

§ 35-403. Refunds of excess in fees, charges, or taxes.

Whenever it appears to the satisfaction of the superintendent that because of some error, mistake, or erroneous interpretation of a statute, a company has paid fees, charges, or taxes in excess of the amount legally chargeable against it, the superintendent shall, on application of the company, present the matter to the commissioners, with the view of refunding to such company any such excess, or applying the excess or portion thereof toward the payment of fees, charges, or taxes already due from such company. (June 19, 1934, 48 Stat. 1131, ch. 672, Ch. II, § 4.)

CROSS REFERENCE

Tax refunds, general provisions, see § 47-1016 et seq.

§ 35-404. Certificate of authority—Investigation of Qualifications—Effect—Issuance.

It shall be the duty of the Superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The Superintendent may, however, satisfy himself by such investigation as he may deem proper or necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the Superintendent, authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate

shall be made to expire on the thirtieth day of April next succeeding the date of its issuance. No company shall transact any business of insurance in or from the District until it shall have received a certificate of authority as authorized by this section and no company shall transact any business of insurance not specified in such certificate of authority. (June 19, 1934, 48 Stat. 1131, ch. 672, Ch. II, § 5; Feb. 22, 1958, 72 Stat. 19, Pub. L. 85-334, § 1.)

AMENDMENT

1958—Act Feb. 22, 1958, authorized the Superintendent to refuse issuance or renewal of certificates, set an annual expiration date for such certificates, and made the section apply to business transacted from the District.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

Section 11 of act Feb. 22, 1958, Pub. L. 85-334, provides as follows:

"Where any provision of this Act [§§ 35-404, 35-415, 35-426, 35-1306, 35-1334, 35-1336, 35-1339, 35-1340, 35-1342, 35-1343] or any amendment made by this Act refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such provision or amendment shall be deemed to refer to the Commissioners of the District of Columbia or to the office, officer, or agency which the Commissioners have heretofore designated or may hereafter designate to perform the functions of the office or agency so abolished."

CROSS REFERENCES

Assessment companies forbidden, see § 35-431.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see § 47-2344.

Revocation of certificate of authority, see § 35-405.

§ 35-405. Revocation or suspension of certificate of authority—Notice—Alternate Penalty—Oaths.

The Superintendent shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of chapters 3—8, or which—

- (a) is impaired in capital or surplus;
- (b) is insolvent;
- (c) is in such a condition that its further transaction of business in the District would be hazardous to its policyholders or creditors or to the public;
- (d) has refused or neglected to pay a valid final judgment against such company within thirty days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmation on appeal;
- (e) has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;
- (f) has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Superintendent, his deputies, or duly appointed examiners;
- (g) has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;
- (h) fails to file with the Superintendent a copy of an amendment to its charter or articles of association within thirty days after the effective date of such amendment;
- (i) has had its corporate existence dissolved or its certificate of authority revoked in the State in which it was organized;

(j) has had all its risks reinsured in their entirety in another company, without prior approval of the Superintendent; or

(k) has made, issued, circulated, or caused to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting either its status or the terms of any policy issued or to be issued by it, or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or has used any name or title of any policy or class of policies misrepresenting the true nature thereof.

The Superintendent shall not revoke or suspend the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing: *Provided*, That if the Superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required: *Provided further*, That in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section, after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than \$200 when in his judgment he finds that the public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Superintendent to the Collector of Taxes of the District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (June 19, 1934, 48 Stat. 1131, ch. 672, Ch. II, § 6; May 4, 1950, 64 Stat. 103, ch. 157, § 1; Feb. 22, 1958, 72 Stat. 20, Pub. L. 85-334, § 2.)

AMENDMENTS

1958—Act Feb. 22, 1958, amended section generally, and among other changes, authorized suspension as well as revocation, and added provisions relating to transaction of business in the District when hazardous to policyholders, creditors or the public, refusal or neglect to pay final judgments, failure to file amendment to charter or articles of association, dissolution or revocation of certificate of authority in State in which organized, reinsurance of all risks in their entirety, misrepresentations of company status or the terms, name or title of any policy or class of policy issued or to be issued, or of dividends or shares of surplus distributable thereon, authorized the Superintendent to administer oaths to witnesses at hearings, and made violation of such oath punishable as perjury.

1950—Act May 4, 1950, added the proviso relating to penalties in lieu of revoking certificate.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 8 of act May 4, 1950, provided that: "This Act [amending §§ 35-405, 35-426, 35-431, 35-508, 35-601(h), 35-722 to 35-724, and repealing § 35-532] shall take effect ninety days after the date of enactment [May 4, 1950]."

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to

refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

CROSS REFERENCE

Perjury, see § 22-2501.

§ 35-406. Annual statement forms to be furnished by Superintendent.

The superintendent shall, annually, in the month of December, furnish to each of the companies authorized to do business in the District and required to make an annual statement to the Department two or more blanks in form adapted for such statements, and which shall conform as nearly as may be practicable to the form of statement from time to time adopted by the national convention of insurance commissioners. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 7.)

CROSS REFERENCE

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

§ 35-407. Annual statement—Verification—Failure to make.

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31, immediately preceding, on forms furnished by the superintendent. Such statement shall be verified by the oaths of the president and secretary of the company, or, in their absence, by two other principal officers. The statement of an alien company shall embrace only its condition and transactions in the United States and shall be verified by the oath of its resident manager or principal representative in the United States. In case a company shall fail to make and file its annual statement within the time herein prescribed its authority to transact business in the District shall thereupon terminate. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 8.)

CROSS REFERENCES

Reports by companies issuing variable contracts, see § 35-541.

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

§ 35-408. Penalty for false statement.

A director, officer, agent, or employee of any company who wilfully and knowingly subscribes, makes, or concurs in making or publishing any annual or other statement required by law, containing any material statement which is false, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not less than two nor more than ten years. A person who wilfully and knowingly makes oath to any such false statement shall be guilty of perjury. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 9.)

CROSS REFERENCE

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

§ 35-409. Deceptive statements prohibited.

No company doing business in the District or agent thereof shall state or represent by advertisement in any newspaper, periodical, or magazine, or by any sign, circular, card, policy of insurance, or certificate of renewal thereof or otherwise that any funds or assets are in possession of such company which are

not actually possessed by it and available for the payment of losses and claims and held for the protection of its policyholders and creditors. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 10.)

CROSS REFERENCES

Penalties for violation, see § 35-410.

Taxation and fiscal affairs of insurance companies, see § 47-1801 et seq.

§ 35-410. Contents of advertisements—Penalty for violation.

Every advertisement or public announcement and every sign, circular, or card issued by any domestic, foreign, or alien company doing business in the District representing its financial standing shall exhibit the amount of the capital stock actually paid up in cash, the assets owned, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made to the superintendent by such company. Every advertisement or public announcement and every sign, circular, or card issued by an alien company doing business in the District, representing its financial standing shall exhibit as capital stock and assets only the capital stock and assets held by its United States branch, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made by such company to the superintendent.

Any violation of this section or section 35-409 shall be a misdemeanor, and any person convicted of such violation shall, for the first offense, be liable to a fine of not more than \$500, and for each subsequent offense shall be liable to a fine of not more than \$1,000. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 11.)

§ 35-411. Defamation of companies—Penalty.

It shall be unlawful for any company now or hereafter doing business in the District, or any officer, director, clerk, employee, general agent, agent, or solicitor thereof, broker or any other person, to make, verbally or otherwise, publish, print, distribute, or circulate, or cause the same to be done, or in any way to aid, abet, or encourage the making, printing, publishing, distributing, or circulating of, any pamphlet, circular, article, literature, or statement of any kind which is defamatory of any company now or hereafter doing business in the District, or which contains any false criticism or false statement calculated to injure such company in its reputation or business; and any officer, director, clerk, employee, general agent, agent, or solicitor of any company, broker or any other person, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 12.)

§ 35-412. Superintendent to have power to issue subpoenas—Enforcement.

In the examination of any company as provided for in chapters 3-8 of this title the superintendent shall have power to issue subpoenas in the name of the Chief Judge of the United States District Court for the District of Columbia to compel wit-

nesses to appear and testify and/or to produce all books, records, papers, or documents before said superintendent.

If any witness having been personally summoned shall neglect or refuse to obey the subpoena issued as herein provided, then and in that event the superintendent may report that fact to the United States District Court for the District of Columbia, or one of the judges thereof, and said court, or any judge thereof, hereby is empowered to compel obedience to said subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that court. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 13; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia"; and "Chief Judge" for "Chief Justice", "judges" for "justices", and "judge" for "justice."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 35—413. Enforcement of superintendent's orders of actions.

The superintendent may, through the corporation counsel of the District, invoke the aid of any court of competent jurisdiction to enforce any order made or action taken by him in pursuance of law. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 14.)

§ 35—414. False statements in application for insurance.

The falsity of a statement in the application for any policy of insurance shall not bar the right to recovery thereunder unless such false statement was made with intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the company. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 15.)

CROSS REFERENCES

Form and contents of insurance contracts, see §§ 35—703 to 35—712.

Special provisions governing industrial policies, see § 35—1001 et seq.

NOTES TO DECISIONS

Burden of proof 1
Change of beneficiary 2
Conditions precedent 3
Evidence 4
Generally 5
Instructions 6
Notice to insurer 7
Purpose 8
Questions for jury 9
Waiver 10

1. Burden of proof

Where insurer charged that insured prior to application for life policy had had duodenal ulcer, abnormal blood pressure, dizziness, loss of consciousness and kidney disease, and that in application he falsely denied their existence, to avoid life policy for material misrepresentation on account of answers, insurer had burden of proving one or more of them false. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

Under this section insurer has burden of proof as to elements indicated in order to avoid life policy. *Metro-politan Life Ins. Co. v. Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

2. Change of beneficiary

An erroneous statement in an application for change of beneficiary which does not relate to a material matter

and is not made with intent to deceive, does not void a life policy. *Carter v. Provident Ins. Co.* (1941, 122 F. 2d 960, 74 App. D. C. 348).

3. Conditions precedent

The effect of this section enacted to prevent innocent and immaterial misrepresentations in application from avoiding insurance cannot be escaped by device of contracting to the contrary or labeling a contractual attempt to do so a condition to the attaching of the risk. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

The purpose of this section regarding effect of false statement in application for insurance was to nullify contractual provisions contrary to its terms, and therefore a so-called condition precedent is invalid to extent that it is more broadly effective than this section allows. *Id.*

Where application for life policy contained clause that policy should not take effect until received by insured and full first premium thereon was paid while conditions material to risk represented by statements in application remained same as described therein, and insurer contended that the clause made truth of statements conditions precedent to attaching of risk, the so-called "condition precedent" was invalid to extent that it was more broadly effective than permitted by this section regarding false statements in application for insurance. *Id.*

4. Evidence

Where evidence was conflicting whether hospitalization of insured and hospital record disclosing diagnosis of duodenal ulcer were genuine or fictitious, excluding evidence that insurance companies generally, and defendant insurer usually declined risk on finding a hospital record disclosing diagnosis of duodenal ulcer, was not error. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

Where insured's wife and companion testified that wife informed insurer's representative of insured's hospitalization not disclosed by application for life policy, refusing to permit insurer to cross-examine the wife and her companion concerning what was said in conversation with the representative as to change in beneficiary was not error, where insurer sought to avoid liability on ground of false statements in application. *Id.*

Evidence concerning insured's statements informing his wife, who was beneficiary of life policy, of hospitalization not disclosed by application was not objectionable on ground that statements were "self-serving declarations" and "hearsay", where evidence disclosed facts leading up to the wife's visit to insurer's representative the following day and reason for visit and were admissible to show that full disclosure of facts had been made to insurer's representative. *Id.*

Where insurer sought to avoid liability on life policy on ground that insured, prior to application, had had duodenal ulcer, abnormal blood pressure, dizziness, loss of consciousness, kidney disease, and in application falsely denied existence thereof, evidence sustained verdict against insurer. *Id.*

In action on life policy defended on ground of misrepresentations in application, objection to testimony of physician who attended insured as to what he treated insured for on ground of privilege was properly sustained. *Metro-politan Life Ins. Co. v. Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

Where insured stated "Don't remember when last ill" in answer to question in application for life policy, and undisputed evidence established that three months previously to applying for policy insured was so sick that he had to be carried out of bathroom and immediately thereafter was treated by two different physicians on not less than six occasions, insured's statement as matter of law constituted a false misrepresentation, preventing recovery on policy. *Id.*

5. Generally

To avoid life policy under this section, the statement must be both false and made with intent to deceive or material to risk or its acceptance, unless possibly both intent to deceive and materiality are required in addition to falsity. *Prudential Ins. Co. of America v. Saxe* (1943,

134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

A misstatement in application for life policy to be "material to hazard assumed" within this section must be shown in some way to have affected the hazard assumed or contributed to the loss in a substantial manner. *Id.*

To void a life insurance policy on the ground of false representation, the answer must not only have been untrue, but it must have been with reference to a material matter. *Kaplan v. Manhattan Life Ins. Co.* (1940, 109 F. 2d 463, 71 App. D.C. 250).

Where the insured stated in his application that he had not consulted a physician for any ailment or disease not included in his previous answers and that he had not consulted or been treated by a physician within the preceding five years, he was making a misrepresentation. Evidence shows as a matter of law that these misrepresentations materially affected either the acceptance of the risk or the hazard assumed by the company, or both. *Kaitlin v. Metropolitan Life Insurance Co.* (D. C. Mun. App. 1949, 65 A. 2d 188).

6. Instructions

In action on life policy defended on ground of misrepresentations in application which denied knowledge of heart trouble and medical attendance, instructions which submitted only issue as to whether there were misrepresentations as to heart trouble, and which failed to submit issue as to whether there were misrepresentations in regard to medical attendance, were erroneous. *Metropolitan Life Ins. Co. v. Adams* (D. C. Mun. App. 1944, 37 A. 2d 345).

7. Notice to insurer

Where insured's wife informed insurer's representative of hospitalization of insured not disclosed by application for life policy, in determining question of waiver by insurer, the representative's knowledge was to be considered "notice" to the insurer regardless of provision of policy that the representative had no power to bind the insurer by accepting any information. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

8. Purpose

This section providing that falsity of statement in application shall not bar right to recovery under policy unless statement was made with intent to deceive or unless it materially affected either acceptance of risk or hazard assumed by insurer, was intended to prevent innocent and immaterial misrepresentations in application from avoiding insurance. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

9. Questions for jury

Where evidence was conflicting as to whether hospitalization of insured and hospital record disclosing diagnosis of duodenal ulcer were genuine or were fictitious, whether insured's answers in application for life policy which failed to disclose hospitalization and diagnosis were material to acceptance of risk was for jury. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D. C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

Where insurer contended that life policy did not take effect because of false statements in application regarding hospitalization and consultation of physician, evidence as to whether hospitalization was genuine or was fictitious for purpose of covering up alleged "social lapse" of insured caused by overdrinking at a wedding party, was for jury. *Id.*

Where evidence was conflicting regarding whether insured's hospitalization was genuine or fictitious, whether misstatements in application for life policy regarding hospitalization and consultation of physician were made with intent to deceive, and were material to hazard assumed or false within meaning of this section regarding effect of false statements in application, was for jury. *Id.*

10. Waiver

Where insured's wife informed insurer's representative of the fact, time and place of insured's hospitalization that

had not been disclosed by application for life policy, and that wife thought insured was going to die, but representative informed wife that policy was not affected and that she should continue premium payments, the disclosure was adequate to form basis for waiver. *Prudential Ins. Co. of America v. Saxe* (1943, 134 F. 2d 16, 77 U. S. App. D.C. 144, certiorari denied 63 S. Ct. 1033, 319 U. S. 745, 87 L. Ed. 1701).

Where insurer's representative with authority to receive information on insurer's behalf and to forward complaints and controversies concerning matters affecting policy to insurer's home office received knowledge of existence of ground of forfeiture of life policy and failed to communicate it promptly to insurer's home office, insurer became charged with "notice" thereof so that where insurer received premiums and allowed matter to rest for nearly a month until insured's death "waiver" of ground of forfeiture was effectually completed. *Id.*

Where insurer's representative having authority to solicit risks and collect premiums was informed by insured's wife of hospitalization of insured not disclosed by application, and thereafter premiums were accepted and insurer and representative stood idle for nearly a month until insured's death, there was a "waiver", precluding insurer from avoiding liability because of insured's failure to disclose the hospitalization, notwithstanding provision of policy prohibiting the representative from waiving any forfeiture. *Id.*

§ 35-415. General deposit—Amount—Deposits outside District.

Every company desiring to transact business in the District shall, as a prerequisite to the issuance of a certificate of authority, deposit, as herein provided, approved securities of not less than \$100,000 market value. In the case of domestic companies, such deposit shall be made in the District as prescribed under section 35-416: *Provided*, That the deposit of every domestic company heretofore organized under the provisions of the laws of the District or other Act of Congress may, in the discretion of the superintendent, be limited (1) for stock companies, to an amount equal to the capital stock outstanding on June 19, 1934; (2) for nonstock companies, to such amount as in the opinion of the superintendent would be required from stock companies of comparable size. In no case shall the deposit of a domestic company be less than \$25,000 in value. In the case of foreign or alien companies, the deposit may be made as provided under section 35-416, or may be made with the supervising official of any State, Territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all policyholders.

In the case of a deposit made with an official outside the District, a certificate of deposit from said official shall be filed with the superintendent, showing the character of the deposit, before a certificate of authority to transact business in the District may be issued, and, if the securities so deposited are not of the class authorized by chapters 3-8 of this title for investments of companies, the superintendent may require an additional deposit in approved securities. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 16; May 20, 1940, 54 Stat. 217, ch. 204.)

AMENDMENT

1940—Act May 20, 1940, substituted "Every company desiring to transact business in the District shall, as a prerequisite to the issuance of a certificate of authority, deposit, as herein provided, approved securities of not less than \$100,000 market value. In the case of domestic companies, such deposit shall be made in the District

as prescribed under section 35-416;" for "Every company desiring to transact business in the District shall before being licensed, deposit approved securities of not less than \$100,000 market value with the superintendent or the supervising official of any State, Territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all policyholders:," "In the case of a deposit made with an official outside the District" for "If such deposit is made with an official other than the superintendent", "a certificate of authority" for "a license", inserted "in the discretion of the superintendent" in the proviso, "in value" after "\$25,000", and added provisions relating to deposits of foreign or alien companies.

CROSS REFERENCES

Assessment companies forbidden, see § 35-431.

Reserves and capital, generally, see § 35-201 et seq.

§ 35-416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.

When any company is required by chapters 3-8 of this title to make a deposit in the District, such deposit shall be in securities of the class authorized by chapters 3-8 of this title for investments of companies, and shall be delivered by the company to the secretary of the Board of Commissioners of the District and the auditor of the District, who shall receive and hold the same subject to the lawful orders of the superintendent, and who shall be responsible for the safe-keeping of all securities deposited or delivered under the authority of this section. The company shall have the right to collect the income on deposited securities so long as it continues solvent and complies with the laws of the United States and of the District, and it shall have the right to substitute for such securities other securities, provided such substituted securities are of the character, amount, and value required by this section, and are approved by the superintendent: *Provided*, That not less than \$25,000 of such deposit shall at all times consist of bonds or other evidences of indebtedness of the United States or of any state of the United States, or of any county or incorporated city of any state of the United States, and that securities of a class different from such bonds or other evidences of indebtedness shall not in any case be accepted for deposit except with the specific approval of and at values determined by the superintendent.

If the value of securities deposited by any company shall decline, the superintendent may require the company to make a further deposit, in order that the amount and value of the deposit required by chapters 3-8 of this title shall at all times be maintained. (June 19, 1934, 48 Stat. 1134, ch. 672, Ch. II, § 17; May 20, 1940, 54 Stat. 217, ch. 204.)

AMENDMENT

1940—Act May 20, 1940, amended section generally. Prior to such amendment, section read as follows: "When any company is required by the laws of the District, or of any State or county, or by other competent authority, to make a deposit with an insurance supervising official, or other financial officer, and where said deposit is made by the company in bonds or other evidence of indebtedness of the United States, or of any State of the United States, or of any county or incorporated city of any State of the United States, the said securities shall be delivered to the Secretary of the Board of Commissioners of the District of Columbia, and the Auditor of the District of Columbia, who shall receive and hold the same, subject to the lawful orders of the Super-

intendent of Insurance, and who shall be responsible for the safekeeping of all securities deposited or delivered under the authority of this section, so long as the company continues solvent and complies with the laws of the United States and of the District of Columbia, and it may in that event collect the income on such securities. The company shall have the right to substitute therefor other securities, required by this section as lawful investment, provided such substitute securities are of the character, amount, and value called for by this section and are approved by the Superintendent of Insurance. If the value of the securities deposited by any company shall decline below the amounts so required, the company shall make a further deposit and maintain the deposit in the amount and value so required."

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

Reorg. Order No. 23 transferred the functions relating to the delivery of securities required to be deposited by insurance companies transacting business in the District of Columbia from the Secretary of the Board of Commissioners and the Auditor of the District to the Internal Audit Officer or his deputy and the Disbursing Officer or his deputy, Department of General Administration. This order was issued by the Board of Commissioners pursuant to Reorg. Plan No. 5 of 1952. The plan and the order are set out in the Appendix to title 1, Administration.

CROSS REFERENCES

Investment permitted, see § 35-535.

Reserves and capital, generally, see § 35-201 et seq.

§ 35-417. Withdrawal of general deposits—Notice—Examination—Bond—Reinsurance—Notice.

When a company determines to discontinue its business or to cease to do business in the District and desires to withdraw its deposit made in the District pursuant to chapters 3-8 of this title the superintendent shall, upon the application of the company, and at its expense, give notice of such intention in a newspaper of general circulation in the District once a week for three consecutive weeks. After such publication he shall deliver to such company or its assigns the securities so deposited when he is satisfied upon examination and investigation made by him or under his authority and upon the oaths of the president and secretary or other chief officers of the company that all debts and liabilities of every kind due and to become due which the deposit was made to secure are paid and extinguished: *Provided*, That the superintendent may require any company so withdrawing from the District to furnish bond to cover any undisclosed or contingent liabilities.

Upon a company being wholly reinsured the superintendent may deliver to it or to its assigns all securities deposited by it upon compliance with the following condition: The reinsuring company shall assume and agree to discharge all liabilities of every kind due and to become due which the deposit of the reinsured company was made to secure. Such reinsuring company shall have a deposit in the District or with some State official in the United States in securities recognized by this law as lawful investments of the company in an amount and value not less than the deposit required of the reinsured company. The deposit of the reinsuring company shall be such that it will subsist for the security of the obligations of the reinsured company assumed by the reinsuring company. The superintendent shall give

notice of such reinsurance agreement and of the application for the deposit once a week for three consecutive weeks in a newspaper of general circulation in the District before the delivery of such securities to the reinsuring company. (June 19, 1934, 48 Stat. 1134, ch. 672, Ch. II, § 18.)

CROSS REFERENCE

Reserves and capital, generally, see § 35-201 et seq.

§ 35-418. Examinations—Reports—Verification—Hearing upon—Publication—Expense.

The superintendent may examine the books, papers, property, and the affairs of any insurance company organized or doing business in the District and of any company engaged in or professing to be engaged in organizing, promoting, or soliciting stock or capital contributions to or aiding in the formation of an insurance company or of any company which holds the capital stock of an insurance company for the purpose of controlling the management thereof as voting trustees or otherwise. The superintendent, his deputy, or any examiner may examine under oath the officers and agents of such company and all persons deemed to have material information regarding the company's property or business. Every such company, its officers and agents, shall produce at the home office of the company at the time designated by the superintendent, its books of original entry and all records and papers in its or their possession relating to its business or affairs, and any other person may be required to produce any book, record, or paper in his custody relevant to the examination, for the inspection of the superintendent, his deputy or examiners, whenever required; and the officers and agents of such company shall facilitate such examination and aid the examiners in making the same so far as it is in their power to do so. Every such examiner shall make a full and true report of every examination made by him, verified by his oath, which shall comprise only facts appearing upon the books, papers, records, or documents of such company, or ascertained from the sworn testimony of its officers or agents or other persons examined under oath concerning its affairs, and said report so verified shall be presumptive evidence in any action or proceeding in the name of the District against the company, its officers or agents, of the facts therein stated. The superintendent shall grant a hearing to the company examined, or he shall furnish it a copy of his report, in tentative form, requesting that the statements and items therein contained be checked, and the report be returned to the superintendent within the time specified by him, before filing any such report and before making public such report or any matters relating thereto; and may withhold any such report from public inspection for such time as he may deem proper; and may, after so filing, if he deems it for the interest of the public to do so, publish any such report or the result of any such examination as contained therein in one or more newspapers in the District without expense to the company. It shall be the duty of the superintendent to examine every domestic insurance company at least once in three years.

The expense of every such examination, not to include salaries, shall be paid by the company ex-

amined, and such company shall pay to the superintendent, his deputies, and/or his examiners the actual expense of such examination upon itemized bills furnished by the superintendent. (June 19, 1934, 48 Stat. 1135, ch. 672, Ch. II, § 19.)

CROSS REFERENCE

Inspection and examination of insurance companies, generally, see §§ 35-108, 35-201, 35-202, 35-903, 35-1313.

§ 35-419. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.

The superintendent may, the corporation counsel of the District representing him, apply to the United States District Court for the District of Columbia for a rule directing any company doing business in the District, any company organized under the laws of the District or other Acts of Congress, or any company in course of organization, to show cause why the superintendent should not take possession of its property and conduct its business and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require, whenever any such company (a) is insolvent; or (b) in the case of a stock company, has neglected or refused to observe a lawful order of the superintendent to make good within the time prescribed by law any deficiency of its capital or surplus, or in the case of a mutual company, if its assets have not become equal to its liabilities within ninety days from the date of notification thereof by the superintendent; or (c) has by contract or reinsurance, or otherwise transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business, in the property or business of any other company, association, society, or order, without having first obtained the written approval of the superintendent; or (d) is found, after an examination by the superintendent, his deputy or examiners, to be in such condition that its further transaction of business will be hazardous to its policyholders; or (e) has willfully violated its charter; or (f) is carrying on activities against public policy.

On such application, or any time thereafter, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith and shall either deny the application or direct the superintendent to take possession of the property and conduct the business of such company, and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or of the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed and that the company can properly resume possession of its property and the conduct of its business.

If, on the like application and rule to show cause, and after a hearing, the court shall order the liqui-

dation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted.

For the purpose of this section the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents of insurance as his agent or agents, and to employ clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The fair and reasonable compensation of such special deputy superintendents, clerks, and assistants and all expenses of taking possession of and conducting the business of liquidating any such company shall be recommended by the superintendent, subject to the approval of the court, and shall on certificate of the superintendent be paid out of the funds or assets of such company.

For the purpose of this section the superintendent shall have power, subject to the approval of the court, to make and prescribe such rules and regulations as to him shall seem proper.

The superintendent shall transmit to the commissioners, in his annual report, the names of the companies so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders, and the public with his proceedings under this section; and, to that end, the special deputy superintendent in charge of any such company shall file annually with the superintendent a report of the affairs of such company similar to that required by section 35-407. The court may require corporate surety bond from the superintendent or any assistant appointed by him, in such amount as it may deem necessary, the cost of which bond shall be paid as other expenses provided under this section. (June 19, 1934, 48 Stat. 1135, ch. 672, Ch. II, § 20; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Rules and regulations generally, see § 35-102 et seq.

§ 35-420. When company to be deemed insolvent.

Every insurance company whose assets and credits are not sufficient to reinsure its outstanding risks in a solvent insurance company, shall be deemed

insolvent and may be proceeded against as an insolvent company. (June 19, 1934, 48 Stat. 1137, ch. 672, Ch. II, § 21.)

§ 35-421. Reinsurance by superintendent.

The superintendent may reinsure all of the policy obligations of any domestic insurance company, of which he is a receiver, in any solvent company authorized to do business in the District, if the assets of the company are sufficient to effect such reinsurance. If such assets are insufficient for that purpose, the superintendent, upon like consent, may reinsure a percentage of each outstanding policy obligation of such company to the extent that its assets may be sufficient for that purpose. No contract of reinsurance shall be entered into by the superintendent, except in pursuance of an order of the court in which he was appointed receiver directing the reinsurance and establishing the general form of the contract for the same. (June 19, 1934, 48 Stat. 1137, ch. 672, Ch. II, § 22.)

§ 35-422. Valuation of assets—Rule—Discretion of superintendent.

All bonds or other evidences of debt having a fixed term and rate held by any company authorized to do business in the District, if amply secured and if not in default as to principal or interest, shall be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made: *Provided*, That the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase: *Provided further*, That the superintendent shall have full discretion in determining the method of calculating values according to the foregoing rule, and the values found by him in accordance with such method shall be final and binding: *And provided further*, That any such company may return such bonds or other evidences of debt at their market value or their book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing rule. (June 19, 1934, 48 Stat. 1137, ch. 672, Ch. II, § 23.)

CROSS REFERENCE

Investments permitted, see §§ 35-416, 35-535.

§ 35-423. Superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.

Every domestic company not having its home office in the District and every foreign or alien company now or hereafter transacting business in the District, and every foreign or alien company now or hereafter soliciting, selling, or writing insurance on any resident of the District, through the medium of the United States mails, shall file with the superintendent a duly executed instrument appointing and constituting him and his successors the true and lawful attorney of such company upon whom all lawful process in any action or legal proceeding against it may be served and therein shall agree that any lawful process against it which may be served upon

its said attorney, as herein provided, shall be of the same force and validity as if served upon the company and the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by leaving the same with the superintendent or his deputy, and service thereof upon such attorney shall be deemed service upon the principal. The superintendent shall forthwith forward such process by mail to the company, or, in the case of an alien company, to the resident manager or last appointed general agent of the company in the United States. The deposit, by the superintendent or his deputy, of such process sent by registered mail or by certified mail in a sealed envelope, postage prepaid, in the United States mail and service of such process, shall not be effectual until the same has been so mailed and received by the company and the return receipt for such registered or certified mail shall be prima facie evidence of the notice of service to a company, or to the resident manager in the case of an alien company.

Failure of any such company to file such instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such insurance company transacting business or soliciting, selling, or writing insurance on any resident of the District without designating an attorney for service of process, incident to adjustment of claims and kindred matters, shall, upon complaint filed by the superintendent in the United States District Court for the District of Columbia, be fined, upon conviction of violating any provision of this section, not to exceed \$200 a day for such violation. (June 19, 1934, 48 Stat. 1137, ch. 672, Ch. II, § 24; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(48).)

AMENDMENT

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail" and substituted "the return receipt for such registered or certified mail" for "registered receipt."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery, see § 14-407.

NOTES TO DECISIONS

In general 1 Constitutionality 2

1. In general

Where an individual certificate of insurance was mailed to insured, although master policy of group insurance plan was delivered in Missouri to representative of association having group policy, and premiums were paid to association, and association mailed check to insurer, insurer was subject to substituted service in action by

beneficiary on policy by service upon Superintendent of Insurance of District of Columbia under this section providing that every foreign company soliciting, selling, or writing insurance on any resident of the District through medium of United States mails may be served by service upon Superintendent. *Security National Life Insurance Co. v. Washington* (D. C. Mun. App. 1955, 113 A. 2d 749).

2. Constitutionality

Congress, legislating for the District of Columbia, has power to protect the interest of District residents for whom out of town companies write insurance policies, and such protective legislation is effective even though it may have repercussions beyond the geographical boundaries of the District. *Security National Life Insurance Co. v. Washington* (D. C. Mun. App. 1955, 113 A. 2d 749).

This section, providing that every foreign company soliciting, selling, or writing insurance on any resident of District of Columbia through medium of United States mails can be served by service upon District Superintendent of Insurance is constitutional and does not violate due process of law requirements. *Id.*

§ 35-424. Political contributions prohibited—Penalty—Immunity of witnesses.

No company doing business in the District shall directly or indirectly pay or use, or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization, or for or in aid of any corporation, joint-stock, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney, or agent of any company which violates any of the provisions of this section, who participates in, aids, abets, or advises, or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than one year and a fine of not more than \$1,000, and any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company for the amount so contributed.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this section, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 19, 1934, 48 Stat. 1138, ch. 672, Ch. II, § 25.)

CROSS REFERENCE

Perjury, generally, see § 22-2501.

§ 35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.

No person shall act within the District for any life-insurance company as a general agent, agent, or solicitor in the solicitation or procurement of applications for insurance unless he has complied with the provisions of this section and has secured a license from the superintendent of insurance. Each applicant for such license shall file with the superintendent of insurance his written application therefor on blanks furnished by the superintendent, which application shall be signed and sworn to by the applicant and shall give his name, age, residence, place of business, and occupation for five years next prior to the date of application and also set forth his qualifications for such license, namely, his familiarity with the life-insurance laws of the District and with the provisions of the contracts to be negotiated; what insurance experience he has had, if any; what insurance instruction he has had or expects to receive; whether he has been refused or has had suspended or revoked a license to solicit insurance by the insurance department or supervising officials of the District of Columbia or of any State; whether any insurance company or any general agent claims such applicant is indebted under any agency contract or otherwise, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto, if any; whether he has had an agency contract canceled, and if so, when, by what company, or general agent and the reason for such action, and such other information as the superintendent may require. The applicant shall be vouched for by an official or a licensed representative of the company for which he proposes to act, who shall certify whether the applicant is personally known to him, whether the applicant has been appointed a general agent, agent, or solicitor to represent such company, and that such company has duly investigated the character and record of such person, and has satisfied itself that he is trustworthy and qualified to act as its general agent, agent, or solicitor and intends to hold himself out in good faith as a life insurance general agent, agent, or solicitor. If, upon the showing made, the superintendent of insurance is reasonably satisfied that the applicant is a trustworthy person he shall promptly issue the license applied for. A general agent, agent, or solicitor licensed to represent any life insurance company doing business in the District shall be entitled to place excess or rejected risks in any other company lawfully doing business in the District, with the knowledge and approval of his own company without additional or separate license. Every license issued under this section shall expire annually on the 30th day of April next after its issue unless prior thereto it is revoked or suspended by the Superintendent of Insurance or the authority of the general agent, agent, or solicitor to act for the company is terminated.

In the absence of a contrary ruling by the superintendent in a given case, license renewals shall be

issued from year to year upon the request of the company without further action on the part of the general agent, agent, or solicitor.

No officer or traveling salaried employee of any insurance company not compensated on a commission basis shall be required to obtain a license under this section.

Every life insurance company shall, upon the termination of the employment of any general agent, agent, or solicitor, file with the Superintendent of Insurance a statement of the facts relative to the termination of such employment and the cause thereof. Any information, document, record, statement, or thing required to be made or disclosed to the Superintendent of Insurance by this section, shall be privileged and shall not be used as evidence in any action or proceeding instituted against the company or any representative thereof by or in behalf of any person who has been licensed under the provisions of this section. (June 19, 1934, 48 Stat. 1139, ch. 672, Ch. II, § 26.)

CROSS REFERENCES

Agents other than life, see §§ 35-1201, 35-1202.

Brokers, see § 35-428.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

License fees, see § 35-402.

§ 35-426. Suspension or revocation of license—Grounds for—Hearing—Penalty.

The Superintendent of Insurance may suspend or revoke the license of any life insurance general agent, agent, solicitor, or broker when and if, after investigation, it appears to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation; or that the general agent, agent, solicitor, or broker has violated any insurance law of the District; or has made any misleading representations or incomplete or fraudulent comparison of any policies or companies or concerning any companies to any person for the purpose or with the intention of inducing such person to lapse, forfeit, surrender, or exchange his insurance then in force; or has made any misleading estimate of the dividends or share of surplus to be received on a policy; or has failed or refused to pay or to deliver to the company or to his principal any money or other property in the hands of said general agent, agent, solicitor, or broker belonging to such company or principal when requested so to do; or has violated any lawful ruling of the insurance department; or has been convicted of a felony; or has otherwise shown himself untrustworthy or incompetent to act as a life insurance general agent, agent, solicitor, or broker. Before the Superintendent of Insurance shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf. Within thirty days after the revocation or suspension of license or the refusal of the Superintendent to grant a license, the general agent, agent, solicitor, or broker, or applicant aggrieved may appeal from the ruling of the Superintendent of Insurance to the court of competent jurisdiction designated in section 35-427. Appeals may be taken from the judgment of said court as prescribed in section 35-427. At any hearing provided by this

section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury.

No individual whose license as a general agent, agent, solicitor, or broker is revoked shall be entitled to any license under chapters 3-8 of this Title for a period of one year after revocation.

Any person who violates any provision of this section upon conviction shall be fined not exceeding \$100 for each and every violation: *Provided*, That in lieu of revoking or suspending the license of any such general agent, agent, solicitor, or broker for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than \$200 when in his judgment he finds that the public interest would be best served by the continuation of the license of such person. The amount of any such penalty shall be paid by such person through the office of the Superintendent to the Collector of Taxes of the District of Columbia. (June 19, 1934, 48 Stat. 1140, ch. 672, Ch. II, § 27; May 4, 1950, 64 Stat. 103, ch. 157, § 2; Feb. 22, 1958, 72 Stat. 21, Pub. L. 85-334, § 3.)

AMENDMENTS

1958—Act Feb. 22, 1958, authorized the Superintendent to administer oaths to witnesses, provided that false testimony after such oath be penalized as perjury, and eliminated provisions which related to hearings before salaried employees of the Department designated by the Superintendent, and which required written notice to be given by registered mail to the person and to the company, not less than 20 days prior to the time set for hearing.

1950—Act May 4, 1950, added the proviso relating to monetary penalties in lieu of suspension or revocation of license.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act May 4, 1950, effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

CROSS REFERENCES

Misrepresentations forbidden, see § 35-714.

Perjury, generally, see § 22-2501.

Suspension or revocation of license for violation of Uniform Narcotic Drug Act, see § 33-418.

NOTES TO DECISIONS

1. Findings of fact

In a proceeding before Superintendent of Insurance on a complaint charging insurance solicitor with misrepresenting advantages of exchange of life insurance policies, Superintendent was required to make findings of fact disclosing particular circumstances upon which determination of misrepresentation rested and although solicitor did not ask for specific findings prior to institution of suit in District Court following revocation of his license, he would be given an opportunity to request specific findings of the Superintendent. *Coffey v. Jordan ind. and as Supt. of Insurance* (1959, 275 F. 2d 1, 107 U.S. App. D.C. 113).

§ 35-427. Appeal from rulings of superintendent—procedure—Costs and supersedeas bond—Liability of superintendent.

Within thirty days after the revocation or suspension of license or the refusal of the superintendent

to grant a license, the general agent, agent, solicitor, or broker or applicant aggrieved may appeal from the ruling of the superintendent to the United States District Court for the District of Columbia, in equity wherein, upon the relation of the superintendent, by representation of the corporation counsel, the superintendent shall be designated as defendant and the general agent, agent, solicitor, or broker or applicant as plaintiff, and the said cause shall be docketed in said court and tried as an equity case. Appeals may be taken from the judgment of said United States District Court for the District of Columbia to the United States Court of Appeals for the District of Columbia as in other equity cases.

In all said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (June 19, 1934, 48 Stat. 1140, ch. 672, Ch. II, § 28; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

ONE FORM OF ACTION

The Rules of Civil Procedure for the District Courts adopted by the Supreme Court of the United States abolish the distinction between law and equity and provide that there shall be one form of action known as a "civil action."

NOTES TO DECISIONS

1. Findings of fact

In a proceeding before Superintendent of Insurance on a complaint charging insurance solicitor with misrepresenting advantages of exchange of life insurance policies, Superintendent was required to make findings of fact disclosing particular circumstances upon which determination of misrepresentation rested, and although solicitor did not ask for specific findings prior to institution of suit in District Court following revocation of his license, he would be given an opportunity to request specific findings of the Superintendent. *Coffey v. Jordan ind and as Supt. of Ins.* (1959, 275 F. 2d 1, 107 U.S. App. D.C. 113).

§ 35-428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.

Every person desiring to engage in business in the District as a life insurance broker shall apply to the superintendent for a license so to do and in the manner hereinafter prescribed.

The applicant for such license shall file with the superintendent his written application therefor and shall make a sworn statement on blanks to be prepared by the superintendent giving his name, age, residence, place of business, occupation for five

years just prior to the date of making his application; and shall state that he intends to hold himself out in good faith as carrying on the business of broker of life insurance, and shall also set out his qualifications, namely, his familiarity with the life insurance laws of the District and with the provisions of the policy contracts to be negotiated; what insurance experience and instruction he has had; his intention with reference to engaging regularly if not exclusively in the business of life insurance broker; whether he has been refused or has had suspended or revoked a license as a broker, general agent, agent, or solicitor of life insurance by the insurance department or the supervising officials of any state; whether any company claims that he is indebted to it under any agency contract or otherwise; if so, what company, the nature of the claim and of his defense if any, whether he has had any agency contract canceled by any company, and if so, when, by what company, and the reason for such action, and such other information as the superintendent may require.

The applicant shall be vouched for by at least three reputable citizens of the District setting out whether the applicant is personally known to them, what they know of the reputation of the applicant as a man of business integrity, and what they know of the applicant's general fitness to act as a broker of life insurance.

The superintendent may require such applicant for license or renewal thereof to submit to examination as to his fitness or qualifications for the license or licenses applied for. Such examination may be made by the superintendent or by his deputy, which said examination may be waived by the superintendent, upon satisfactory proof of the qualifications of the applicant.

When the superintendent is satisfied from the application or the examination made by him that the applicant is qualified, he shall issue to said applicant a license to engage in the business specified in said applications which shall also be specified in said license.

No individual whose license as a broker is revoked shall be entitled to any license under chapters 3-8 of this title for a period of one year after such revocation, provided, however, that the failure or refusal of the superintendent to license any such applicant shall be subject to review in the same manner as provided in section 35-427.

Licenses shall be renewed annually and every such license shall continue in force until the 30th day of April next following unless in the meantime suspended or revoked; provided any qualified person may be licensed as a broker regardless of place of residence or domicile.

Any person who violates any provision of this section upon conviction shall be fined not exceeding \$100 for each and every violation. (June 19, 1934, 48 Stat. 1141, ch. 672, Ch. II, § 29.

CROSS REFERENCES

Insurance agents other than life, see §§ 35-1201, 35-1202.

License fees, see § 35-402.

Life insurance agents, see § 35-425 et seq.

Revocation or suspension of licenses, see § 35-426.

§ 35-429. Premiums paid to agent—Agent trustee—Embezzlement—Penalty.

An insurance agent, solicitor, or broker who acts in negotiating or renewing or continuing a contract of insurance for a company lawfully doing business in the District, and who receives any money or substitute for money as a premium for such a contract from the insured, whether he shall be entitled to an interest in same or otherwise, shall be deemed to hold such premium in trust for the company making the contract. If he fails to pay the same over to the company after written demand made upon him therefor, such failure shall be prima facie evidence that he has used or applied the said premium for a purpose other than paying the same over to the company, and upon conviction thereof he shall be deemed guilty of embezzlement and punished accordingly. (June 19, 1934, 48 Stat. 1142, ch. 672, Ch. II, § 30.)

CROSS REFERENCE

Embezzlement, see § 22-1201 et seq.

§ 35-430. Contract of minors for life, health, and accident insurance—Beneficiaries—Surrender and discharge.

Any minor of the age of fifteen years or more may, notwithstanding such minority, contract for life, health, and accident insurance on his own life for his or her own benefit or for the benefit of his father, mother, husband, wife, child, brother, sister, or for the benefit of any person who has the care or custody of said minor or with whom said minor makes his or her home, and may exercise all such contractual rights with respect to any such contract of insurance as might be exercised by a person of full legal age and may at any time surrender his or her interest in any such insurance or give a valid discharge for any benefit accruing or money payable thereunder. (June 19, 1934, 48 Stat. 1142, ch. 672, Ch. II, § 31.)

§ 35-431. Assessment companies shall not be formed, admitted, or licensed.

Any company which makes insurance or reinsurance the performance of which is not guaranteed by the reserves required by chapters 3-8 of this title, but is contingent upon the payment of assessments or calls made upon its members, shall not be formed, admitted, or licensed in the District. (June 19, 1934, 48 Stat. 1142, ch. 672, Ch. II, § 32; May 4, 1950, 64 Stat. 104, ch. 157, § 3.)

AMENDMENT

1950—Act May 4, 1950, struck out the word "mainly" which appeared before the word "contingent."

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act May 4, 1950, effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

§ 35-432. Appeal from superintendent to Commissioners.

Any appeals to the commissioners from rulings of the superintendent shall be perfected and filed with the commissioners within twenty days exclusive of Sundays and legal holidays from the date such rulings are communicated to the party at interest. (June 19, 1934, 48 Stat. 1142, ch. 672, Ch. II, § 33.)

Chapter 5.—DOMESTIC LIFE COMPANIES

Sec.

- 35-501. Articles of incorporation.
- 35-502. Filing articles of incorporation—Notice of intention to form company—Bond of incorporators.
- 35-503. Articles of incorporation—Submission to corporation counsel—Recording—Corporate powers—Permit as "company in course of organization"—Authority to organize—No policies to be issued—Certificate of authority.
- 35-504. Authority to solicit subscriptions to capital of company in course of organization.
- 35-505. Subscription to capital stock—Limitation of expense on sale of capital stock—Disposition of proceeds.
- 35-506. Examination of company in course of organization—Revocation of permit, authority of agent—Causes—Notice.
- 35-507. When corporate powers of company in course of organization shall cease.
- 35-508. Capital-stock requirements.
- 35-509. Amendment of articles of incorporation—Procedure.
- 35-510. Increase of capital stock—Failure to subscribe and pay in within one year.
- 35-511. Decrease of capital stock—Conditions—Reissuance of stock certificates.
- 35-512. Liability of stockholders—Fiduciaries as stockholders—Pledged stock.
- 35-513. Capital stock must be paid in before doing business—Capital stock payment calls—Forfeiture—Notice.
- 35-514. Capital stock transfers—Effect of record ownership.
- 35-515. Capital stock book—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.
- 35-516. Corporations and associations as members of mutual companies—Liability.
- 35-517. Mutual companies—Requirements before doing business.
- 35-518. Reincorporation of existing corporations.
- 35-519. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.
- 35-520. Application to corporations formed prior to June 19, 1934.
- 35-521. Directors — Election — Qualifications—Limitation on proxies.
- 35-522. By-laws.
- 35-523. Election of directors.
- 35-524. Cumulative voting.
- 35-525. Voting power under policies of group life insurance.
- 35-526. Liability of directors—Objections to be filed.
- 35-527. Salaries to be authorized by directors.
- 35-528. Limitation of dividends to stockholders and policyholders.
- 35-529. Officers.
- 35-530. Officers and directors not to be pecuniarily interested in transactions—Appraisal—Loans on policies.
- 35-531. "Voting-trust agreements" defined and declared unlawful.
- 35-532. Repealed.
- 35-533. Classification of risks, payment of dividends, and creation of surplus by mutual companies.
- 35-534. Mutual company guaranty fund—Mutual company's power to borrow—Approval by superintendent.
- 35-535. Investment of funds of domestic companies.
- 35-536. Repealed.
- 35-537. Reinsurance by domestic companies in authorized companies.
- 35-538. Vouchers for disbursements.
- 35-539. Books, records, accounts, and vouchers of domestic companies.
- 35-540. Unlawful acquisition by company of its own capital stock.

Sec.

- 35-541. Variable contracts—Separate accounts—Assets of accounts to equal obligations for variable payments—Issuance by foreign companies—Standards of qualification—Reports—Regulations—Investment limitations.

§ 35-501. Articles of incorporation.

Any seven or more persons who desire to become incorporated as an insurance company shall make, sign, and acknowledge articles of incorporation before an officer authorized to take acknowledgment of deeds, in which shall be stated:

(a) The proposed corporate name, which shall not be identical with nor so nearly resemble the name of an existing corporation organized under the laws of the District, or authorized to transact business therein, as to mislead the public or cause confusion and, in case of a mutual company, shall contain the word "mutual."

(b) The term of its existence, which may be perpetual.

(c) The place where its principal office shall be located, which shall be the District of Columbia.

(d) The purpose of the company, which shall be restricted to the business of insurance appertaining to persons.

(e) The mode and manner in which the corporate power shall be exercised; the number, terms of office, and manner of electing directors, who shall be stockholders, or, in the case of a mutual company, shall be members or policyholders of the corporation.

(f) The provisions for meeting and votes of stockholders and policyholders. A stock company in which the policyholders do not vote shall provide for cumulative voting in its articles of incorporation. A stock company in which policyholders vote shall provide that each stockholder shall have one vote, in person or by proxy, for each share of stock owned. A company without capital stock shall provide that every policyholder shall be a member and entitled to one or more votes, in person, or by proxy, based on the insurance in force, the number of policies held or the amount of premiums paid as may be provided in the by-laws, and a stock company may provide for votes by policyholders, but in such case each policyholder shall have the same voting power as every other policyholder.

(g) The amount of its capital stock, if any, the number of shares, and the par value of each share.

(h) The number of directors who shall manage the company for the first year and their names.

(i) Such other particulars as may be necessary to manifest and explain the objects and purposes of the company. (June 19, 1934, 48 Stat. 1143, ch. 672, Ch. III, § 1.)

EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

CROSS REFERENCES

- Amendment of articles, see § 35-509.
- Application to existing companies, see § 35-520.
- Assessment companies forbidden, see § 35-431.
- Conversion of stock into mutual companies, see § 35-519.
- Health and accident companies, see § 35-202.
- Increase or decrease of capital stock, see §§ 35-510, 35-511.
- Liability of stockholders, see § 35-512.

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-1601 et seq.

Reincorporation of existing companies, see § 35-518.

Sales of securities, see U.S. Code, title 15, ch. 2a.

§ 35-502. Filing articles of incorporation—Notice of intention to form company—Bond of incorporators.

The incorporators shall file such articles with the superintendent and shall publish in a newspaper of general circulation in the District notice of the filing of such articles and of the intention to form such company. Copy of such notice verified by the oath of the publisher of the newspaper, or his agent, copies of proposed bylaws and forms of subscription for capital stock and of proposed applications for membership and for insurance and of all proposed forms of insurance policies, literature, and advertisements shall be filed with the superintendent. The incorporators shall also file with the superintendent a bond payable to the superintendent and his successors, as trustee, in the sum of \$10,000 with approved corporate sureties, and conditioned upon the faithful accounting to the proposed company, on completion of its organization and the receipt of its certificate of authority from the superintendent, or the stockholders, members, applicants for policies, and creditors, or the trustee, receiver, or assignee of the proposed company, duly appointed in any proceedings in any court or department of competent jurisdiction in the District, in accordance with their respective rights in case the organization of the proposed company shall not be completed and a certificate of authority shall not be procured from the superintendent. (June 19, 1934, 48 Stat. 1144, ch. 672, Ch. III, § 2.)

§ 35-503. Articles of incorporation—Submission to corporation counsel—Recording—Corporate powers—Permit as "company in course of organization"—Authority to organize—No policies to be issued—Certificate of authority.

The superintendent shall submit the proposed articles and other papers so filed with him to the corporation counsel of the District, who shall examine the same, and, if he finds the same in accordance with law, he shall so certify and return the same to the superintendent, who shall cause the articles and the certificate of the corporation counsel to be recorded in the records of the superintendent and issue to the incorporators two certified copies thereof, one of which shall be recorded in the office of the recorder of deeds for the District of Columbia, and thereupon such incorporators and their associates shall become and be a body corporate with power to sue and be sued, contract and be contracted with, adopt a seal, and do such other acts, subject to the provisions of chapters 3-8 of this title, as shall be needful to accomplish the purposes of its organization. If the superintendent shall approve the sureties on the bond so filed, or on any like bond substituted therefor, he shall issue to the corporation a permit, as a "company in course of organization," authorizing it to complete its organization. Said company in course of organization shall have authority under such permit to solicit subscriptions and payments for capital stock, if a stock company, and applications and advance premiums for insurance, and to exercise such powers, subject to the limitations in chapters 3-8 of this title prescribed, as

may be necessary and proper in completing its organization and qualifying itself for a certificate of authority from the superintendent to transact the business of insurance appertaining to persons. But such company shall not issue policies or enter into contracts of insurance until it shall have received the certificate of the superintendent authorizing it so to do.

Upon completion of organization in accordance with chapters 3-8 of this title the superintendent shall issue to such company, in course of organization, a certificate of authority as an insurance company. (June 19, 1934, 48 Stat. 1144, ch. 672, Ch. III, § 3.)

§ 35-504. Authority to solicit subscriptions to capital of company in course of organization.

No person shall solicit subscriptions for the capital stock of or applications for insurance in any such company in course of organization unless he has been duly authorized by the company and a certificate of his authority, duly signed by a principal officer of the company, has been filed with and approved by the superintendent. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 4.)

§ 35-505. Subscription to capital stock—Limitation of expense on sale of capital stock—Disposition of proceeds.

Every subscription to the capital stock of a stock company shall contain the stipulation that no sum shall be used for commission, promotion, or organization expenses in excess of a percentage of the amount paid upon the stock subscriptions, to be named in such stipulation and approved by the superintendent, and the remainder of sums so paid to the company shall be invested in securities in which a life insurance company is authorized to invest, or deposited in a bank or trust company in the District until the company has duly procured a certificate of authority from the superintendent. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 5.)

§ 35-506. Examination of company in course of organization—Revocation of permit, authority of agent—Cause—Notice.

The superintendent shall personally, or through his deputy and assistants, examine into the affairs of any such company in course of organization and inspect its books and papers, and may summon and examine under oath any officer or agent or any person who is or has been connected with or who has knowledge of the affairs of such company, and if he find the company is violating the law, or if the company shall not be qualified for a certificate of authority within two years from date of its permit, he shall revoke its permit; and if he find an agent of such company has violated the law, he shall revoke his authority, and he may for such agent's violation revoke the company's permit. Any revocation shall be after twenty days' notice. The superintendent may, on proper showing, reinstate any company's permit or agent's authority which he has revoked. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 6.)

§ 35-507. When corporate powers of company in course of organization shall cease.

If any domestic life insurance company, in course of organization, shall not commence to issue policies

within two years from the date of filing its articles of incorporation in the office of the superintendent, its powers shall thereby cease, and the court, upon petition of the superintendent or of any person interested, may fix by decree the time in which the superintendent may settle and close its affairs: *Provided, however,* That the superintendent may extend the time for any such company to commence the issuance of policies for a period not exceeding two years if the said company shall show good cause in writing why the same should be done. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 7.)

§ 35-508. Capital-stock requirements.

A domestic capital-stock company organized under chapters 3-8 of this title shall have a paid-up capital stock of not less than \$100,000. Each domestic capital-stock company organized under chapters 3-8 of this title, in addition to the paid-up capital stock shall have a surplus paid up equal to at least 50 per centum of such capital stock. Each domestic mutual company organized or doing business under chapters 3-8 of this title shall at all times have a surplus as defined by chapters 3-8 of this title of not less than \$150,000. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 7; May 4, 1950, 64 Stat. 104, ch. 157, § 4.)

AMENDMENT

1950—Act May 4, 1950, added the provisions relating to domestic mutual companies.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act May 4, 1950, effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

§ 35-509. Amendment of articles of incorporation—Procedure.

Any company may amend its articles of incorporation upon publishing notice of such intention, authorized by a majority of its directors, once a week for three consecutive weeks in a newspaper of general circulation in the District, and with the written consent of two-thirds of its stockholders, or two-thirds of its members present in person or by proxy at a meeting called for that purpose if it does not have capital stock, and by observing such other and further requirements in that behalf as may be prescribed in its articles of incorporation. Such amendment shall be signed and acknowledged by the president and secretary or like officers of the company, and, with a copy of the proceedings of the stockholders or members, if any, and of the directors, shall be filed with the superintendent and by him submitted to the corporation counsel, and if he finds the amendment and proceedings in conformity with the law, he shall so certify to the superintendent. The amendment shall not take effect until the superintendent shall deliver to the company his certified copy of the amendment and of the certificate of the corporation counsel. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 9.)

§ 35-510. Increase of capital stock—Failure to subscribe and pay in within one year.

If a company amend its articles of incorporation by providing for an increase of its capital stock, such increase shall be subscribed and fully paid up within one year of the date of such amendment, unless the

superintendent shall certify his consent to an extension of such time. Failure to have such increase of capital stock paid up within the time provided may be considered grounds for ousting the company from its powers under any such amendment to such articles of incorporation by a court of competent jurisdiction in a proceeding by the superintendent, the corporation counsel representing him, against the company for such judgment. (June 19, 1934, 48 Stat. 1146, ch. 672, Ch. III, § 10.)

§ 35-511. Decrease of capital stock—Conditions—Reissuance of stock certificates.

A company may, with the approval of the superintendent, amend its articles of incorporation by providing for a decrease of its capital stock and a corresponding increase in surplus to an amount not less than the minimum capital stock and surplus required by chapters 3-8 of this title. The superintendent shall not approve or issue his certified copy of such amendment if he be of the opinion that the interests of policyholders or creditors may be prejudiced thereby. No distribution of the assets of the company shall be made to stockholders upon any such decrease of capital stock which shall reduce the surplus and capital stock to less than the minimum capital stock and surplus required as aforesaid. Upon any such amendment so decreasing the capital stock such company may require each stockholder to return his certificate of stock and accept a new certificate for such proportion of the amount of its original capital stock as the reduced capital stock shall bear to the original capital stock. (June 19, 1934, 48 Stat. 1146, ch. 672, Ch. III, § 11.)

§ 35-512. Liability of stockholders—Fiduciaries as stockholders—Pledged stock.

All the stockholders of every company incorporated under this chapter shall be severally and individually liable to the policyholders and creditors of the company in which they are stockholders for the unpaid amount due upon the shares of capital stock held by them, respectively, for all debts and contracts made by such company until the whole amount of capital stock fixed and limited by such company shall have been paid in.

No person holding capital stock in such company as executor, administrator, guardian, committee, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, committee, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust would have been if he had been living and competent to act and hold the stock in his own name.

Every such executor, administrator, guardian, committee, or trustee shall represent the capital stock in his hands at all meetings of the company, and may vote accordingly as a stockholder.

No person holding capital stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such capital stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his capital stock as collateral security may,

nevertheless, represent the same at all meetings and vote as a stockholder. (June 19, 1934, 48 Stat. 1146, ch. 672, Ch. III, § 12.)

§ 35-513. Capital stock must be paid in before doing business—Capital stock payment calls—Forfeiture—Notice.

No company incorporated under this chapter shall be authorized to transact any business until the authorized capital stock shall have been actually paid in, either in cash or in investments authorized by chapters 3-8 of this title at market value; and it shall be lawful for the directors to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the directors shall deem proper, under the penalty of forfeiting the shares of capital stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published once a week for three consecutive weeks in a daily newspaper in the District. (June 19, 1934, 48 Stat. 1147, ch. 672, Ch. III, § 13.)

§ 35-514. Capital stock transfers—Effect of record ownership.

The capital stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the bylaws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment.

A person in whose name shares of capital stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell or otherwise dispose of any of his shares of capital stock to another and deliver to him the certificates for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale or other disposition, not only as between the parties themselves but also as against the creditors of and subsequent purchasers from the former. (June 19, 1934, 48 Stat. 1147, ch. 672, Ch. III, § 14.)

§ 35-515. Capital stock book—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.

It shall be the duty of the directors of every company formed under this chapter to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of capital stock held by them, respectively, the time when they became owners of such shares, and the amount of capital stock actually paid in.

Such book shall, during the usual business hours of the day, on every business day, be open for inspection by policyholders, stockholders, and creditors of the company and their personal representatives at the office or principal place of business of such company in the place where its business operations shall be located, and any policyholder, stockholder,

creditor, or representative shall have a right to make extracts from such book.

Such book shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders.

Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of \$50 for any such neglect or refusal, and all damages resulting therefrom.

Every company that shall neglect to keep such book open for inspection, as herein provided, shall forfeit to the District the sum of \$50 for every day it shall so neglect, to be sued for and recovered by the superintendent, the corporation counsel representing him, in the United States District Court for the District of Columbia. (June 19, 1934, 48 Stat. 1147, ch. 672, Ch. III, § 15; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 35-516. Corporations and associations as members of mutual companies—Liability.

Public or private corporations, boards, or associations of the District or elsewhere, may make applications, enter into agreements for, hold policies in, and become members of mutual companies. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or of an estate may be recognized as acting for or on its behalf, but shall not be personally liable by reason of acting in such representative capacity. (June 19, 1934, 48 Stat. 1148, ch. 672, Ch. III, § 16.)

§ 35-517. Mutual companies—Requirements before doing business.

No domestic mutual company shall transact any business until at least two hundred persons shall have subscribed in the aggregate for at least \$200,000 of insurance and shall have paid in full one annual premium in money upon the insurance so subscribed. (June 19, 1934, 48 Stat. 1148, ch. 672, Ch. III, § 17.)

CROSS REFERENCE

Assessment companies forbidden, see § 35-431.

§ 35-518. Reincorporation of existing corporations.

Any domestic insurance corporation existing or doing business on June 19, 1934, may, by a vote of a majority of its directors or trustees, accept the provisions of chapters 3-8 of this title and amend its charter to conform with the same upon obtaining the consent of the superintendent thereto in writing, and filing such consent in the office of the recorder of deeds for the District; and thereafter it shall be deemed to have been incorporated under this

chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any and all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated hereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter and filing the same with the superintendent and the record thereof with the recorder of deeds of the District, perpetually enjoy the same as and be such corporation, which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the period and the same general proceedings shall be taken upon the presentation of such amended charter or certificate adopted in relation to such amendment, to the superintendent, as are required by this chapter to be taken with respect to an original charter or certificate, except that no examination of the condition and affairs of such corporation shall be required unless so ordered by the superintendent, and if the amended charter or certificate be approved by the superintendent and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such charter or certificate so amended had been its original charter or certificate of incorporation, but without prejudice to pending action or proceeding or any rights previously accrued.

Upon the reincorporation or upon the amendment of the charter of any corporation having a capital stock in accordance with the provisions of this section it may by a vote of the majority of its directors confer upon its policyholders as may have a prescribed amount of insurance upon their lives the right to vote for all or any less number of the directors in such manner not inconsistent with any provision of chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1148, ch. 672, Ch. III, § 18.)

§ 35-519. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.

Any domestic stock company organized or licensed to do business, whether incorporated under chapters 3-8 of this title, or any previous existing law, or Act of Congress, may become a mutual company, and to that end may carry out a plan for the acquisition of shares of its capital stock: *Provided, however*, That such plan (1) shall have been adopted by a vote of a majority of the directors of such company; (2) shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose; and (3) shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose, of policyholders each insured for at least \$1,000 and whose insurance shall then be in force and shall have been in force for at least one year prior to such meeting; notice

of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting, in a sealed envelope, postage prepaid, addressed to such policyholders at their last known post-office addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan: *Provided, however*, That policyholders may vote in person, by proxy, or by mail; that all votes shall be cast by ballot and the superintendent shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the superintendent and to the company the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the superintendent; that all necessary expenses incurred by the superintendent shall be paid by the company as certified to by him; and (4) shall have been submitted to the superintendent and shall have been approved by him in writing: *Provided*, That every payment for the acquisition of any shares of the capital stock of such company, the purchase price of which is not fixed by such plan, shall be subject to the approval of the superintendent: *Provided further*, That neither such plan, nor any such payment, shall be approved by the superintendent unless at the time of such approvals, respectively, the company, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets not less than the entire liabilities of the company, including the net values of its outstanding contracts computed according to the standard adopted by the company under section 35-701, and also all funds, contingent reserves, and surplus save so much of the latter as shall have been appropriated or paid under such plan. (June 19, 1934, 48 Stat. 1149, ch. 672, Ch. III, § 19.)

§ 35-520. Application to corporations formed prior to June 19, 1934.

Every company incorporated under the provisions of the laws of the District, or Act of Congress, prior to June 19, 1934, is hereby brought under all the provisions of chapters 3-8 of this title, except that its capital may continue in the amount named in its charter during the existing term thereof, unless it extends its business to other kinds of insurance, and it shall be entitled to all privileges granted by such charter not authorized by this law. (June 19, 1934, 48 Stat. 1149, ch. 672, Ch. III, § 20.)

§ 35-521. Directors—Election—Qualifications—Limitation on proxies.

The stock, property, and business of every company organized under chapters 3-8 of this title shall be managed by the directors who shall, except for the first year, be annually elected, at such time and

place as shall be determined by the bylaws of the company. Every director of such a stock company shall be a stockholder thereof, and every director of such a mutual company shall be a policyholder thereof. All proxies used in the election of directors of such companies shall be valid for a period not exceeding one year from the election for which they were signed and in which they were authorized to be voted. (June 19, 1934, 48 Stat. 1149, ch. 672, Ch. III, § 21.)

CROSS REFERENCE

Quo warranto proceedings to question right to corporate office, see § 16-1601 et seq.

§ 35-522. By-laws.

The directors of companies organized under chapters 3-8 of this title shall have power to make such by-laws as they deem proper for the management of the business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, employees, and servants, that may be employed, for the appointment or election of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 22.)

§ 35-523. Election of directors.

Notice of the time and place of holding election of directors of a company organized under chapters 3-8 of this title shall be sent to those entitled to vote, and the election shall be made by such of the stockholders and/or policyholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and the persons receiving the greatest number of votes shall be directors. When any vacancy shall happen among the directors it shall be filled for the remainder of the year in such manner as shall be prescribed by the by-laws of the company.

In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for directors in such manner as may be provided in the by-laws, and all acts of directors shall be valid and binding as against said company until their successors shall be elected. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 23.)

§ 35-524. Cumulative voting.

In an election for directors of any stock company in which the policyholders do not vote, each stockholder having a right to vote may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer, that is to say: If the stockholder having a right to vote owns one share of stock, or has one vote, or is entitled to one vote for each of seven directors by virtue thereof, he may give one vote to each of said seven directors, or seven votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 24.)

§ 35-525. Voting power under policies of group life insurance.

In every group policy issued by a domestic life company the employer shall be deemed to be the policyholder for all purposes, within the meaning of this chapter, and, if entitled to vote at meetings of the company, shall be entitled to one vote thereat. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 25.)

§ 35-526. Liability of directors—Objections to be filed.

The directors of any company organized under the laws of the District shall be personally liable when they have participated in or assented to any act which shall cause injury to policyholders, creditors, or stockholders resulting from (a) ultra vires acts; (b) illegal corporate acts done with their connivance, knowledge, or consent; (c) issuing unpaid or part-paid stock and marking or representing it as paid up in full; (d) dividend payments declared whether negligently or purposely impairing the capital stock and minimum surplus; (e) mismanagement; (f) loaning corporate funds to stockholders or discounting their notes out of corporate moneys; (g) making false notices or reports that deceive the public; or, (h) transferring property to officers or stockholders to defraud policyholders or creditors. If any of the directors shall object to declaring a dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objections in writing with the secretary of the company and with the superintendent, they shall be exempt from the liability prescribed in this section for dividends declared or paid impairing the capital stock and minimum surplus. (June 19, 1934, 48 Stat. 1150, ch. 672, Ch. III, § 26.)

§ 35-527. Salaries to be authorized by directors.

No domestic company shall pay any salary, compensation, or emolument to any officer, trustee, or director thereof, amounting in any one year to more than \$5,000, unless such payment shall be authorized by the board of directors of the company. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 27.)

§ 35-528. Limitation of dividends to stockholders and policyholders.

No domestic company shall make any payments in form of dividends or otherwise to its stockholders for or on account of any interest in or relation to the company as stockholders unless it possesses assets in the amount of such payment in excess of its liabilities, including its capital stock, and the surplus required by chapters 3-8 of this title; and no domestic company shall make any payments to its policyholders for or on account of any interest in or relation to the company as members or policyholders except for matured claims or other policy obligations and in the purchase of surrender values unless it possesses assets in the amount of such payments in excess of its liabilities, and the capital stock and surplus required by chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 28.)

§ 35-529. Officers.

There shall be a president, a secretary, and a treasurer of the company, who shall be elected by the directors; and also such subordinate officers as

may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as chapters 3-8 of this title and the company by its by-laws may require. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 29.)

CROSS REFERENCE

Quo warranto proceedings to question right to corporate office, see § 16-1601 et seq.

§ 35-530. Officers and directors not to be pecuniarily interested in transactions—Appraisalment—Loans on policies.

No director or officer of any company doing business in the District shall receive any money or valuable thing for negotiating, procuring, recommending, or aiding in any purchase by or sale to such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, in any such purchase, sale, or loan, nor shall the financial obligation of any such director or officer be guaranteed by such company in any capacity: *Provided*, That nothing herein contained shall prevent any such director or officer from receiving a fee for appraising property for said company or for serving on any committee that passes on the investments of said company: *Provided further*, That nothing herein contained shall prevent a life insurance company from making a loan upon a policy held therein by a director not in excess of the net value thereof. Any person violating any provision of this section shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 30.)

§ 35-531. "Voting-trust agreements" defined and declared unlawful.

It shall be unlawful for any stockholder, director, or officer of any company having capital stock to enter into any contract or agreement, commonly known as "voting-trust agreements," whereby the rights, benefits, or liabilities attaching to the capital stock are transferred or assigned, temporarily or otherwise, to any person or group of persons, incorporated or unincorporated, for the purpose of controlling, managing, or directing the company, or voting its stock: *Provided*, That this section shall not prevent the granting of proxies by stockholders authorizing a designated individual to represent them at stockholders' meetings. (June 19, 1934, 48 Stat. 1151, ch. 672, Ch. III, § 31.)

§ 35-532. Repealed. May 4, 1950, 64 Stat. 104, ch. 157, § 5.

Section, act June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 32, related to maximum and contingent premiums of mutual companies.

EFFECTIVE DATE OF REPEAL

Repeal of section by act May 4, 1950, effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

§ 35-533. Classification of risks, payment of dividends, and creation of surplus by mutual companies.

A mutual company may, in its articles of incorporation or in its by-laws, provide for the classification of its risks and of its members and for the payment of dividends and for the creation of a surplus. (June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 33.)

§ 35-534. Mutual company guaranty fund—Mutual company's power to borrow—Approved by superintendent.

A mutual company organized under chapters 3-8 of this title may borrow or assume a liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of the law or as a guaranty fund upon agreement, which shall first be submitted to and approved by the superintendent that such loan or advance, with interest at a rate not exceeding six per centum per annum, shall be repaid out of the earnings, or profits of such corporation with the approval of the superintendent whenever in his judgment the financial condition of the company shall warrant; but such approval shall not be withheld if, after such repayment shall be made, the company shall have and be in possession of a surplus equal to 10 per centum or more of its gross annual premiums. Any such loan or advance shall not form a part of the legal liabilities of the company, but until repaid all statements published by such company or filed with the superintendent shall show the amount thereof then remaining unpaid. (June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 34.)

§ 35-535. Investment of funds of domestic companies.

A domestic company shall invest its funds only in—

(1) Bonds, notes, or other evidences of indebtedness of the United States, any State, Territory, or possession of the United States, the District of Columbia, the Dominion of Canada, any Province of the Dominion of Canada, or of any administration, agency, authority, or instrumentality of any of the political units enumerated; or obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development.

(2) Bonds, notes, or other evidences of indebtedness guaranteed or insured as to principal and interest by the United States, any State, Territory or possession of the United States, the District of Columbia, the Dominion of Canada, any Province of the Dominion of Canada, or by an administration, agency, authority, or instrumentality of any of the political units enumerated.

(3) Bonds, notes, or other evidences of indebtedness issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a State, Territory or possession of the United States, or the District of Columbia, or of the Dominion of Canada, or any province thereof, provided such obligations are authorized by law and are (a) direct and general obligations of the issuing, guaranteeing, or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality; or (b) payable from designated revenues pledged to the payment of the principal and interest thereof.

(4) Legally authorized bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness, and share certificates, which have been or may be issued by (a) the Federal home-

loan bank; (b) the Home Owners' Loan Corporation; (c) any Federal savings and loan association; (d) the Reconstruction Finance Corporation; (e) the Federal Farm Loan Board; (f) any Federal land bank; (g) the Federal Intermediate Credit Bank; (h) any housing authority organized under the public housing laws of the District of Columbia or any State of the United States, or in notes, bonds, or loans secured by mortgage or deed of trust insured under the provisions of the National Housing Act, as amended, or guaranteed or insured pursuant to the provisions of title III of an Act of Congress of the United States of June 22, 1944, cited as the "Servicemen's Readjustment Act of 1944", as heretofore or hereafter amended, or by any entity, corporation, or agency which has been or which may be created by or authorized by any Act which has been enacted, or which may hereafter be enacted by the Congress of the United States, or any amendment thereto, which has for its purpose the relief of, refinancing of, or assistance to owners of mortgaged or encumbered homes, farms, or other real estate.

(5) (a) Bonds, notes, or loans secured by first lien on real estate in the United States or Dominion of Canada worth at least $33\frac{1}{2}$ per centum more than the amount loaned thereon: *Provided*, That this limitation shall not apply to any of the classes of securities mentioned in subsection (4) of this section, if guaranteed or insured in whole or in part as therein provided; but nothing in this section shall be deemed to prohibit a company from renewing or extending a loan for the original amount where there has been a shrinkage in the value of such real estate nor to prohibit a company from accepting, as part payment for real estate sold by it, a lien thereon for more than the percentage herein specified of the purchase price of such real estate. For the purpose of this section, real estate shall not be deemed to be encumbered by reason of the existence of—

(i) taxes or assessments that are not delinquent.

(ii) assessments or other charges made by non-governmental agencies under instruments creating or reserving the right to make charges for the creation or maintenance of roadways, utilities, recreational or other community facilities or for supplying services or benefits for the community in which such real estate is situated, notwithstanding such charges are or may become a lien against the real estate, provided no such charges are delinquent.

(iii) instruments creating or reserving mineral, oil, gas, water, or timber rights, easements, rights-of-way, joint driveways, sewer rights, rights in walls.

(iv) building restrictions or other restrictive covenants, or leases with or without an option to purchase.

(v) conditions or rights of reentry or forfeiture which are insured against by a title insurance company, or which cannot cut off, subordinate, or otherwise disturb the aforesaid first lien on real estate.

(b) Bonds, notes, or loans secured by first lien on leasehold estates in improved real property lo-

cated in the United States or Dominion of Canada, where such real property is unencumbered except by rentals to accrue therefrom to the owner of the fee, and where there is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed so long as the lessee is not in default, provided the value of such leasehold, with improvements thereon shall be at least 50 per centum more than the amount loaned thereon: *Provided*, That this limitation shall not apply to any of the classes of securities mentioned in subsection (4) of this section, if guaranteed or insured in whole or in part as therein provided. Such loan shall be completely amortized during the unexpired portion of the lease or leasehold estate securing its payment.

(c) Loans or advances by a company for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which real estate or upon a leasehold estate in said real estate such company then holds a first lien to secure a loan previously made: *Provided*, That no such loan or advance shall be made in a sum in excess of \$2,000: *And provided further*, That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien.

(d) Ground rents in the District of Columbia or any State of the United States: *Provided*, That in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between the date of acquisition and earliest redemption date, or charged off at any time prior to redemption date; and in the case of expired redeemable ground rents the premiums paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.

(6) (a) Notes, bonds, or equipment trust certificates secured by any transportation equipment leased or sold to a common carrier, domiciled within the United States or the Dominion of Canada, with gross revenues exceeding \$1,000,000 in the fiscal year immediately preceding purchase, which notes, bonds, or equipment trust certificates provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue and also provide (i) for the vesting of title to such equipment, free from encumbrance in a corporate trustee or (ii) for the creation of a first lien on such equipment, provided at the date of purchase such notes, bonds, or trust certificates are not in default as to principal or interest, and provided further that no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such notes, bonds, or equipment trust certificates of any one corporation.

(b) Notes, bonds, or other evidences of indebtedness evidencing rights to receive partial payments agreed to be made upon any contract of leasing or conditional sale, the issue of which has been approved by the proper public authority if such approval was required by law at the time of issue, if

such lessee or conditional vendee is a solvent corporation domiciled within the United States or the Dominion of Canada, and if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section: *Provided, however*, That no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such notes, bonds, or other evidences of indebtedness of any one corporation.

(c) Equipment or machinery for use in transportation, manufacturing, production or distribution, leased or to be leased to any solvent corporation domiciled within the United States or the Dominion of Canada, if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section: *Provided, however*, That no company shall invest an amount in excess of 2 per centum of its admitted assets in such equipment or machinery leased or to be leased to any one corporation.

(7) (a) Bonds and other evidences of indebtedness of any solvent corporation created under the laws of the United States or any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof: *Provided*, That (i) no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such obligations of any one corporation; (ii) the net earnings of the issuing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by such insurance company shall have averaged yearly, and during the last year of said five-year period shall have been not less than one and one-half times its annual fixed charges at the time of the investment, or, if a new issue, as shown by the pro forma statement of the corporation; and (iii) there shall have been no defaults in interest thereon, or on any such obligations of such corporation which are of equal or higher priority with those purchased, during the period of five years next preceding the date of acquisition, or, if outstanding for less than five years, at any time since said obligations were issued. The term "net earnings available for fixed charges", as used herein, shall mean the net income after deducting all operating and maintenance expenses, depreciation and depletion, and taxes other than Federal, State, and District of Columbia income taxes, but nonrecurring items of income and expenses may be eliminated. The term "fixed charges" as used herein shall include interest on all of the fixed interest bearing debt of the corporation outstanding and maturing in more than one year, as of the date of acquisition, and in case of investment in contingent interest obligations, said term shall also include maximum annual contingent interest as of said date. The earnings of all predecessor, merged, consolidated, or purchased companies may be included through the use of consolidated or pro forma statements provided the fixed charges of all such companies are also included.

(b) Certificates, notes, or other obligations issued by trustees or receivers of any corporation created or existing under the laws of the United States or of

any State, District, or Territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction: *Provided*, That no company shall invest an amount in excess of 2 per centum of its admitted assets in any one issue of such certificates, notes or other obligations of any one corporation.

(8) Bank certificates of deposit and bankers' acceptances, and other bills of exchange of the kind and maturities made eligible by law for purchase in the open market by Federal Reserve banks.

(9) (a) Preferred stock of any solvent corporation (other than its own) created under the laws of the United States, or of any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, where such corporation has not failed in any one of the three fiscal years next preceding such investment, to have earned a sum applicable to dividends on such preferred stock equal at least to three times the amount of dividends due in that year, or where in case of issuance of new preferred stock such earnings applicable to dividends are equal to at least three times the amount of proforma annual dividend requirements after giving effect to such new financing, and where the bonds and other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section, and where the total investment in any one issue of such preferred stock of any one corporation does not exceed 1 per centum of the investing company's admitted assets.

(b) Stocks or other securities guaranteed by any solvent corporation created under the laws of the United States, or any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, if the guaranteeing corporation has not failed in any one of the three fiscal years next preceding such investment to have earned a sum applicable to interest on outstanding indebtedness and dividends on all guaranteed stocks equal to at least twice the amount of interest and guaranteed dividends payable for that year. No company shall invest in excess of 1 per centum of its assets in any one issue of guaranteed stocks made eligible for investment under this subsection.

(10) Common stocks of any solvent corporation (other than its own) created under the laws of the United States, or of any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, which shall have paid common dividends in cash for not less than five years next preceding the purchase of such stocks, and where the bonds and other evidences of indebtedness, if any, and the preferred stock, if any, of such corporation are eligible as investments under the provisions of subsections (7) and (9), respectively, of this section, and where the total investment in the common stock of any one corporation does not exceed 1 per centum of the investing company's admitted assets.

(11) Loans upon the pledge of any of the securities aforesaid, not exceeding 85 per centum of the market value of the collateral taken as security at the date of the loan.

(12) A life-insurance company may also purchase for its own benefit any policy of life insurance or

other obligation of the company and claims of the holders thereof, and may lend to the holders of its life-insurance policies sums not exceeding in any case the reserve value of the policy at the time the loan is made, and for the payment of any such loan the policy and all amounts payable thereunder shall be pledged.

(13) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(14) A life-insurance company may also acquire, hold, and convey real estate for the purposes and in the manner following:

(a) the building in which it has its principal office and the land on which it stands;

(b) such as shall be requisite for its convenient accommodation in the transaction of its business;

(c) such as shall have been acquired for the accommodation of its business;

(d) such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings;

(e) such as it shall have purchased at trustee sale or sales on judgments, decrees, or mortgages obtained or made for such debts; and

(f) such as it may purchase or hold for the production of income. It may improve or otherwise develop in any manner such real estate and the improvements thereon, and may own, maintain, manage, collect, and receive income from, and sell or convey the same. No company shall, in any period of twelve consecutive months, invest in or agree to pay for real estate, including improvements thereon, under the authority of this item (f) an aggregate amount in excess of 2 per centum of its admitted assets as shown in its most recent annual statement; nor shall the total value of real estate and improvements thereon acquired or held by a company for the production of income under the provisions of this item (f) at any time exceed 5 per centum of its said admitted assets. No investment shall be made by any company pursuant to this item (f) if such company then owns real estate having a total value in excess of 10 per centum of its said admitted assets or if such investment will cause such company's aggregate investments in real estate owned by it to exceed 10 per centum of its said admitted assets: *Provided*, That for the purpose of applying said 10 per centum limitation real estate shall include all real estate then owned by the company and such real estate as it may have owned and sold on contract, to the extent of the balance unpaid on such contract of sale; or if the balance unpaid on account of real estate owned and sold by a company is secured by mortgage or other instrument, there shall be included as real estate the amount, if any, by which the balance unpaid exceeds 75 per centum of the value of such real estate. A company may, subject to the limitations and conditions of this item (f), elect to consider property acquired as specified in items (c), (d), and (e) as real estate for the production of income as defined in this item (f). Such

election shall be duly authorized and recorded by the board of directors or by a committee of directors, officers, or employees of the company designated by the Board charged with the duty of supervising loans or investments. The minutes of any such committee shall be duly recorded and regular reports of such committee shall be submitted to the board of directors.

All such real estate specified in items (c), (d), and (e) of this subsection (14), which shall not be necessary for its accommodation in the convenient transaction of its business, and which it has not elected to hold for the production of income, shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company file with the Superintendent an application for extension of time, supported by such evidence as may be required by the Superintendent, establishing to his satisfaction that an extension would be to the advantage of the company and that the interests of the company would be affected adversely by a forced sale thereof, in which event the time for the sale may be extended to such time as the Superintendent shall direct.

(15) Any domestic life insurance company may also lend or invest its funds, to an extent that the cost of such investments shall not exceed in the aggregate the lesser of (i) 5 per centum of its total admitted assets, or (ii) the amount of capital, surplus, and contingency reserves in excess of \$150,000, in loans or investments (other than common stocks of insurance companies) not otherwise permitted under this section: *Provided, however*, That no company shall invest in excess of 1 per centum of its admitted assets in any one such loan or investment. The company shall keep a separate record of all loans and investments made under this subsection. In the event that, subsequently to being made under the provisions of this subsection, a loan or investment is determined to have become qualified under some other part of this section, the company may consider such loan or investment as being held under the applicable provision and such loan or investment shall no longer be considered as having been made under this subsection.

(16) The compliance of a particular investment with the restrictions that not more than a specified percentage of the investing company's admitted assets may be invested therein, as set forth in subsections (6), (7), (9), (10), (14), or (15) of this section, whichever is applicable, shall be determined as of the date of the making or acquisition of each such investment.

No loan or investment, except loans on the security of life insurance policies, shall be made by any such company, unless the same shall have been authorized or be approved by the board of directors or by a committee of directors, officers or employees of the company designated by the board charged with the duty of supervising loans or investments. The minutes of any such committee shall be duly recorded and regular reports of such committee shall be submitted to the board of directors.

No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company. Nothing contained in this paragraph shall be construed to invalidate or prohibit such a company from joining with one or more other investors to share in the purchase of any securities or the making of any loan for investment purposes.

Nothing in this chapter shall prohibit a company from accepting in good faith, to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 35; Feb. 3, 1938, 52 Stat. 26, ch. 13, § 12; June 19, 1948, 62 Stat. 480, ch. 503; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Sept. 21, 1959, 73 Stat. 598, Pub. L. 86-329, § 1; Sept. 8, 1960, 74 Stat. 863-866, Pub. L. 86-731, § 1.)

REFERENCES IN TEXT

National Housing Act, referred to in subsec. (4), is classified to U.S. Code, title 12, § 1701 et seq.

Servicemen's Readjustment Act of 1944, referred to in subsec. (4), was repealed, and is now covered by U.S. Code, title 38, § 1801 et seq.

CODIFICATION

Section 1(f) of act Sept. 8, 1960, amended subsec. (14) (f) of this section by "deleting the last sentence in its entirety and substituting the following two sentences in lieu thereof." However, the report accompanying act Sept. 8, 1960, indicates that the next to last sentence of such paragraph was amended. Accordingly, the amendment has been executed as shown in the report.

AMENDMENTS

1960—Subsec. (5) (a) amended by act Sept. 8, 1960, § 1(a), which substituted the last sentence as set out above for provisions which read "For the purpose of this section real estate shall not be deemed to be encumbered by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, water, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner."

Subsec. (6) (a) amended by act Sept. 8, 1960, § 1(b), which added proviso prohibiting any company from investing an amount in excess of 2 per centum of its admitted assets in any one issue of such notes, bonds, or equipment trust certificates of any one corporation.

Subsec. (6) (b), (c) added by act Sept. 8, 1960, § 1(b).

Subsec. (7) amended by act Sept. 8, 1960, § 1(c), which designated existing provisions as par. (a), and inserted therein depreciation and depletion in the definition of net earnings available for fixed charges, and added par. (b).

Subsec. (9) amended by act Sept. 8, 1960, § 1(d), which designated existing provisions as par. (a) and added par. (b).

Subsec. (11) amended by act Sept. 8, 1960, § 1(e), which limited the amount of loans to not more than 85 per centum of the market value of the collateral taken as security at the date of the loan.

Subsec. (14) (f) amended by act Sept. 8, 1960, § 1(f), which substituted "committee of directors, officers, or employees of the company designated by the Board" for "committee thereof", and inserted sentence requiring the minutes of any such committee to be duly recorded and requiring submission of reports to the board.

Subsecs. (15) and (16) added by act Sept. 8, 1960, § 1(g).

The paragraph following subsec. (16) was amended by act Sept. 8, 1960, § 1(h), which substituted "committee of directors, officers or employees of the company designated by the board" for "committee thereof", and inserted sentence requiring the minutes of the committee to be recorded and requiring the submission of regular reports.

The next to last paragraph was amended by act Sept. 8, 1960, § 1(i), which added sentence providing that nothing contained in this paragraph shall be construed to invalidate or prohibit such a company from joining with one or more other investors to share in the purchase of any securities or the making of any loan for investment purposes.

1959—Subsec. (5) (a), amended by act Sept. 21, 1959, which substituted "33½ per centum" for "40 per centum."

1954—Subsec. (1), amended by act July 19, 1954, which added "or obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development."

1950—Subsec. (h) amended generally by act May 4, 1950, which among other changes, substituted requirement that companies invest funds in accordance with the laws of their domicile, and in securities or property affording financial security substantially equal to that required for similar domestic companies, for provisions permitting companies to invest according to the laws of the District, or their domicile, and requiring non-stock companies to have additional assets to equal the cash premium of policies in force, and for all companies, a surplus held in trust for its policyholders equal to requirements for like domestic companies, and also requiring an additional \$100,000 deposit of securities with the Superintendent or authorized state official.

1948—Act June 19, 1948, amended section generally, and among other changes, effected the following:

Subsec. (1), inserted references to notes, territories or possessions, and to administrations, agencies, authorities and instrumentalities of the enumerated political units.

Subsec. (2), substituted provisions relating to indebtedness guaranteed or insured as to principal and interest by the United States or Canada or any of the enumerated political subdivisions of either, or of any instrumentality of said political subdivisions, for provisions relating to indebtedness of counties, cities, towns, villages, school districts, or other municipal districts within the United States or Canada, which have been substantially incorporated in subsec. (3).

Subsec. (3), substituted provisions relating to indebtedness guaranteed by cities, counties, drainage districts, road districts, school districts, tax districts, towns, local civil administrations and other subdivisions of States, Territories, possessions, or provinces of the United States or Canada, part of which were formerly in subsec. (2), for provisions relating to bonds or notes secured by mortgages, deeds of trust, and perpetual leases on unencumbered real estate, insurance of improvements, and construction of unencumbered real estate, which have been substantially incorporated in subsec. (5).

Subsec. (3a), related to bonds or notes secured by mortgages insured by the Federal Housing Administrator, and was omitted. See subsec. (4) (h).

Subsec. (4), substituted provisions relating to indebtedness and share certificates issued by the enumerated federal administrative agencies, indebtedness secured by mortgage or deed of trust issued under the National Housing Act, or guaranteed or insured under the Servicemen's Readjustment Act of 1944, or by any entity created by Congress to assist owners of mortgaged or encumbered real estate, for provisions relating to indebtedness of Farm Loan Banks or national mortgage associations.

Subsec. (5) (a), (b), (c), substituted provisions relating to indebtedness secured by first lien on real estate and on leasehold estates in the United States or Canada, defining unencumbered real estate, loans for repairs and improvements, part of which were formerly in subsec. (3), for provisions relating to stocks and bonds of solvent corporations. See subsecs. (7), (9), and (10).

Subsec. (5) (d), added.

Subsec. (6), substituted provisions relating to notes, bonds or equipment trust certificates secured by transportation equipment, for "Loans upon the pledge of any of

the securities aforesaid", which provisions have been redesignated as subsec. (11).

Subsec. (7), substituted provisions relating to bonds of solvent corporations, and defining "net earnings available for fixed charges", and "fixed charges", part of which were formerly in subsec. (5), for provisions relating to purchase of policies and loans to policyholders which have been redesignated as subsec. (12).

Subsec. (8), substituted provisions relating to bills of exchange for provisions relating to investments of companies doing business in a foreign country, which have been redesignated as subsec. (13).

Subsec. (9), substituted provisions relating to preferred stock, for provisions relating to bonds of the Home Owner's Loan Corporation, restrictions of general loans, underwriting, and acceptance of securities and property in payment of loans. See subssecs. (4)(b), and (14).

Subsecs. (10), (11), and (12), added, reenacting the provisions of former subssecs. (6), (7), and (8), respectively.

Subsec. (14), added, substantially reenacting provisions relating to approval of loans or investments, restrictions on underwriting, and acceptance of securities and property in payment of debts, which were part of former subsec. (9), and adding provisions relating to the purposes and the manner of acquiring, holding and conveying real estate.

1938—Subsec. (3a), added by act Feb. 3, 1938, § 12(a).

Subsec. (4) was amended by act Feb. 3, 1938, § 12(b), which inserted "and bonds or other evidences of indebtedness of national mortgage associations."

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of act Sept. 8, 1960, provided that: "The amendments made by this Act [to this section] shall become effective on September 1, 1960."

CROSS REFERENCES

Investment limitations on variable payment contract assets, see § 35-541.

Investments, generally, see § 35-202.

Securities permitted for deposits, see § 35-416.

Valuation of securities, see § 35-422.

§ 35-536. Repealed, June 19, 1948, 62 Stat. 480, ch. 503.

Section, act June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 36, relating to domestic company real estate holdings, is now covered by section 35-535.

§ 35-537. Reinsurance by domestic companies in authorized companies.

Any domestic company may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure any part or all of its risks in another such company. But no credit shall be taken for the reserve for unearned premiums on such reinsurance unless the company accepting the reinsurance is authorized to do business in the District by the superintendent, or in one or more States in the United States, and the superintendent shall have approved the reinsurance. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. III, § 37.)

CROSS REFERENCE

Reinsurance reserves, see § 35-201.

§ 35-538. Vouchers for disbursements.

No domestic company shall make any disbursement of \$100 or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and describing the consideration for the payment; and if the expenditure be in connection with any matter pending before any legislative or public body or before any department or officer of any State or government, the voucher shall describe the nature of the matter and the interest of the company therein,

or, if such voucher can not be obtained, the expenditure shall be evidenced by affidavit describing its character and object and stating the reasons for not obtaining such voucher. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. III, § 38.)

§ 35-539. Books, records, accounts, and vouchers of domestic companies.

Every domestic company shall keep its books, records, accounts, and vouchers in such manner that its financial condition can be ascertained and so that its financial statements filed with the superintendent can be readily verified. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. III, § 39.)

§ 35-540. Unlawful acquisition by company of its own capital stock.

It shall be unlawful for any company to acquire shares of its own capital stock except upon approval of the superintendent where the total outstanding stock is being diminished in accordance with chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. III, § 40.)

CROSS REFERENCE

Decrease of capital, see § 35-511.

§ 35-541. Variable contracts—Separate accounts—Assets of accounts to equal obligations for variable payments—Issuance by foreign companies—Standards of qualification—Reports—Regulations—Investment limitations.

(a) Every domestic life insurance company which issues contracts providing for payments which vary directly according to investment experience shall establish one or more separate accounts in connection with such contracts, as directed by the superintendent. All amounts received by the company which are required by contract to be applied to provide such variable payments shall be added to the appropriate separate account, and the assets of any such separate account shall not be chargeable with liabilities arising out of any other business the company may conduct. Any surplus or deficit which may arise in any such separate account by virtue of mortality experience shall be adjusted by withdrawals from or additions to such account so that the assets of such account shall always equal the assets required to satisfy the company's obligations for such variable payments.

(b) A foreign or alien life insurance company authorized to do business in the District may be authorized to issue or deliver contracts in the District providing for payments which vary directly according to investment experience only if authorized to issue such contracts under the laws of its domicile.

(c) No domestic life insurance company shall be authorized to issue such variable contracts, and no foreign or alien life insurance company shall be authorized to issue or deliver such contracts in the District, until such company has satisfied the Superintendent that its condition and methods of operation in connection with the issuance of such variable contracts will not be such as to render its operation hazardous to the public or to its policyholders in the District. In determining the qualification of a company to issue or deliver such variable contracts in the District, the Superintendent shall consider,

among other things, the history and financial condition of the company; the character, responsibility, and general fitness of the officers and directors of the company; and, in the case of a foreign or alien company, whether the regulation provided by the laws of its domicile provides a degree of protection to policyholders and the public substantially equal to that provided by this section and the rules and regulations issued by the Superintendent pursuant thereto.

(d) Every life insurance company which issues or delivers such variable contracts in the District shall file with the Superintendent, in addition to the annual statement required by section 35-407, such other periodic or special reports as the Superintendent may prescribe.

(e) The provisions of this section shall not apply to any contracts which do not provide for payments which vary directly according to investment experience.

(f) The Superintendent shall have the authority to issue such reasonable rules and regulations as may be necessary to carry out the purposes of this section.

(g) In the case of a domestic life insurance company which issues contracts providing for payments which vary directly according to investment experience—

(1) the 2 per centum limitation of clause (1) of subsection (7) of section 35-535, shall be enlarged to include an additional 2 per centum of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section.

(2) the 1 per centum limitation of subsection (9) of said section 35-535 shall be enlarged to include an additional 2 per centum of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section.

(3) the 1 per centum limitation of subsection (10) of said section 35-535 shall be enlarged to include an additional 2 per centum of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section.

(June 19, 1934, ch. 672, Ch. III, § 41, as added June 12, 1960, 74 Stat. 218, Pub. L. 86-520, § 1.)

Chapter 6.—FOREIGN AND ALIEN LIFE COMPANIES

Sec.

35-601. Conditions precedent to authority of foreign or alien company to do business in the District.

35-602. Trustees of alien companies.

§ 35-601. Conditions precedent to authority of foreign or alien company to do business in the District.

A foreign or alien insurance company desiring to transact business in the District shall file with the superintendent:

(a) Its application for certificate of authority, stating the kind or kinds of insurance it proposes to transact.

(b) A copy of its charter, articles of incorporation, or deed or settlement, certified by the official who is required to keep or record the same in the state

under whose laws the company is incorporated, or if organized under the laws of a foreign government, province, or state, by the proper official of such government, province, or state.

(c) A copy of its by-laws, or regulations, if any, certified to by the secretary of the company.

(d) Copies of the policies it is issuing or proposes to issue and of the applications therefor.

(e) The instrument authorizing service of process on the superintendent required by chapters 3-8 of this title.

(f) A statement of its financial condition and business, in form as prescribed by law for annual statements, signed and sworn to by the president and secretary or other principal officers of the company. If an alien company, the statement shall comprise only its condition and business in the United States, and shall be signed and sworn to by its United States manager.

(g) It shall satisfy the superintendent that the company is duly organized under the laws of the state, province, or government under whose laws it professes to be organized, and authorized to do the business it is transacting or proposes to transact, and that its name is not identical with, nor so similar to, that of another company organized prior to the organization of the applying company as to lead to confusion.

(h) It shall satisfy the Superintendent that its funds are invested in accordance with the laws of its domicile and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies, and, if a stock company, that it has paid-up capital and surplus at least equal to the capital and surplus required of domestic stock companies, or, if a mutual company, that it has a surplus at least equal to that required by chapters 3-8 of this title for domestic mutual companies. (June 19, 1934, 48 Stat. 1154, ch. 672, Ch. IV, § 1; May 4, 1950, 64 Stat. 104, ch. 157, § 6.)

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act May 4, 1950, effective ninety days after May 4, 1950, see § 8 of act May 4, 1950, set out as a note under § 35-405.

EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

CROSS REFERENCES

Application to existing companies, see § 35-520.

Deposits of domestic companies, see § 35-415 et seq.

Requirements for domestic companies, see chapter 5 of this title.

§ 35-602. Trustees of alien companies.

The directors of an alien company may appoint citizens or corporations of the United States, approved by the superintendent, as its trustees to hold funds and assets in trust for the benefit of the policyholders and creditors of the company in the United States. A certified copy of the record of such appointment and of the deed of trust shall be filed with the superintendent, who may examine such trustees and any officers and agents, books, and papers of the company in the same manner as he may examine officers, agents, books, papers, and affairs of insurance companies. The funds and assets so held by

such trustees shall, with the deposits otherwise made by the company and the funds and assets held by the company in the United States for the benefit of its policyholders and creditors in the United States, constitute the assets of the company for the purpose of making its financial statements required by chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1155, ch. 672, Ch. IV, § 2.)

Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

Sec.

- 35-701. Superintendent to value policies—Legal standard of valuation.
- 35-702. Separate classes and accounts to be kept for participating and nonparticipating insurance.
- 35-703. Standard provisions required in life insurance policies.
- 35-704. Provisions prohibited in life insurance policies.
- 35-705. Standard provisions required in annuities and pure endowment contracts.
- 35-705a. Nonforfeiture benefits and cash surrender values.
- 35-705b. Standard nonforfeiture law.
- 35-705c. Loan provisions in policies.
- 35-706. Extension of time for payment of life premiums.
- 35-707. Interest on policy and premium loans shall be added to principal.
- 35-708. Life-policy forms to be filed with Superintendent—Notice of nonconformity—Review.
- 35-709. Provisions required by the laws of a company's own State may be included in policies.
- 35-710. Group life insurance.
- 35-711. Standard provisions for policies of group life insurance.
- 35-711a. Notice to individual insured under group life insurance policy.
- 35-712. Individual Accident and Sickness Policy Provisions.
- 35-713. Stock operations and advisory board contracts prohibited.
- 35-714. Misrepresentations prohibited.
- 35-715. Discriminations prohibited.
- 35-716. Rights of creditors and beneficiaries under policies of life insurance.
- 35-717. Exemption of disability insurance from execution.
- 35-718. Exemption of group life insurance policies from execution.
- 35-719. False statements—Misdemeanor.
- 35-720. Proceeds of certain policies to be held in trust by life company.
- 35-721. When actual premium for life policy is less than net premium.
- 35-722. Acceptance of premiums in arrears and recording of payments.
- 35-723. Standard provisions required in industrial life insurance policies.
- 35-724. Provisions prohibited in industrial life insurance policies.

§ 35-701. Superintendent to value policies—Legal standard of valuation.

(a) The Superintendent shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life-insurance policies and annuity and pure endowment contracts of every life-insurance company doing business in the District except that in the case of an alien company such valuation shall be limited to its insurance transactions in the United States, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. All such valuations made by him or by his authority, shall be made upon the net premium basis. In calculating

such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any State or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such State or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the Superintendent when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that State or jurisdiction.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the Superintendent, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(b) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 35-705b (the standard nonforfeiture law).

The legal minimum standard for the valuation of life-insurance contracts issued before January 1, 1935, shall be the method and basis of valuation heretofore applied by the Superintendent in the valuation of such contracts, and for life-insurance contracts issued on and after said date shall be the one-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American Experience Table of Mortality with interest at $3\frac{1}{2}$ per centum per annum: *Provided*, That any life company may, at its option, value its insurance contracts issued on and after January 1, 1935, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than $3\frac{1}{2}$ per centum per annum by the level net premium method or by the modified preliminary term method hereinafter described.

If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty years from date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same company, the reserve thereon at the end of the year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a twenty payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. The premium payment period is the period during which premiums are concurrently payable under such twenty payment life preliminary term policy and such limited payment life or endowment policy.

Policies issued on the preliminary term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with the modified preliminary term method of valuation provided for herein.

The legal minimum standard for the valuation of annuities issued on and after January 1, 1935, shall be McClintock's Table of Mortality Among Annuity-tants, with interest at 4 per centum per annum, but annuities deferred ten or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium therefor, or upon any higher standard at the option of the company.

The legal minimum standard for the valuation of industrial policies issued after January 1, 1935, shall be the American Experience Table of Mortality with interest at $3\frac{1}{2}$ per centum per annum: *Provided*, That any life company may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table by the level net premium method or in accordance with their terms by the modified preliminary term method hereinbefore described.

The Superintendent may vary the standards of interest and mortality in the case of alien companies as to contracts issued by such companies in other countries than the United States, and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(c) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 35-705b (the standard nonforfeiture law).

(1) The minimum standard for the valuation of all such policies and contracts shall be the Commissioners reserve valuation method defined in paragraph (2), $3\frac{1}{2}$ per centum interest, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of the last paragraph of section 35-705b(d), and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(ii) For all industrial life-insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table.

(iii) For annuity and pure endowment contracts, excluding any disability and accidental

death benefits in such policies, the 1937 Standard Annuity Mortality Table.

(iv) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, class (3) Disability Table (1926) which, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life-insurance policies.

(v) For accidental death benefits in or supplementary to policies, the Intercompany Double Indemnity Mortality Table combined with a mortality table permitted for calculating the reserves for life-insurance policies.

(vi) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Superintendent.

(2) Reserves according to the Commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: *Provided, however*, That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioners reserve valuation method for (i) life-insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) annuity and pure endowment contracts, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life-insurance policies, shall be calculated by a method consistent with the principles of this paragraph (2), except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(3) In no event shall a company's aggregate reserves for all life-insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in paragraph (2) and

the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(4) Reserves for any category of policies, contracts, or benefits as established by the Superintendent, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein: *Provided, however*, That reserves for participating life-insurance policies may, with the consent of the Superintendent, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per centum the company issuing such policies shall file with the Superintendent a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the Superintendent shall approve.

(June 19, 1934, 48 Stat. 1156, ch. 672, Ch. V, § 1; Feb. 19, 1948, 62 Stat. 27, ch. 66, § 1; June 27, 1960, 74 Stat. 227, Pub. L. 86-530, § 1.)

AMENDMENTS

1960—Subsec. (c) (1) (i) amended by act June 27, 1960, § 1(a), which limited the use of the Commissioners 1941 Standard Ordinary Mortality Table to policies issued prior to the operative date of the last paragraph of section 35-705b(d) and authorized the use of the 1958 Standard Ordinary Mortality Table for policies issued after such date, and inserted the proviso relating to policies issued on female risks.

Subsec. (c) (2) (B) amended by act June 27, 1960, § 1(b), to require that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

1948—Act Feb. 19, 1948, amended section generally, and among other changes, authorized valuation of reserves for pure endowment contracts, limited valuation for alien companies to transactions in the United States, permitted the Superintendent to certify amount of reserves, to calculate them by group methods, and to accept valuations made by the insurance supervisory official of any other jurisdiction if it complies with the minimum standards herein provided and if the other jurisdiction accepts the Superintendent's certificate, permitted companies to reduce their reserves with the Superintendent's approval to the legal minimum, limited the application of the legal minimum standards for valuation to policies and contracts issued prior to the operative date of section 35-705b, and set new standards for valuation for policies and contracts issued on or after the operative date of section 35-705b.

EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

CROSS REFERENCES

Actual premium less than net premium, effect, see § 35-721.

Application to existing companies, see § 35-520.

§ 35-702. Separate classes and accounts to be kept for participating and nonparticipating insurance.

Every life company doing business in the District which issues both participating and nonparticipating

policies shall keep the two classes of business separate and shall make, and include in the annual statement to be filed with the superintendent each year a separate statement of the gains, losses, and expenses properly attributable to each of such classes and also showing the manner in which any general outlay of expenses of the company has been apportioned to each. No such life company shall be permitted to do business in the District unless it makes such a separation of its business. This section shall not apply to paid-up, temporary, or pure endowment insurance issued or granted in exchange for lapsed or returned policies. (June 19, 1934, 48 Stat. 1157, ch. 672, Ch. V, § 2.)

§ 35-703. Standard provisions required in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments with or without return of premiums or of premiums and interest shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935, unless the same shall contain in substance the following:

(1) A provision that all premiums after the first shall be payable in advance, either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who shall be designated in the policy.

(2) A provision that the insured is entitled to a grace period of at least thirty days or of one month within which the payment of any premiums after the first year may be made, subject at the option of the company to an interest charge not in excess of 6 per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium or the deferred premiums of the current policy year, if any, are paid, the amount of such premiums, with interest on any overdue premiums, may be deducted from any amount payable under the policy in settlement. Grace shall date from the premium-paying date stated in the policy.

(3) A provision that, except as otherwise expressly provided by law, the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for a period of not more than two years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted; that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties; and that no such statement or statements shall be used in defense of a claim under the policy unless contained in a written application and unless a copy of such statement or statements be endorsed upon or attached to the policy when issued: *Provided*, That nothing contained herein shall apply to applications

for reinstatement. A reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue.

(4) A provision that if it shall be found at any time before final settlement under the policy that the age of the insured (or the age of the beneficiary, if considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age, according to the company's rate at date of issue.

(5) A provision that the policy shall participate in the surplus of the company, and any policy containing provisions for participation at the end of the first policy year, and annually thereafter, may also provide that each dividend shall be paid subject to the payment of the premium for the next ensuing year; and the insured under any annual dividend policy shall have the right each year to have the dividend arising from such participation paid in cash; and if the policy shall provide other dividend options, it shall further provide which of said options shall be effective if the insured shall not elect any such other option on or before the expiration of the period of grace allowed for the payment of the premium. This provision shall not apply to any form of paid-up insurance or temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies, or to nonparticipating policies.

(6) A provision that after the policy has been in force three full years the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the insured less than the amount required by section 35-705c under the conditions specified thereby; and that the company will deduct from such loan value any indebtedness not already deducted in determining such value and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. This provision shall not be required in term insurance, nor shall it apply to temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies. The policy may further provide that if the interest on the loan is not paid when due it shall be added to the existing loan and shall bear interest at the same rate.

(7) A provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of section 35-705a or section 35-705b.

(8) A provision specifying the options, if any, to which the policyholder is entitled in the event of default in a premium payment.

(9) A table showing in figures the loan values and the options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy or during the premium paying period if less than twenty years.

(10) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance

as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium and indebtedness at the rate of not exceeding 6 per centum per annum payable annually, and that such reinstated policy shall be contestable, on account of suicide, fraud, or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue.

(11) A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death.

(12) A table showing the amount of instalments, if any, in which the policy may provide its proceeds may be payable.

(13) Title on the face and on the back of the policy briefly describing its form.

Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall, to that extent, not be incorporated therein; and any such policy may be issued or delivered in the District which in the opinion of the superintendent contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies of reinsurance, or to policies issued or granted in exchange for lapsed or surrendered policies, or to group insurance. (June 19, 1934, 48 Stat. 1158, ch. 672, Ch. V, § 3; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 2.)

AMENDMENT

1948—Subsec. (6) was amended by act Feb. 19, 1948, § 3(6), which substituted "amount required by section 35-705c of this chapter under the conditions specified thereby;" for provisions relating the amount of loan to the reserve at the end of the current policy year on the policy and dividend additions thereto exclusive of reserve on return premium insurance and on disability and accidental death benefits less a percentage of the policy, and deleted provisions permitting deferral of loans for six months after application, and for alternate deductions of either not more than 2½ per centum of the policy or one-fifth of the reserve.

Subsec. (7) was amended by act Feb. 19, 1948, § 3(7), which substituted "a provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of section 35-705a or section 35-705b of this chapter", for provisions that in event of default in premium payments after having been paid for three years, the insured was entitled to a stipulated form of insurance with net value at least equal to reserve at default date plus dividend additions, exclusive of reserve on account of return premium insurance and disability and accidental death benefits, less a percentage of the policy, for alternate deductions of either not more than 2½ per centum of the policy or one-fifth of the reserve, a right to surrender for a specific cash value, and that the company could defer payment up to six months after application, and for a net single premium rate.

Subsec. (8) was amended by act Feb. 19, 1948, § 3(8), which deleted "after three full annual premiums shall have been paid. This provision shall not be required in term insurance of twenty years or less. A provision may also be inserted in the policy that in event of default in a premium payment before such options become available

the reserve on any dividend additions then in force may at the option of the company be paid in cash or applied as a net premium to the purchase of paid-up term insurance for any amount not in excess of the face of the original policy", following "default in a premium payment."

CROSS REFERENCES

Effect of false statements in application, see § 35-414.

Industrial policies, special provisions governing, see § 35-1001 et seq.

Standard provisions for,

Accident and health policies, see § 35-712.

Annuity and endowment contracts, see § 35-705.

Group life policies, see § 35-711.

Valuation of policies, see § 35-701.

§ 35-704. Provisions prohibited in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments, with or without return of premiums or of premiums and interest, shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935 if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.

(2) A provision by which the policy shall purport to be issued or take effect more than six months before the original application for the insurance was made.

(3) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy, of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision.

(4) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof.

(5) A provision to the effect that the agent soliciting the insurance is the agent of the person insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy.

(6) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the payment of any benefits other than in lawful money of the United States.

(7) A provision permitting either contracting to pay, or the payment of, funeral, burial, and other expenses to any designated undertaker or undertaking establishment, or to any particular tradesman or business man, so as to deprive the persons entitled by law to dispose of the body of a deceased, or in any way to control such persons in procuring and purchasing said supplies and services in the open market with the advantage of competition. (June 19, 1934, 48 Stat. 1161, ch. 672, Ch. V, § 4; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 3.)

AMENDMENT

1948—Act Feb. 19, 1948, amended par. (3) by deleting "which employs the cash value less indebtedness, if any, to purchase automatic paid-up or extended insurance", following "This paragraph shall not apply to any nonforfeiture provision."

CROSS REFERENCE

Discrimination prohibited, see § 35-715.

NOTES TO DECISIONS

1. Soliciting agent

The mailing of life policy from home office of insurer in Washington, D. C., to soliciting agent in Alabama for delivery in person to insured did not constitute a delivery of policy at Washington, D. C., since agent was agent of insurer rather than of insured, and delivery took place when agent handed policy to insured in Alabama. *United Services Life Ins. Co. v. Farr* (D. C. N. Y. 1945, 60 F. Supp. 829).

§ 35-705. Standard provisions required in annuities and pure endowment contracts.

On and after January 1, 1935, no annuity or pure endowment contract shall be issued or delivered in the District unless and until a copy of the form thereof has been filed with the superintendent and formally approved by him.

Except in the case of a reversionary annuity, otherwise called a "survivorship annuity," or an annuity contracted by an employer in behalf of his employees, no annuity or pure endowment contract shall be so issued or delivered in this District unless it contains, in substance, the following provisions:

First. A provision that there shall be a period of grace, either of thirty days or of one month, within which any stipulated payment to the company falling due after the first year may be made, subject, at the option of the company, to an interest charge thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum for the number of days of grace elapsing before such payment, during which period of grace, the contract shall continue in full force; but in case a claim arises under the contract on account of death during the said period of grace before the overdue payment to the company or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

Second. If statements, other than those relating to age and identity, are required, as a condition of issuing the contract, a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or each of the persons as to whom such statements are required, for a period of two years from its date of issue, except where stipulated payments to the company have not been made, and except for violation of the conditions of the contract relating to military or naval service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant insurance specifically against death by accident, may also be excepted.

Third. A provision that such contract shall constitute the entire contract between the parties, but if the company desires to make the application a part of the contract it may do so, provided a copy of such

application shall be endorsed upon or attached to such contract, when issued, and in such case such contract shall contain a provision that it, together with the application therefor, shall constitute the entire contract between the parties.

Fourth. A provision that if the age of the person or persons upon whose life or lives the contract is based, or of any of them, has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct age or ages.

Any overpayment or overpayments by the company, on account of misstatement of age, shall with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, be charged against the current or next succeeding payment or payments to be made by the company under the contract.

Fifth. If the contract is participating, a provision that the divisible surplus shall be apportioned annually and dividends shall be payable in cash or shall be applicable to any stipulated payment or payments to the company under the contract.

Sixth. A provision that if the contract after having been in force for three full years, shall, by its terms, lapse or become forfeited because any stipulated payment to the company shall not have been made, the reserve on such contract, computed according to the standard adopted by said company in accordance with this chapter, shall, after deducting one-fifth of the said entire reserve, and any indebtedness to the company under the contract, be applied as a net single payment, according to said standard, for the purchase of a paid-up annuity or pure endowment contract, which may be nonparticipating and which shall be payable by the company under the same terms and conditions, except as to amount, as the original contract. A company may provide, in lieu of such paid-up values, for a paid-up annuity or pure endowment contract in an amount bearing the same proportion to the original annuity or pure endowment contract as the number of stipulated payments which shall have been made to the company shall bear to the total number of stipulated payments required to be made to the company under the contract, and if there be any indebtedness to the company under the contract, the amount of such paid-up annuity or pure endowment shall be reduced by an amount bearing the same proportion to such paid-up annuity or pure endowment as such indebtedness bears to the reserve on such paid-up annuity or pure endowment, computed according to the standard adopted by said company in accordance with this chapter.

Seventh. A provision that the contract may be reinstated at any time within one year from the date of default in making stipulated payments to the company, provided that all overdue stipulated payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract but not exceeding 6 per centum per annum, payable annually. In cases where applicable a company may also include a requirement of evidence of insurability satisfactory to the company.

No contract for a reversionary annuity shall be so issued or delivered unless it contains in substance the following provisions:

A. Provisions "First," "Second," "Third," and "Fifth," of this section, except that under provision "First," the company may, at its option, provide for an equitable reduction of the amount of the annuity payments in settlement of any overdue or deferred payments, in lieu of providing for a deduction of such payments from any amount payable upon a settlement under the contract.

B. A provision that, if the age of any of the persons upon whose lives the contract is based has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct ages.

C. A provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the company, upon production of evidence of insurability satisfactory to the company, provided that all overdue payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, payable annually.

Any of the foregoing provisions or portions thereof not applicable to nonparticipating contracts nor to contracts for which a single stipulated payment to the company is made, shall, to that extent, not be incorporated therein; and any such contract may be issued or delivered in this District, which, in the opinion of the superintendent, contains provisions on any one or more of the several foregoing requirements, more favorable to the holder of the contract than hereinbefore required.

Nothing herein contained shall be construed to prevent a life company, which issues life insurance on a participating basis, from issuing annuities, reversionary annuities, or pure endowments on a nonparticipating basis.

Any such contract or any application, endorsement, or rider form used in connection therewith, issued in violation of this section, shall, nevertheless, be held valid, but shall be construed as provided in this section and when any provision in such contract, application, endorsement, or rider is in conflict with any provision of this section or with any other statutory provision, the rights, duties, and obligations of the company, of the holder of the contract and of the beneficiary or annuitant thereunder, shall be governed by the provisions of this section.

The provisions of this section shall not apply to contracts of reinsurance nor to contracts for deferred annuities or reversionary annuities included in life insurance policies.

For the purposes of this section, application forms, rider forms, and endorsement forms for use in connection with any such contract, excepting riders or endorsements relating to the manner of distribution of benefits or to the reservation of rights and benefits under any such contract, and used at the request of the individual holders of such contracts, shall be deemed to be parts of such contract and shall require the approval of the superintendent. No rider and no endorsement, except as stated above, shall be

attached to or printed or stamped upon any such contract issued or delivered in the District until the form of such rider or endorsement has been filed with the superintendent and formally approved by him. (June 19, 1934, 48 Stat. 1161, ch. 672, Ch. V, § 5.)

CROSS REFERENCES

Copy of application to be delivered with policy, see § 35-203.

Effect of false statements in application, see § 35-414.

Industrial policies, special provisions governing, see § 35-1001 et seq.

Provision prohibited in life policies, see §§ 35-704, 35-712.

Accident and health policies, see §§ 35-704.

Group life policies, see § 35-711.

Life policies, see § 35-701.

Valuation of policies, see § 35-701.

§ 35-705a. Nonforfeiture benefits and cash surrender values.

This section shall apply only to policies of life insurance issued prior to the operative date of section 35-705b (the standard nonforfeiture law).

The nonforfeiture benefits referred to in provision (7) of section 35-703 shall be available to the insured in event of default in premium payments, after premiums shall have been paid for three years, and shall be a stipulated form of insurance, effective from the due date of the defaulted premium, the net value of which shall be at least equal to the reserve at the date of default on the policy and on dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and on total and permanent disability and additional accidental death benefits (the policy to specify the mortality table and rate of interest adopted for computing such reserve), less a specified percentage (not more than two and one-half) of the amount insured by the policy and of existing dividend additions thereto, if any, and less any existing indebtedness to the company on or secured by the policy: *Provided*, That a company may, in lieu of the provision herein permitted for the deduction from the reserve of a sum not more than 2½ per centum of the amount insured by the policy, and of any dividend additions thereto, insert in the policy a provision that one-fifth of said reserve may be deducted, or may provide therein that a deduction may be made of said 2½ per centum or one-fifth of said reserve, at the option of the company: *Provided further*, That the policy may be surrendered to the company at its home office within one month of the due date of defaulted premium for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid: *And provided further*, That the company may defer payment for not more than six months after the application therefor is made. A provision may also be inserted in the policy that in event of default in a premium payment before such benefit becomes available, the reserve on any dividend additions then in force may at the option of the company be paid in cash or applied as a net premium to the purchase of paid-up term insurance for any amount not in excess of the face of the original policy. This section shall not apply to term insurance of twenty years or less. The net single premium rate employed in computing the term of temporary insurance or the amount of pure

endowment insurance granted as a nonforfeiture value under any life-insurance policy may at the option of the company be based upon a table of mortality showing rates of mortality not greater than 130 per centum of those shown by the American Men Ultimate Table of Mortality instead of the table used in computing the reserve on the policy, or in case of substandard policies not greater than 130 per centum of the rates of mortality shown by the table of mortality approved by the Superintendent for computing the reserve on the policy, anything herein to the contrary notwithstanding. (June 19, 1934, ch. 672, Ch. V, § 5a, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4.)

§ 35-705b. Standard nonforfeiture law.

(a) In the case of policies issued on or after the operative date of this section, as defined in subsection (g) no policy of life insurance, except as stated in subsection (f), shall be issued or delivered in the District of Columbia unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the Superintendent are at least as favorable to the defaulting or surrendering policyholder—

(1) that, in event of default in any premium payment after premiums have been paid one full year in the case of ordinary insurance or three full years in the case of industrial insurance, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified;

(2) that, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit a cash surrender value of such amount as may be hereinafter specified;

(3) that a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(4) that, if the policy shall become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified;

(5) a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of

the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy;

(6) a brief and general statement of the method to be used in calculating the cash surrender value and the paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy, with an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(b) Any cash surrender value available under any policy referred to in subsection (a) in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (a), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (i) the then present value of the adjusted premiums as defined in subsection (d), corresponding to premiums which would have fallen due on and after such anniversary, and (ii) the amount of any indebtedness to the company on the policy. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection (a), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(c) Any paid-up nonforfeiture benefit available under any policy referred to in subsection (a), in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(d) The adjusted premiums for any policy referred to in subsection (a) shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be

equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 2 per centum of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) 40 per centum of the adjusted premium for the first policy year; (iv) 25 per centum of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: *Provided, however,* That in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed 4 per centum of the amount of insurance or uniform amount equivalent thereto.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: *Provided, however,* That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

Except as otherwise provided in the next succeeding paragraph of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding $3\frac{1}{2}$ per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: *Provided, however,* That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 per centum of the rates of mortality according to such applicable table: *Provided further,* That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent.

In the case of ordinary policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values

referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest, not exceeding $3\frac{1}{2}$ per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured: *Provided, however*, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: *Provided further*, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1960, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January 1, 1966.

(e) Any cash surrender value and any paid-up nonforfeiture benefit, available under any such policy in the event of default in the payment of any premium due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (b), (c), and (d) may be calculated upon the assumption that any death benefit is payable at the end of the policy or contract year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (b), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, and (v) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(f) This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen

years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsection (d), is less than the adjusted premium so calculated, on such fifteen-year term policy issued at the same age and for the same initial amount of insurance, nor to any policy or contract which shall be delivered outside the District of Columbia through an agent or other representative of the company issuing the policy.

(g) After February 19, 1948, any company may file with the Superintendent a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1950. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this section shall become operative with respect to the policies and contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1950: *Provided, however*, That the operative date of the last paragraph of subsection (d) shall be as stated therein. (June 19, 1934, ch. 672, Ch. V, § 5b, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4, and amended June 27, 1960, 74 Stat. 228, Pub. L. 86-530, § 2.)

AMENDMENT

1960—Subsec. (d) amended generally by act June 27, 1960, § 2(a).

Subsec. (e) amended by act June 27, 1960, § 2(b), which eliminated word "decreasing" preceding "term insurance" in cl. (iv).

§ 35-705c. Loan provisions in policies.

(a) In the case of ordinary policies issued prior to the operative date of section 35-705b (the standard nonforfeiture law) the loan value referred to in provision (6) of section 35-703 shall be the reserve at the end of the current policy year on the policy and on the dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and of total and permanent disability and additional accidental death benefits, less a sum not more than $2\frac{1}{2}$ per centum of the amount insured by the policy and of any dividend additions thereto (the policy to specify the mortality table and rate of interest adopted for computing such reserve). The policy may provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than $2\frac{1}{2}$ per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the said reserve may be deducted in case of a loan under the policy, or may provide therein that the deduction may be the said $2\frac{1}{2}$ per centum or the one-fifth of the said reserve at the option of the company.

(b) In the case of ordinary policies issued on or after the operative date of section 35-705b (the standard nonforfeiture law) the loan value referred to in provision (6) of section 35-703 shall be the cash surrender value at the end of the current policy year as required by section 35-705b. The company shall reserve the right to defer such loan, except when

made to pay premiums, for six months after application therefor is made. (June 19, 1934, ch. 672, Ch. V, § 5c, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4.)

§ 35-706. Extension of time for payment of life premiums.

A life company may enter into subsequent agreements in writing with the insured, which need not be attached to the policy, to extend the time for the payment of any premium, or part thereof, upon condition that failure to comply with the terms of such agreement shall lapse the policy, as provided in said agreement or in the policy. Subject to such lien as may be created to secure any indebtedness contracted by the insured, in consideration of such extension, said agreement shall not impair any right existing under the policy. (June 19, 1934, 48 Stat. 1164, ch. 672, Ch. V, § 6.)

§ 35-707. Interest on policy and premium loans shall be added to principal.

In ascertaining the indebtedness due upon policy or premium loans the interest, if not paid when due, shall be added to the principal of such loans and shall bear interest at the rate specified in the note or loan agreement. (June 19, 1934, 48 Stat. 1164, ch. 672, Ch. V, § 7.)

§ 35-708. Life-policy forms to be filed with Superintendent—Notice of nonconformity—Review.

A policy of life insurance shall not be issued or delivered in the District until the form of the same has been filed with the superintendent, nor if the superintendent give written notice, within thirty days of such filing to the company proposing to issue it, showing wherein the form of such policy does not comply with the requirements of the laws of the District, provided that such action of the superintendent shall be subject to review by a court of competent jurisdiction. (June 19, 1934, 48 Stat. 1164, ch. 672, Ch. V, § 8.)

NOTES TO DECISIONS

1. War clause

Under life policy limiting liability if death of insured resulted from military or naval service outside the United States in time of war and if death of insured resulted within two years from date of issue of policy from war while insured was outside the United States, where death of insured occurred while he was serving as a naval officer outside of the United States in time of war and more than two years after date of policy, ambiguity between policy provisions would be resolved by applying the two year provision as an affirmation of liability. *Hayes v. Home Life Ins. Co.* (1948, 168 F. 2d 152, 83 U.S. App. D.C. 110).

Where insured was fatally injured when he fell from hotel window in France on October 2, 1945, while serving with occupation forces, the United States was not a country "engaged in war" within life policy provision restricting liability, even though war had not terminated in a political sense. *Stinson v. New York Life Ins. Co.* (1948, 167 F. 2d 233, 83 U.S. App. D.C. 115).

§ 35-709. Provisions required by the laws of a company's own State may be included in policies.

The policies of a life company, not organized under the laws of the District, may contain any provisions prescribed by the laws of the state, territory, District, or country, under which the company is organized. The policies of a life company, organized under the laws of the District, may, when issued or delivered in any state, territory, District, or country,

contain any provisions required by the laws of the state, territory, District, or country in which the same are issued or delivered, anything in chapters 3-8 of this title to the contrary notwithstanding. (June 14, 1934, 48 Stat. 1164, ch. 672, Ch. V, § 9.)

§ 35-710. Group life insurance.

No policy of group life insurance shall be delivered in the District unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors; or partnerships is under common control through stock ownership or contract. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75 per centum of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding indi-

vidual selection either by the employees or by the employer or trustees. No policy may be issued which provides term insurance on any employee which together with any other term insurance under any group life-insurance policy or policies issued to the employers or any of them or to the trustees of a fund established in whole or in part by the employers or any of them exceeds \$20,000, any of them exceeds \$20,000 unless 150 per centum of the annual compensation of a covered employee, exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75 per centum of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75 per centum of the new entrants become insured.

(d) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable in installments to the creditor, or \$5,000, whichever is less.

(e) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of

such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75 per centum of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten members at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides term insurance on any union member which together with any other term insurance under any group life insurance policies exceeds \$20,000 unless 150 per centum of the annual compensation of a covered union member exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(4) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide

employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both. No policy may be issued on which any part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at date of issue at least one hundred persons and not less than an average of five persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued only if (i) either (a) the participating employers constitute at date of issue at least 60 per centum of those employer members whose employees are not already covered for group life insurance or (b) the total number of persons covered at date of issue exceeds six hundred; and (ii) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life-insurance policy or policies issued to the employers, or any of them, or to the trustees of a fund established in whole or in part by the employers, or any of them, exceeds \$20,000 unless 150 per centum of the annual compensation of a covered person exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(5) A policy issued to the president of the Board of Commissioners, or to the head of any Federal department or independent Federal bureau, board, commission, or other Federal independent establishment, or to an association of Federal employees, as the case may be, covering not less than ten employees of the government of the District or of the Federal Government, with or without medical examination, the premium on which is to be paid by the employees and insuring only employees, or any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer: *Provided*, That when the benefits of the policy are offered to all eligible employees, not less

than 75 per centum of such employees may be so insured.

(6) A policy issued to an association whose eligible members have the same profession, trade, or occupation which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members, or employees of members, of such association for the benefit of persons other than the association, or any of its officials, representatives, or agents, subject to the following requirements:

(a) The members or employees eligible for insurance under the policy shall be all the members, and all the employees of the members, of the association, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(b) The premium for the policy shall be paid by the policyholder either wholly from the association's funds, or partly from such funds and partly from funds contributed by the insured members or employees specifically for their insurance, or from funds wholly contributed by the insured members or employees specifically for their insurance. A policy on which any part or all of the premium is to be derived from funds contributed by the insured members or employees specifically for their insurance may be placed in force only if at least 60 per centum of the then eligible members or employees or a minimum of four hundred members or employees, whichever is less, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members or employees specifically for their insurance must insure all eligible members or employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five members or employees at date of issuance.

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members or employees, or by the association. No policy may be issued which provides term insurance on any association member or employee which, together with any other term insurance under any group life insurance policy or policies, exceeds \$20,000, unless 150 per centum of the annual compensation of such person exceeds \$20,000, in which event all such term insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less.

(7) Any policy issued pursuant to this section, except a policy issued to a creditor pursuant to subsection (2) hereof, may be extended to insure the spouses and minor children of insured persons, or any class or classes thereof, subject to the following requirements:

(a) The premiums for the insurance shall be paid by the policyholder either from the policyholder's funds or from funds contributed by the

insured person, or from both. If any part of the premium is to be derived from funds contributed by the insured persons, the insurance with respect to spouses and children may be placed in force only if at least 75 per centum of the then eligible employees or association members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the insured persons, all such eligible employees or association members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(b) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, and shall not exceed with respect to any spouse or child, 50 per centum of the insurance on the life of such insured person.

(c) Upon termination of the insurance with respect to the spouse of any insured person by reason of such person's termination of employment or membership or death, the spouse insured pursuant to this section shall have the same conversion rights as to the insurance on his or her life as is provided for the insured person under section 35-711.

(d) Notwithstanding the provisions of section 35-711, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

(June 19, 1934, 48 Stat. 1164, ch. 672, ch. V, § 10; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 330, ch. 457, § 1; July 5, 1960, 74 Stat. 315, 316, Pub. L. 86-579, §§ 1-5.)

AMENDMENTS

1960—Subsec. (1) (c) amended by act July 5, 1960, § 1, which substituted "ten employees" for "twenty-five employees."

Subsec. (1) (d) amended by act July 5, 1960, § 1, which inserted words "unless 150 per centum of the annual compensation of a covered employee, exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less."

Subsec. (3) (c) amended by act July 5, 1960, § 2, which substituted "ten members" for "twenty-five members."

Subsec. (3) (d) amended by act July 5, 1960, § 2, which substituted "insurance policies exceeds \$20,000 unless 150 per centum of the annual compensation of a covered union member exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less" for "insurance policies issued to the union exceeds \$20,000."

Subsec. (4) (d) amended by act July 5, 1960, § 3, which inserted words "unless 150 per centum of the annual compensation of a covered person exceeds \$20,000, in which event all such insurance shall not exceed \$40,000, or 150 per centum of such annual compensation, whichever is less."

Subsec. (5) amended by act July 5, 1960, § 4, which substituted "ten employees" for "fifty employees."

Subsecs. (6) and (7) added by act July 5, 1960, § 5. 1950—Act July 12, 1950, amended section generally, and among other changes, provided that: the trustees of a fund established by an employer may be policyholders, "employees" to include individual proprietors or partners if they are the employer and devote substantial time to the business, and retired employees, excluded directors

unless otherwise qualified as employees, and limited total term coverage under any number of policies to \$20,000 per employee; regarding creditor's policies, where premiums are partly paid by debtors, excluded as insurable debtors those under obligations outstanding at the date of issue without evidence of individual insurability unless at least 75 per centum elect to pay the charges, but where debtors pay entire premium, then all individually insurable must be included, and increased the amount of insurance to \$5,000; in labor union groups, policy must cover at least twenty-five members at issue date, and limited total term coverage to \$20,000 per member; trustees of trust funds by two or more member employers, or one or more unions, or combinations of employers and unions may be policyholders, and in such cases, defined "employees" in like manner as aforesaid in the case of trust funds set up by a single employer, premiums to be paid by funds contributed by the employers, or unions, or both, with no policy to be issued if any premiums are to be paid by the insured, all individually insurable to be insured, established formulas to determine how many people must be covered at date of issue under diverse circumstances, precluded individual selection of employees, and limited individual coverage to \$20,000; provisions defining as insurable groups, National Guard units, and units of the State troopers or police were deleted.

1940—Act July 2, 1940, added subdivision (e) which established as an acceptable form of group life insurance, that covering the lives of members of a group, with not less than one hundred entrants to the group yearly, and limited in coverage to \$2,000 per life, who are borrowers from one lending institution, or are purchasers of securities, merchandise or other property from one vendor under agreement to repay the sum borrowed, or the balance of the price due, and payable to the lender or vendor or other creditor to whom the vendor may have transferred title to the indebtedness, with the premium "payable by the borrower lending institution vendor or other creditor."

NOTES TO DECISIONS

Construction 1
Number of employees required 2
Opinions of superintendent 3

1. Construction

The terms of a statute should be so construed so as to effectuate the true intent and object of the Legislature in the enactment. *Shenandoah Life Insurance Co. v. Jordan* (1955, 128 F. Supp. 274).

2. Number of employees required

This section, respecting group insurance in view of legislative history, does not manifest a congressional intent that 75 percent of all employees of a government department, board, commission, etc., must be included before the group may be validly insured and an association of not less than 50 employees can be formed and obtain insurance, although the group does not comprise 75 percent of all employees of the government department, board, commission, etc., and even if the sole purpose for the formation of the association is the obtaining of group insurance. *Shenandoah Life Insurance Co. v. Jordan* (1955, 128 F. Supp. 274).

3. Opinions of superintendent

While the informal opinions of the superintendent of insurance are not conclusive in the construction of a statute the court would not disregard such administrative interpretations despite their informality especially where the interpretation had been followed in practice for a long period of time. *Shenandoah Life Insurance Co. v. Jordan* (1955, 128 F. Supp. 274).

§ 35-711. Standard provisions for policies of group life insurance.

No policy of group life insurance shall be delivered in the District unless it contains in substance the following provisions, or provisions which in the opinion of the superintendent are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder: *Provided, however*, (a) That provisions (6) to (10), inclusive, shall not apply to policies issued

to a creditor to insure debtors of such creditor; (b) that the standard provisions required for individual life-insurance policies shall not apply to group life-insurance policies; and (c) that if the group life-insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the superintendent is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life-insurance policies contain the same nonforfeiture provisions as are required for individual life-insurance policies:

(1) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him.

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

(5) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

(6) A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding \$250 to any person appearing to the in-

surer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in (8), (9), and (10) following.

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination: *And provided further, That—*

(a) the individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(b) the individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by (8) above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and (b) \$2,000.

(10) A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance

which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. (June 19, 1934, 48 Stat. 1165, ch. 672, Ch. V, § 11; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 333, ch. 457, § 2.)

AMENDMENTS

1950—Act July 12, 1950, amended section generally, and among other changes provided that: policyholders are to have a grace period of thirty-one days for premium payments, except the first, with death benefit coverage continuing; to contest a policy, the statement relating to insurability must be in writing and prior to a two-year period from date of issue; a copy of the application should be attached to the policy, and that a copy of an instrument containing a statement used to contest a policy is to be furnished to the insured; the conditions whereby the insurer may require evidence of individual insurability must be set forth; the method of adjustment where a misstatement of age exists must be clearly stated; policy to be payable to the beneficiary designated by the insured, subject to policy provisions in the event there is no living beneficiary, and also subject to the insurer's right, if reserved, to pay up to \$250 to persons equitably entitled; insurance which matures before termination of employment shall not be considered in determining the amount of insurance obtainable at a conversion to an individual policy; if the group policy terminates or is amended to terminate the insurance of any class thereunder, every person whose insurance so terminates shall be entitled to individual insurance, subject to the same limitations as if his employment was terminated, and not more than the lesser of \$2,000, or the difference between his protection in the group less his protection in any other policy his employer places him in within thirty-one days; if a person dies after termination of employment or policy during period wherein he was entitled to an individual policy, the amount of that individual policy is payable through the group even if no application had been made, and deleted the provision that violation of the policy conditions relating to war service shall survive the incontestability period.

1940—Act July 2, 1940, amended paragraph 4 by adding "The provisions of the paragraph shall not apply to insurance described in item (e) of section 35-710."

CROSS REFERENCES

Copy of application to be delivered with policy, see § 35-203.

Effect of false statements in application, see § 35-414.

Provisions prohibited in life policies, see § 35-704.

Standard provisions for,

Accident and health policies, see § 35-712.

Annuity and endowment contracts, see § 35-705.

Life policies, see § 35-701.

Valuation of policies, see § 35-701.

§ 35-711a. Notice to individual insured under group life insurance policy.

If any individual insured under a group life-insurance policy hereafter delivered in the District becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least fifteen days prior to the expiration date of such period, then, in such event, the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire fifteen days next after the individual is given such notice but in no

event shall such additional period extend beyond sixty days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last-known address of the individual or mailed by the insurer to the last-known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this paragraph.

Except as provided in this chapter it shall be unlawful to make a contract of life insurance for a group in the District. (June 19, 1934, ch. 672, Ch. V, § 11(a), as added July 12, 1950, 64 Stat. 335, ch. 457, § 2.)

§ 35-712. Individual Accident and Sickness Policy Provisions.

1. Filing Requirements

No policy of insurance against loss resulting from sickness or from bodily injury or death by accident, or both, shall be issued or delivered to any person in the District by any company organized under this or any other law of the District, or, if a foreign or alien company, authorized to do business in the District, until a copy of the form thereof, and of the classification of risks and the premium rates appertaining thereto, have been filed with the Superintendent; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed, unless the Superintendent shall sooner give his written approval thereto. If the Superintendent shall give written notice to the company which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the Superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427.

2. Form of Policy

(a) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in the District unless—

(1) the entire money and other considerations therefor are expressed therein; and

(2) the time at which the insurance takes effect and terminates is expressed therein; and

(3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

(4) the style, arrangement, and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lowercase unspaced alphabet

length not less than one hundred and twenty-point (the text shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions) ; and

(5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in subsection (3) of this section, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS," or "EXCEPTIONS AND REDUCTIONS": *Provided*, That, if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Superintendent.

(b) If any policy is issued by an insurer domiciled in the District for delivery to a person residing in another jurisdiction, and if the official having responsibility for the administration of the insurance laws of such other jurisdiction shall have advised the Superintendent that any such policy is not subject to approval or disapproval by such official, the Superintendent may by ruling require that such policy meet the standards set forth in paragraph (a) of this subsection and in subsection (3).

3. Accident and Sickness Policy Provisions

(a) Required provisions: Except as provided in paragraph (c) of this subsection each such policy delivered or issued for delivery to any person in the District shall contain the provisions specified in this paragraph in the words in which the same appear in this paragraph: *Provided, however*, That the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Superintendent which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this paragraph or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Superintendent may approve.

(1) A provision as follows:

"ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

(2) A provision as follows:

"TIME LIMIT ON CERTAIN DEFENSES: (aa) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three-year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three-year period, nor to limit the application of subsection 3 (b), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE."

"After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

"(bb) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(3) A provision as follows:

"GRACE PERIOD: A grace period of _____ (insert a number not less than '7' for weekly premium policies, '10' for monthly premium policies, and '31' for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

A policy which contains a cancellation provision may add, at the end of the above provision, "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof".

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

"Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted,".

(4) A provision as follows:

"REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement."

ment, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement."

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

"**NOTICE OF CLAIM:** Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at _____ (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given."

(6) A provision as follows:

"**CLAIM FORMS:** The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within

fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made."

(7) A provision as follows:

"**PROOFS OF LOSS:** Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required."

(8) A provision as follows:

"**TIME OF PAYMENT OF CLAIMS:** Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid _____ (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

(9) A provision as follows:

"**PAYMENT OF CLAIMS:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity up to an amount not exceeding \$_____ (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services

may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

(10) A provision as follows:

"**PHYSICAL EXAMINATIONS AND AUTOPSY:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

(11) A provision as follows:

"**LEGAL ACTIONS:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished."

(12) A provision as follows:

"**CHANGE OF BENEFICIARY:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(b) Other provisions: Except as provided in paragraph (c) of this subsection, no such policy delivered or issued for delivery to any person in the District shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this paragraph: *Provided, however,* That the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Superintendent which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this paragraph or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Superintendent may approve.

(1) A provision as follows:

"**CHANGE OF OCCUPATION:** If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occu-

pation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the official having supervision of insurance in the jurisdiction where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such jurisdiction prior to the occurrence of the loss or prior to the date of proof of change in occupation."

(2) A provision as follows:

"**MISSTATEMENT OF AGE:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

(3) A provision as follows:

"**OTHER INSURANCE IN THIS INSURER:** If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ----- (insert type of coverage or coverages) in excess of \$----- (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

(4) A provision as follows:

"**INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "**—EXPENSE INCURRED BENEFITS.**" The insurer may, at its option, include in this provision a definition of "other valid cover-

age", approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Superintendent. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

(5) A provision as follows:

"INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro-rata portion for the indemnities thus determined."

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase "—OTHER BENEFITS." The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Superintendent. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third

party liability coverage shall be included as "other valid coverage".)

(6) A provision as follows:

"RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss-of-time coverage", approved as to form by the Superintendent, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Superintendent or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(7) A provision as follows:

"UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

(8) A provision as follows:

"CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later

date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the official having supervision of insurance in the jurisdiction where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."

(9) A provision as follows:

"**CONFORMITY WITH STATE STATUTES:** Any provision of this policy which, on its effective date, is in conflict with the statutes of the jurisdiction in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

(10) A provision as follows:

"**ILLEGAL OCCUPATION:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

(11) A provision as follows:

"**INTOXICANTS AND NARCOTICS:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

(c) Inapplicable or inconsistent provisions: If any provision of this subsection is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Superintendent, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(d) Order of certain policy provisions: The provisions which are the subject of paragraphs (a) and (b) of this subsection, or any corresponding provisions which are used in lieu thereof in accordance with such paragraphs, shall be printed in the consecutive order of the provisions in such paragraphs or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

(e) Third party ownership: The word "insured", as used in this section, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

(f) Filing procedure: The Superintendent may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this section as are necessary, proper or advisable to the administration of this section. This provision shall not abridge any other authority granted the Superintendent by law.

4. Conforming to Statute

(a) Other policy provisions: No policy provision which is not subject to subsection (3) of this section shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this section.

(b) Policy conflicting with this section: A policy delivered or issued for delivery to any person in the District in violation of this section shall be held valid but shall be construed as provided in this section. When any provision in a policy subject to this section is in conflict with any provision of this section, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of this section.

5. Application

(a) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in the District shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(b) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(c) The falsity of any statement in the application for any policy covered by this section may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

6. Notice; Waiver

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

7. Age Limit

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the

end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

8. Nonapplication to Certain Policies

Nothing in this section shall apply to or affect (1) any policy of group accident, group health, or group accident and health insurance; or (2) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract: *Provided*, That no such supplemental contract shall be issued or delivered to any person in the District unless and until a copy of the form thereof has been submitted to and approved by the Superintendent under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission to and approval by him. (June 19, 1934, 48 Stat. 1166, ch. 672, Ch. V, § 12; July 12, 1950, 64 Stat. 335, ch. 457, § 3; July 16, 1953, 67 Stat. 162, ch. 196, § 1.)

AMENDMENTS

1953—Act July 16, 1953, amended the section generally so as to modernize existing law with respect to life insurance particularly that part relating to accident and sickness provisions.

1950—Subsec. (k) (1) amended by act July 12, 1950, which substituted "group accident, group health, or group accident and health insurance", for liability or workmen's compensation insurance or any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any employer, whether a corporation, copartnership, association, or individual or to any police or fire department, underwriters corps, salvage bureau, or to any association of fifty or more members having a constitution or bylaws and formed in good faith for purposes other than that of obtaining insurance, where not less than 75 per centum of the members or employees are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise in consideration of a premium intended to cover the risks of all the persons insured under such policy.

EFFECTIVE DATE OF 1953 AMENDMENT

Amendment of section by act July 16, 1953, effective ninety days after July 16, 1953, see section 3 of act July 16, 1953, set out as a note under section 35-302.

CROSS REFERENCES

Health and accident companies, see § 35-202.

Health and accident policies issued by companies operating under the "Fire and Casualty Act" may be required to comply with this section, see § 35-1332.

Standard provisions for,

Annuity and endowment contracts, see § 35-705.

Group life policies, see § 35-711.

Life policies, see § 35-703.

NOTES TO DECISIONS

Burden of proof 1
Domestic and foreign corporations 2
Intention to deceive 3

1. Burden of proof

Insurer had burden of proving that right to recovery on hospitalization policy was barred by insured's failure to state in application inquiring as to past medical or surgical treatment that insured's cervix had been cauterized, and such burden could be carried by evidence deduced from insured's own witnesses. *Turner v. National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).

2. Domestic and foreign corporations.

Subsection (f) of this section providing that falsity of any statement in application for accident and health policy shall not bar right of recovery thereunder unless made with intent to deceive, or unless materially affecting acceptance of risk or hazard assumed by insurer, was applicable to insurance company issuing hospitalization policy and chartered in District of Columbia and authorized to do business in District, and to Maryland company assuming policy with consent of insured, where insured continued to live in District and claim arose in District. *Turner v. National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).

3. Intention to deceive

An insured's failure to state, in hospitalization policy application inquiring as to past medical or surgical treatment, that her cervix had been cauterized, precluded recovery of hospitalization benefits under policy, where failure to disclose such fact was intended to deceive and materially affected acceptance of risk. *Turner v. National Hospitalization* (D. C. Mun. App. 1947, 52 A. 2d 274).

§ 35-713. Stock operations and advisory board contracts prohibited.

No life company doing business in the District shall issue in the District, nor permit its general agents, agents, officers, solicitors, or employees to issue or deliver in the District, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board or other contracts of any kind promising returns and profits as an inducement to insure; and no life company shall be authorized to do business in the District which issues or permits its general agents, agents, officers, solicitors, or employees to issue in the District or in any state or territory agency company stock or other capital stock, or benefit certificates or shares in any common-law corporations, or securities or any special advisory board or other contracts of any kind promising returns and profits as an inducement to insurance; and no corporation or stock company acting as agent of a life company nor any of its general agents, agents, officers, solicitors, or employees shall be permitted to sell, agree, or offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature promising returns and profits as an inducement to insurance or in connection therewith. It shall be the duty of the superintendent, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending: *Provided, however*, That the action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427. (June 19, 1934, 48 Stat. 1173, ch. 672, Ch. V, § 13.)

§ 35-714. Misrepresentations prohibited.

No life company doing business in the District, and no officer, director, general agent, agent, or solicitor

thereof, broker, or any other person shall make, issue, or circulate, or cause to be issued or circulated, any estimate, illustration, circular, or statement of any sort misrepresenting the terms of any policy issued or to be issued by it or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such corporation or officer, director, general agent, agent, or solicitor thereof, broker or any other person, firm, association, or corporation make any misrepresentation to any person insured in any company for the purpose of inducing or tending to induce a policyholder in any company to lapse, forfeit, or surrender his insurance. It shall be the duty of the superintendent, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending: *Provided, however,* That the action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427. (June 19, 1934, 48 Stat. 1174, ch. 672, Ch. V, § 14.)

CROSS REFERENCE

Revocation or suspension of agent's or broker's license, see § 35-426.

§ 35-715. Discriminations prohibited.

No life insurance corporation doing business in the District shall make or permit any discriminations between individuals of the same class or of equal expectation of life, in the amount of payment or return of premiums or rates charged for policies of insurance, including endowment policies and annuity contracts, or in the dividends or other benefits payable thereon, or in any of the terms or conditions of the policy; nor shall any such company permit or agent thereof offer to make any contract of insurance, endowment policy, or annuity contract, or agreement as to such contracts other than as plainly expressed in the policy issued thereon, nor shall any such company or officer, agent, solicitor, or representative thereof pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to any person to insure, or give, sell, or purchase, or offer to give, sell, or purchase as such inducement or in connection with such insurance, endowment policy, or annuity contract, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profit accruing thereon, or any valuable consideration or inducement whatever not specified in the policy, nor shall any person knowingly receive any such inducement, any rebate of premium, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever, not specified in the policy. No person shall be excused from attending and testifying and producing any books, papers, or other documents before any court or magistrate, upon any investigation, proceeding, or trial for a violation of any of the provisions of this section, upon the ground or for the rea-

son that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Nothing in this section shall be so construed as to forbid a company, transacting industrial life insurance, from returning to policyholders, who have made premium payments for a period of at least one year, directly to the company at its home or distant offices, a percentage of such a premium which the company would have paid for the collection thereof. (June 19, 1934, 48 Stat. 1174, ch. 672, Ch. V, § 15.)

CROSS REFERENCE

Provisions prohibited in life policies, see § 35-704.

NOTES TO DECISIONS

1. Splitting commissions

An insurance broker was not prohibited from splitting commissions with insurance solicitor where arrangement was otherwise valid. *Werber v. Wallop* (D. C. Mun. App. 1946, 46 A. 2d 110).

This section prohibiting discrimination, rebates, kickbacks, or other improper manipulating of premiums, did not invalidate agreement between insured and broker that broker would pay half of commissions on issuance of life policies, to insurance solicitor who had handled practically all of insured's insurance business. *Id.*

§ 35-716. Rights of creditors and beneficiaries under policies of life insurance.

When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person: *Provided,* That subject to the statute of limitations the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice by or in behalf of a creditor of a claim to recover for transfer made or premiums paid with intent to defraud creditors with specifications of the amount claimed. (June 19, 1934, 48 Stat. 1175, ch. 672, Ch. V, § 16; Aug. 1, 1947, 61 Stat. 711, ch. 427.)

AMENDMENT

1947—Act Aug. 1, 1947, substituted "executors or administrators of such insured or the person so effecting such insurance" for "his executors or administrators".

NOTES TO DECISIONS

Beneficiary, rights of 1
 Impairment of contract 2
 Representatives of
 Deceased beneficiary 3
 Insured 4

1. Beneficiary, rights of

Under this section providing that the lawful beneficiary other than insured or person effecting insurance or "his" executors or administrators shall be entitled to its proceeds against creditors and representatives of insured the word "beneficiary" is an antecedent of the word "his" and this section means that lawful beneficiary or his executors or administrators shall be entitled to the proceeds against creditors and representatives of insured. *Kindleberger v. Lincoln Nat. Bank of Wash.* (1946, 155 F. 2d 281, 81 U.S. App. D.C. 101, 167 A.L.R. 1011, certiorari denied 67 S. Ct. 495, 329 U.S. 803, 91 L. Ed. 686).

2. Impairment of contract

Where this section was expressly made applicable to policies previously issued, this section was controlling over contrary provision of policy issued before enactment of this section and such application of this section did not impair obligation of contract embodied in the policy. *Kindleberger v. Lincoln Natl. Bank of Wash.* (1946, 155 F. 2d 281, 81 U.S. App. D.C. 101, 167 A.L.R. 1011, certiorari denied 67 S. Ct. 495, 329 U.S. 803, 91 L. Ed. 686).

3. Representatives of deceased beneficiary

Under this section, proceeds of life policy were payable to estate of beneficiary who predeceased insured, notwithstanding insured reserved right to change beneficiary and policy, issued before enactment of this section, provided that interest of beneficiary should vest in insured in event of beneficiary's death before insured. *Kindleberger v. Lincoln Nat. Bank of Wash.* (1946, 155 F. 2d 281, 81 U.S. App. D.C. 101, 167 A.L.R. 1011, certiorari denied 67 S. Ct. 495, 329 U.S. 803, 91 L. Ed. 686).

Where insured reserves right to change beneficiary of life policy, interest of beneficiary may be defeated by insured by expedient of changing beneficiary; but in absence of change, when policy has matured because of insured's death, claim of beneficiary to proceeds cannot be defeated and, if beneficiary has not survived, beneficiary's executors or administrators are entitled under this section to the proceeds against creditors and representatives of insured. *Id.*

4. Representatives of insured

Where life policy provided that proceeds thereof were to be paid to insured's wife, "if living; otherwise to his executors, administrators or assigns", and insured died 15 months after his wife's death without having changed beneficiary clause, insured's executors, rather than wife's administrators, were entitled to proceeds of policy notwithstanding this section providing that beneficiary's representatives shall be entitled to proceeds of a life policy as against insured's representatives, and though application for policy did not contain the quoted words appearing in policy. *Horning v. Lindsay* (1948, 169 F. 2d 963).

§ 35-717. Exemption of disability insurance from execution.

No money or other benefit paid, provided, allowed, or agreed to be paid by any company on account of the disability from injury or sickness of any insured person shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person whether such debt or liability was incurred before or after the commencement of such disability, but the provisions of this section shall not affect the assignability of any

such disability benefit otherwise assignable, nor shall this section apply to any money income disability benefit in an action to recover for necessities contained in this section apply to any money income disability covered by the disability clause or contract allowing such money income benefit. (June 19, 1934, 48 Stat. 1175, ch. 672, Ch. V, § 16a.)

NOTES TO DECISIONS

Allimony 1
 Disposition of insurance 2
 Reason for law 3

1. Allimony

Liability for allimony and support payments to divorced wife is not a "debt or liability" within the meaning of this exemption. *Schlaefter v. Schlaefter* (1940, 112 F. 2d 177, 71 App. D.C. 350).

Payments of disability insurance are not exempt from liability for allimony and for support of divorced wife. *Id.*

2. Disposition of insurance

So far as general creditors are concerned, the purpose of this provision is clear, with the exceptions stated, to make disposition of these funds a matter solely for the insured's judgement. *Schlaefter v. Schlaefter* (1940, 112 F. 2d 177, 71 App. D.C. 350).

3. Reason for law

Congress regarded it better for creditors to go unpaid than to deprive the debtor and his dependents of this means of support when earning capacity would be cut off. *Schlaefter v. Schlaefter* (1940, 112 F. 2d 177, 71 App. D.C. 350).

§ 35-718. Exemption of group life insurance policies from execution.

No policy of group life insurance, nor the proceeds thereof when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 17.)

§ 35-719. False statements—Misdemeanor.

Any agent, broker, examining physician, or other person who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for life insurance, or who shall make any such statement for the purpose of obtaining any fee, commission, money, or benefit from or in any company transacting business under chapters 3-8 of this title shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 18.)

§ 35-720. Proceeds of certain policies to be held in trust by life company.

Any life company licensed under the laws of the District shall have power to hold the proceeds of any policy issued by it under a trust or other agreement upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors or beneficiaries other than the policyholder as shall have been agreed to in writing by such company and the policyholder. Such insurance company shall not

be required to segregate funds so held, but may hold them as a part of its general corporate assets. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 19.)

§ 35-721. When actual premium for life policy is less than net premium.

When the actual premium charged for an insurance policy by any company is less than the net premium on the basis adopted by the company for the valuation of such policy under section 35-701, such company shall be charged as a separate liability with a deficiency reserve equal to the total present value of the future deficiencies in the actual premium calculated according to the table of mortality and rate of interest employed by the company for the valuation of such policy. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 20.)

§ 35-722. Acceptance of premiums in arrears and recording of payments.

No industrial insurance company or agent thereof shall accept any money in payment of premiums which are in arrears on any industrial life or industrial sick benefit insurance policy which has lapsed and which the insured seeks to reinstate, unless such payment shall amount at least to the total of all premiums in arrears or unless such payment shall, under the regulations of the company, make the policy immediately eligible for reinstatement, subject only to evidence of insurability.

Every current premium shall be correctly recorded by the agent or by the company in the premium receipt book of the insured at the time the premium is paid.

Every advance premium paid by an industrial life or industrial sick-benefit policyholder shall be recorded in the receipt book of the insured in exactly the same manner as current premiums are recorded, and accurate entry thereof shall be made in the record book of the agent: *Provided, however*, That failure so to do shall not invalidate the policy. (June 19, 1934, ch. 672, Ch. V, § 21, as added May 4, 1950, 64 Stat. 104, ch. 157, § 7.)

EFFECTIVE DATE

Section effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

§ 35-723. Standard provisions required in industrial life insurance policies.

No policy of industrial life insurance shall be delivered or issued for delivery in the District unless it contains in substance the following provisions, or provisions which in the opinion of the Superintendent are more favorable to the policyholders:

(1) A provision that all premiums after the first shall be payable in advance, either at the home office of the company or to an agent of the company.

(2) A provision that the insured is entitled to a grace period of at least twenty-eight days within which the payment of any premiums after the first may be made, and during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium is paid, the amount of such premium may be deducted from any amount payable under the policy in settlement.

(3) A provision that, except as otherwise expressly provided by law, the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for a period of not more than two years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service in time of war, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted; if a copy of the application be attached to the policy, a provision that all statements made by the insured shall in the absence of fraud, be deemed representations and not warranties, and that no such statement or statements shall be used in defense of a claim under the policy unless contained in the attached written application.

(4) A provision that if it shall be found at any time before final settlement under the policy that the age of the insured (or the age of any other person considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age, according to the company's rate at date of issue.

(5) If the policy is a participating policy, a provision indicating the conditions under which the company shall periodically ascertain and apportion any divisible surplus accruing to the policy.

(6) A provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of section 35-705a or section 35-705b.

(7) A provision specifying the options, if any, to which the policyholder is entitled in the event of default in a premium payment.

(8) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within two years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium and indebtedness at the rate of not exceeding 6 per centum per annum payable annually.

(9) A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death.

(10) Title on the face and on the back of the policy briefly describing its form.

Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall, to that extent, not be incorporated therein; and any such policy may be issued or delivered in the District which in the opinion of the Superintendent contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this sec-

tion shall not apply to policies issued or granted in exchange for lapsed or surrendered policies. Nothing contained in subsection (3) hereof shall apply to applications for reinstatement. A reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue. (June 19, 1934, ch. 672, Ch. V, § 22, as added May 4, 1950, 64 Stat. 104, ch. 157, § 7.)

EFFECTIVE DATE

Section effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

§ 35-724. Provisions prohibited in industrial life insurance policies.

No policy of industrial life insurance shall be delivered or issued for delivery, in the District, if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.

(2) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision.

(3) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof.

(4) A provision to the effect that the agent soliciting the insurance is the agent of the person insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy.

(5) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the payment of any benefits other than in lawful money of the United States.

(6) A provision whereby the benefits or any part thereof accruing under such policy upon the death of a person insured may be paid to any designated undertaker or undertaking firm or corporation or to any person or persons engaged in or connected with such business, without the written consent of the person or persons to whom such benefits would otherwise be paid, or so as in any way to deprive the personal representative or family of the deceased of the advantages of competition in procuring and purchasing supplies and services in connection with the burial of the person insured.

(7) A provision that the liability of the company by reason of the insured's death shall be limited to less than the face amount of the policy if the death of the insured results from a specified kind or character of disease. (June 19, 1934, ch. 672, Ch. V, § 21, as added May 8, 1950, 64 Stat. 104, ch. 157, § 7.)

EFFECTIVE DATE

Section effective ninety days after May 4, 1950, see section 8 of act May 4, 1950, set out as a note under section 35-405.

Chapter 8.—LIFE INSURANCE—PENALTIES—TESTIMONY—SEPARABILITY

Sec.

35-801. Penalties.

35-802. Testimony—Production of books—Immunity of witness.

35-803. Separability of provisions.

§ 35-801. Penalties.

Any person, partnership, or company who violates any of the provisions of chapters 3-8 of this title, or fails to comply with any duty imposed upon him or it by any provision of chapters 3-8 of this title, for which violation or failure no penalty is elsewhere provided by the laws of the District, shall be fined not exceeding \$500 for each and every violation. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. VI, § 1.)

EFFECTIVE DATE

Chapter effective June 19, 1934, see section 5 of Ch. VI of act June 19, 1934, set out as a note under section 35-301.

CROSS REFERENCE

Application to existing companies, see § 35-520.

§ 35-802. Testimony—Production of books—Immunity of witness.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 3-8 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. VI, § 2.)

§ 35-803. Separability of provisions.

Should any section or provision of chapters 3-8 of this title be decided by the courts to be unconstitutional or invalid, the validity of chapters 3-8 of this title as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. (June 19, 1934, 48 Stat. 1177, ch. 672, Ch. VI, § 3.)

Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

Sec.

35-901. Definition—When disability payable—Reserves—To whom benefits payable—Exemption from general insurance laws.

35-902. Existing associations.

35-903. Nonresident associations—Conditions precedent to doing business in District—Right of superintendent to examine.

35-904. Annual reports.

Sec.

- 35-905. Nonresident associations to name superintendent attorney upon whom process may be served—Sufficiency—Notice by mail—Fee—Record.
- 35-906. Permit to do business from Superintendent of Insurance—Fee.
- 35-907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.
- 35-908. Reincorporation of associations existing prior to January 1, 1902.
- 35-909. Incorporation of subordinate bodies—Procedure.
- 35-910. Contract invalid if beneficiary to pay assessments.
- 35-911. Benefits exempt from attachment.
- 35-912. Meetings.
- 35-913. Fraudulent representations—Penalty.
- 35-914. Neglect to report—Effect—Injunction—Penalty for violating injunction.
- 35-915. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.
- 35-916. Associations for profit.
- 35-917. Associations or individuals using name of previously existing corporation.

JUVENILE FRATERNAL ACT

- 35-918. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.
- 35-919. Contributions—How computed.
- 35-920. Reserves.
- 35-921. Enforcement of payment of contributions—Rules and regulations.

SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

- 35-922. Separation of insurance and fraternal activities authorized.
- 35-923. Certificate to be filed with Superintendent of Insurance—Contents.
- 35-924. Approval and certificate of Superintendent—Recordation.
- 35-925. Division of activities and property—Directors of insurance activities—Number and selection—Policies as evidence.
- 35-926. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.
- 35-927. Contracts not impaired—Right of repeal and amendment reserved.
- 35-928. Insurance laws of States and District applicable.

§ 35-901. Definition—When disability payable—Reserves—To whom benefits payable—Exemption from general insurance laws.

A fraternal beneficial association is hereby declared to be a corporation, society, order, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and representative form of government, making provision for the payment of benefits in case of death. Each such association may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident, or old age: *Provided*, That the period in life at which physical disability benefits on account of old age commences shall not be under seventy years, or the age of expectancy from the time of entering, subject to their compliance with its laws. Any such association may create and maintain a reserve, emergency, or benefit fund in accordance with its laws. Any such association having a reserve, emergency, or benefit fund may, in addition to the benefits hereinbefore named, pay withdrawal benefits, not exceeding the contributions of such member, to a member un-

able or unwilling to continue membership, provided such membership shall continue not less than three successive years. Such association may also, after ten years of membership, apply its funds and accumulations as its laws provide or the association and members agree. The fund from which the payments of such benefits shall be made and the fund from which the expenses of such association shall be defrayed shall be derived from assessments, dues, and other payments collected from its members or otherwise. The payment of death benefits shall be to the families, heirs, blood relatives, affianced husband, affianced wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution, or to persons dependent upon the member or upon whom the member is dependent. Such association shall be governed by sections 35-901 to 35-917, and shall be exempt from the provisions of insurance laws of the United States relating to the District of Columbia, and no law hereafter passed shall apply to them unless they be expressly designated therein: *Provided, however*, That the fact that any such association has outstanding agreements with its members for the payment of benefits other than those herein specified, if it is making no new contracts of that character and is retiring those already existing, shall not exclude such association from the operation of sections 35-901 to 35-917. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 749; Dec. 20, 1928, 45 Stat. 1055, ch. 40, § 1.)

AMENDMENT

1928—Act Dec. 20, 1928, inserted: "father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution," and "or upon whom the member is dependent."

REPEAL OF INCONSISTENT PROVISIONS

Provisions of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, are repealed by section 4, Ch. VI of said act which is set out as a note under section 35-301.

Provisions of this chapter conflicting with the Fire and Casualty Act, classified to chapter 13 of this title, are repealed by section 46, Ch. II, of said act which is set out as a note under section 35-1301.

Section 2 of act Dec. 20, 1928, provided that: "All Acts or parts of Acts inconsistent with the provisions of this Act [amending this section] are hereby repealed."

CROSS REFERENCES

Application of act, see §§ 35-916, 35-917.

Juvenile Fraternal Act, see §§ 35-918 to 35-921.

Separation of insurance and fraternal activities, see § 35-922 et seq.

NOTES TO DECISIONS

Amendment of charter or constitution 1

Beneficiaries 2

By-laws 3

Payment of dues 4

Reinstatement 5

1. Amendment of charter or constitution

The amendment of the charter of a fraternal benefit association, which originally had been a joint-stock company, from depriving certificate holders of the right formerly had of designating beneficiaries, will not affect existing insurance contracts in the absence of anything in the charter showing that it was intended to have a retrospective effect. *Brown v. Grand Fountain* (28 App. D. C. 200).

A committee appointed by a fraternal beneficial association to revise the laws and constitution does not have authority to originate and propose methods without the notice as required for amendments generally, as to abolition of both constitution and laws. *National Council Junior Order United American Mechanics v. State Council* (27 App. D. C. 1).

2. Beneficiaries

This section permitted as beneficiaries only families, heirs, blood relatives, affianced husband, affianced wife, or dependents. Certificate in favor of woman who had been living with the insured, knowing that he had a legal wife living, was void. *Electrical Workers Ben. Assn. v. Brown* (1928, 26 F. 2d 981, 58 App. D.C. 203).

Police Relief Association could not authorize payment of benefit certificates to persons other than those designated by this section as eligible beneficiaries. *Simpkins v. McDermott* (1939, 81 F. 2d 257, 65 App. D.C. 123, certiorari denied 56 S. Ct. 592, 297 U.S. 715, 80 L. Ed. 1001).

3. By-laws

When by-laws of fraternal beneficial association imposes upon the officers of local councils the duty of receiving and transmitting all assessments and dues to the central committee, a provision in such by-laws that the officers of each local council shall be agents solely of such council and its members, is not consistent with duty and agency imposed by central governing body, and it cannot defeat claim upon certificate of insurance issued by the association. *Prudent Patricians of Pompeii v. Marr* (20 App. D. C. 363).

4. Payment of dues

Courts will ordinarily not concern themselves with questions of the good standing of members of such organizations, but when good standing depends solely on payment of dues the civil courts will not hesitate to take cognizance. *Prudent Patricians of Pompeii v. Marr* (20 App. D. C. 363). See, also, *Berkley v. Harper* (3 App. D. C. 308); *Moss v. Littleton* (6 App. D. C. 201); *Drum V. Benton* (13 App. D. C. 245).

5. Reinstatement

Right of reinstatement is personal to the member of a fraternal beneficial association, and it does not survive to the personal representatives or beneficiaries, and if member dies within specified 30 days as stipulated in by-laws, there can be no recovery. *Supreme Commandery of United Order of Golden Cross v. Bernard* (26 App. D. C. 169, 6 Ann. Cas. 694).

§ 35-902. Existing associations.

All such associations coming within the description as set forth in section 35-901, organized under the laws of the United States relating to said District, or of any state, county, province, or territory, and doing business in said District on January 1, 1902, may continue such business: *Provided*, That they comply with the provisions of sections 35-901 to 35-917 regulating annual reports and the designation of the Superintendent of Insurance of said District, provided for in section 35-101 et seq., as the person upon whom process may be served as hereinafter provided. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 750.)

§ 35-903. Nonresident associations—Conditions precedent to doing business in District—Right of superintendent to examine.

Any such association coming within the description as set forth in section 35-901, organized under the laws of any state, country, province, or territory, and not doing business in said District on January 1, 1902, shall be admitted to do business within said District when it shall have filed with the Superintendent of Insurance a duly certified copy of its charter and articles of association and a copy of its by-laws certified to by its secretary or corresponding

officer, together with an appointment of the said superintendent as the person upon whom process may be served as hereinafter provided: *Provided*, That such association shall be shown to be authorized to do business in the state, country, province, or territory in which it is incorporated or organized, in case the laws of such state, country, province, or territory shall provide for such authorization; and in case the laws of such state, country, province, or territory do not provide for any formal authorization to do business on the part of any such association, then such association shall be shown to be conducting its business in accordance with the provisions of sections 35-901 to 35-917; for which purpose the said superintendent may personally, or by some person to be designated by him, examine into the condition, affairs, character, and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association and shall be made within thirty days after demand therefor, and the expense of such examination shall be limited to fifty dollars. Any association doing business under the provisions of sections 35-901 to 35-917 shall be permitted to do business upon filing annually with the Superintendent of Insurance the certificate of authority of the insurance department of the state, province, or territory in which it is incorporated or organized: *Provided, however*, That in case of failure to file said certificate by any such association, or in case the Superintendent of Insurance shall deem it necessary, he shall have power, either personally or by some person designated by him, to examine into the condition, affairs, character, business methods, accounts, books, and investments of such association, at its home office, which examination shall be at the expense of the association. The amount of such expense shall not exceed one hundred dollars for associations which have no reserve or emergency fund and two hundred dollars for associations with a reserve or emergency fund. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 751.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Inspection and examination of insurance companies, see §§ 35, 108, 35-201, 35-202, 35-418, 35-1313.

§ 35-904. Annual reports.

Every such association doing business in said District shall, on or before the first day of March of each year, make and file with the said superintendent a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such report shall be upon blank forms to be provided by the said superintendent, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the said superintendent under a separate part entitled "Fraternal Beneficial Associations," and shall contain answers to the following questions:

First. Number of certificates issued during the year or members admitted.

Second. Amount of indemnity effected thereby.

Third. Number of losses or benefit liabilities incurred.

Fourth. Number of losses or benefit liabilities paid.

Fifth. The amount received from each assessment for the year.

Sixth. Total amount paid members, beneficiaries, legal representatives, or heirs.

Seventh. Number and kind of claims for which assessments have been made.

Eighth. Number and kind of claims compromised or resisted, and brief statement of reasons.

Ninth. Does the association charge annual or other periodical dues or admission fees?

Tenth. If so, how much on each one thousand dollars, annually or per capita, as the case may be?

Eleventh. Total amount received, from what source, and the disposition thereof.

Twelfth. Total amount of salaries paid to officers.

Thirteenth. Does the association guarantee in its certificate fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations?

Fourteenth. If so, state amount guaranteed and the security of such guaranty.

Fifteenth. Has the association a reserve or emergency fund?

Sixteenth. If so, how is it created, and for what purpose, the amount thereof, and how invested?

Seventeenth. Has the association more than one class?

Eighteenth. If so, how many; and the amount of indemnity in each case.

Nineteenth. Number of members in each class.

Twentieth. If voluntary, so state; and give date of organization.

Twenty-first. If organized under the laws of said District, under what law and at what time, giving chapter and year, and date of passage of the act.

Twenty-second. If organized under the laws of any state, country, province, or territory, state such fact and the date of organization, giving chapter and year, and date of passage of the act.

Twenty-third. Number of certificates of beneficial membership lapsed during the year.

Twenty-fourth. Number in force at beginning and end of year; if more than one class, number in each class.

Twenty-fifth. Names and addresses of its president, secretary, and treasurer, or corresponding officers. (Mar. 3, 1901, 31 Stat. 1311, ch. 854, § 752.)

§ 35-905. Nonresident associations to name superintendent attorney upon whom process may be served—Sufficiency—Notice by mail—Fee—Record.

Each such association doing business on January 1, 1902, or thereafter admitted to do business within said District, and not having its principal office within said District, and not being organized under the laws of the United States relating to said District, shall appoint, in writing, the said superintendent and his successors in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and in such

writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in said District. Copies of said certificate certified by said superintendent shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against such association is served upon said superintendent he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall, within two days after such service, forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so served shall pay to the said superintendent at the time of such service a fee of three dollars which shall be recovered by him as a part of the taxable costs if he prevails in his suit. The said superintendent shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 753.)

§ 35-906. Permit to do business from Superintendent of Insurance—Fee.

The said superintendent shall, upon the application of any association having the right to do business within said District, as provided by sections 35-901 to 35-917, issue to such association a permit in writing authorizing such association to do business within said District, for which certificate and all proceedings in connection therewith such association shall pay the said superintendent the fee of five dollars. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 754.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see § 47-2344, 47-2345.

Fraternal benefit associations exempted from provision of general law governing taxes and license fees for insurance companies, see § 47-1808.

NOTES TO DECISIONS

Estoppel as affecting issue 1
Mandatory injunction to compel issue 2

1. Estoppel as affecting issue

A corporation which did not question finding that it was not qualified under this chapter to do insurance business as a fraternal beneficial association had no "legal right" to a license and could not invoke an estoppel to obtain a license forbidden by statute. *National Hospital Service Soc. v. Jordan* (1942, 128 F. 2d 460, 76 U. S. App. D. C. 23, certiorari denied 63 S. Ct. 65, 317 U. S. 664, 87 L. Ed. 534).

2. Mandatory injunction to compel issue

Plaintiff was not entitled to a mandatory injunction requiring superintendent of insurance to renew its permit to do insurance business as a fraternal beneficial association, even though it was not qualified under this chapter, on ground that persons in control of plaintiff had acted in reliance on expired permits which were issued by superintendent's predecessors in office and that superintendent was "estopped" from refusing to renew permit. *National Hospital Service Soc. v. Jordan* (1942, 128 F. 2d 460, 76 U. S. App. D. C. 23, certiorari denied 63 S. Ct. 65, 317 U. S. 664, 87 L. Ed. 534).

§ 35-907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.

Any nine or more persons, at least one-third of whom shall be residents of the District of Columbia, being desirous of forming a fraternal beneficial association for the purposes set forth in section 35-901 may associate themselves together and effect such organization as hereinafter prescribed, and not otherwise. Such persons shall make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this District and file in the office of the recorder of deeds of said District a certificate of declaration in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated the name or title by which said association shall be known to law; the mode and manner in which the corporate powers granted by sections 35-901 to 35-917 are to be exercised; the name or official title of the officers, trustees, representatives, or other persons by whatever name or title designated, who are to have and exercise the general control and management of its affairs; the place of doing business defined; the limit as to age of applicants for beneficial membership, which shall not exceed fifty-five years, and that medical examinations are required of applicants for life benefits, together with the sworn statement by three of said corporators that at least one hundred persons eligible under the proposed laws of such association to membership therein have in good faith made application in writing for membership. The recorder of deeds, upon the filing of said declaration, shall deliver to such association a certified copy of the papers so filed and recorded in his office, together with a certificate to such association, stating that the provisions in sections 35-901 to 35-917 relative to incorporation have been complied with and that said association becomes thereby authorized to carry on the work of a fraternal beneficial association. Upon filing the certificate or declaration as aforesaid, the persons who shall have signed and acknowledged the same, and their successors and associates, shall, by the provisions of sections 35-901 to 35-917, be a body politic and corporate by the name and style stated in the certificate, and by that name and style shall have perpetual succession, and by said name may sue and be sued, and may have and use a common seal, and the same may alter and change at pleasure, and may make and alter, at times or from time to time, such laws, not inconsistent with the Constitution of the United States or the laws in force in said District, as they may deem necessary for the government of said association. And they and their successors, by their corporate name, shall in law be capable of creating, maintaining, and disbursing a reserve or emergency fund in accordance with its laws and the provisions of sections 35-901 to 35-917, and of taking, receiving, purchasing, and holding real and personal estate necessary for the purpose of such association, and may let, place out at interest, or sell and convey the same as may seem most beneficial for said association. The association shall elect from its members trustees, directors, or managers, by whatever title known in its laws, at such time and place and

in such manner as may be specified in its laws, who shall have the control and management of the affairs and funds of said association, a majority of whom shall be a quorum for the transaction of business; and whenever any vacancy shall happen among such trustees, directors, or managers, by death, resignation, or otherwise, such vacancy shall be filled in such manner as shall be provided by the laws of said association. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 755.)

§ 35-908. Reincorporation of associations existing prior to January 1, 1902.

The officers, trustees, directors, or governing body of any existing fraternal beneficial association may, by conforming to the requirements of the several provisions of sections 35-901 to 35-917, reincorporate themselves or continue their existing corporate powers under sections 35-901 to 35-917, or change their name, stating in their certificate the original name of such corporation as well as their new name assumed, and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 756.)

EFFECTIVE DATE

The Code of the Laws of the District of Columbia enacted March 3, 1901, 31 Stat. 1189, ch. 854, by its preamble provided that it shall be effective January 1, 1902.

§ 35-909. Incorporation of subordinate bodies—Procedure.

Any subordinate body of any fraternal beneficial association incorporated under the provisions of sections 35-901 to 35-917 or of such association doing business in this District under sections 35-901 to 35-917, where the laws of the governing body of said association do not prohibit the incorporation of their subordinate bodies, may become a body corporate in the manner following: At some regular meeting of such subordinate body a resolution expressing the desire of such subordinate body to be incorporated, and directing its officers to perfect such incorporation, shall be submitted to a vote of the members present, and if two-thirds of the members present vote therefor the president and secretary of such subordinate body, or the officers holding relative offices therein, shall prepare articles of association, under their hands and the seal of such subordinate body, setting forth, first, the number of members of such subordinate body then in good standing; second, the name by which said subordinate body is known; third, the date of its organization and the period for which it is to be incorporated, not exceeding thirty years. A copy of such articles of association shall be filed with the recorder of deeds, and shall by him be recorded, together with the affidavit hereafter named, in a book to be kept for that purpose. On the execution of said articles of association and before the filing thereof with the recorder the secretary of such subordinate body shall annex thereto his affidavit, stating that he is a member in good standing in such subordinate body and occupies the position of secretary, or the office corresponding therewith, and that the resolution, a copy of which shall be set forth at length, was regularly passed at a regular meeting of said subordinate body and received the vote of two-thirds of the members present

and voting, and that, to the best of his knowledge and belief, the statements made in the articles of association are true, and that such subordinate body is organized and acting under the laws of its respective association, giving the name by which such association is known. When the foregoing requirements are complied with such subordinate body shall be a body corporate by the name expressed in such articles, and by that name shall be a person in law, capable of suing and being sued in the courts, and taking and holding property of every kind the same as natural persons, and a copy of said articles of association, duly certified to by the recorder of deeds, shall be prima facie evidence in all courts and places of the existence and the due incorporation of such subordinate body. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 757.)

§ 35-910. Contract invalid if beneficiary to pay assessments.

No contract with any such association shall be valid when there is a contract, agreement, or understanding between the member and the beneficiary prior to or at the time of becoming a member of the association that the beneficiary, or any person for him, shall pay such member's assessments and dues, or either of them. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 758.)

NOTES TO DECISIONS

1. Waiver of requirements

The provisions of the section are not waived when order has no knowledge of agreement between insured and beneficiary whereby latter pays the assessment. *Columbian Fraternal Assn. v. Smith* (1924, 297 F. 887, 54 App. D. C. 308).

§ 35-911. Benefits exempt from attachment.

The money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any association authorized to do business under sections 35-901 to 35-917 shall not be liable to attachment, garnishment, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, or by operation of law to pay any debt or liability of a certificate holder or of any beneficiary named in the certificate, or any person who may have any right thereunder. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 759.)

§ 35-912. Meetings.

Any such association organized under the laws of said District may provide for the meetings of its legislative or governing body in any state, country, province, or territory wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid in all respects as if such meetings were held within said District; and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any state, country, province, or territory shall be valid as if cast within said District. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 760.)

§ 35-913. Fraudulent representations—Penalty.

Any person, officer, member, or examining physician who shall knowingly or wilfully make any false or fraudulent statement or representation in or with

reference to any application for membership or for restoration to membership or for the purpose of obtaining any money or benefit in any association transacting business under sections 35-901 to 35-917 shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the United States jail in said District for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration under oath required or authorized by sections 35-901 to 35-917, shall be guilty of perjury. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 761; June 30, 1902, 32 Stat. 534, ch. 1329, § 761.)

AMENDMENT

1902—Act June 30, 1902, inserted following the word "membership," the first time said word appears, the words "or for restoration to membership."

CROSS REFERENCE

Perjury, see § 22-2501.

§ 35-914. Neglect to report—Effect—Injunction—Penalty for violating injunction.

Any such association refusing or neglecting to make the report as provided in sections 35-901 to 35-917 shall be excluded from doing business within the District. The superintendent of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of sections 35-901 to 35-917, give notice in writing to the attorney for said District, who shall immediately commence an action against such association to enjoin the same from carrying on any business. An injunction against any such association may be granted on application by the commissioners of said District at the request of the said superintendent. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by it (provided, the court shall find that such association was in default, as charged), whereupon the Superintendent of Insurance shall reinstate such association; and not until then shall such association be allowed again to do business in said District. Any officer, agent, or person acting for any association or subordinate body thereof, within said District, while such association shall be so enjoined or prohibited from doing business pursuant to sections 35-901 to 35-917, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in said jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 762.)

CROSS REFERENCE

Quo warranto proceedings to question right to corporate rights and franchises, see § 16-1601 et seq.

§ 35-915. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.

Any person who shall act within said District as an officer, agent, or otherwise, for any association which shall have failed, neglected, or refused to comply with, or shall have violated any of the provisions of sections 35-901 to 35-917, or shall have failed or neglected to procure from the said superintendent a proper certificate of authority to transact business as provided for in sections 35-901 to 35-917, shall be subject to the penalty provided in section 35-914 for the misdemeanor therein specified. To "transact business" or "doing business" under sections 35-901 to 35-917 means the writing of applications and the soliciting of new members so far as the penalty of sections 35-901 to 35-917 applies thereto. It shall not be unlawful for any organization under section 35-901 to continue the operation of its lodges or branches except in securing new members. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 763.)

§ 35-916. Associations for profit.

Nothing in sections 35-901 to 35-917 shall be construed to apply to any corporation, society, order, or association carrying on the business of life, health, casualty, or accident insurance for profit or gain, and it shall only apply to fraternal beneficial associations as defined by section 35-901, and nothing in sections 35-901 to 35-917 contained shall be construed to affect any grand or subordinate lodge or branch of any such fraternal beneficial societies, orders, or associations which limits its certificate holders to a particular religious denomination or to the employees of a particular town or city, designated firm, business house, or corporation, or department or branch of the United States government, nor the grand or subordinate lodges of the Independent Order of Odd Fellows, nor any grand or subordinate lodge, or other body of Free and Accepted Masons, nor the grand or any subordinate lodge of the Knights of Pythias, nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the national council or any subordinate council of the Daughters of America, nor the supreme council of the Knights of Columbus or any subordinate council thereof, or similar orders, associations, or societies that do not have as their principal object the issuance of benefit certificates of membership in case of death or the payment of sick, funeral, or death benefits exceeding in amount one hundred dollars. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 764; Dec. 12, 1928, 45 Stat. 1021, ch. 24.)

AMENDMENT

1928—Act Dec. 12, 1928, inserted "nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the national council or any subordinate council of the Daughters of America, nor the supreme council of the Knights of Columbus or any subordinate council thereof."

§ 35-917. Associations or individuals using name of previously existing corporation.

The provisions of sections 35-901 to 35-917 shall not extend to nor apply to any association or individual who shall, in the certificate filed with the

recorder of deeds, use or specify a name or style the same as that of any previously existing incorporated fraternal beneficial association in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 765.)

JUVENILE FRATERNAL ACT

§ 35-918. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.

Any fraternal benefit society authorized to do business in the District of Columbia may provide in its laws, in addition to other benefits provided for therein, for insurance and/or annuities upon the lives of children, at any age, upon the application of some adult person, as the laws of such society may provide. Any such society may, at its option, organize and operate branches for such children, and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. (May 29, 1928, 45 Stat. 953, ch. 862, § 2.)

SHORT TITLE

Section 1 of act May 29, 1928, provided: "That this Act [which added §§ 35-918 to 35-921] shall be known as the Juvenile Fraternal Act."

REPEAL OF INCONSISTENT PROVISIONS

Section 6 of act May 29, 1928, provided that: "All Acts or parts of Acts inconsistent with the provisions of this Act [§§ 35-918 to 35-921] are hereby repealed."

§ 35-919. Contributions—How computed.

Contributions to be made upon such certificates shall be based upon the Standard Industrial Mortality Table or the English Life Table Numbered 6, or the society may use a table based upon its own juvenile experience of at least ten years and covering not less than one hundred thousand lives with a rate of interest not greater than 4 per centum per annum, or upon a higher standard. (May 29, 1928, 45 Stat. 953, ch. 862, § 3.)

§ 35-920. Reserves.

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section 35-919. (May 29, 1928, 45 Stat. 953, ch. 862, § 4.)

§ 35-921. Enforcement of payment of contributions—Rules and regulations.

Any society shall have full power to provide for means of enforcing payment of contributions, designation of beneficiaries, and changing such designations, and in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith, not at variance with the provisions of sections 35-918 to 35-921. (May 29, 1928, 45 Stat. 953, ch. 862, § 5.)

SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

§ 35-922. Separation of insurance and fraternal activities authorized.

Any corporation heretofore organized by a special Act of Congress and vested with the powers, rights,

and privileges of fraternal and benevolent corporations under the laws of the District of Columbia and engaged in carrying on fraternal activities and fraternal beneficial insurance activities in which are maintained reserves not lower than the reserves required by the American Experience Table of Mortality with $3\frac{1}{2}$ per centum interest per annum, is authorized and empowered, by a majority vote of its supreme legislative body and with the approval of the Superintendent of Insurance of the District of Columbia as hereinafter provided, to divide and separate such activities and continue the same as separate and distinct corporations in the manner set forth in sections 35-923 to 35-928. (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 1.)

§ 35-923. Certificate to be filed with Superintendent of Insurance—Contents.

A certificate under the seal of said corporation shall be filed in the office of the Superintendent of Insurance of the District of Columbia and which certificate shall set forth the facts as follows:

(a) That said corporation is organized under special Act of Congress giving appropriate reference thereto.

(b) That said corporation is engaged in carrying on fraternal activities and fraternal beneficial-insurance activities, with appropriate detailed information touching each of such activities, including the name of the corporation, its officers, numbers, and classes of membership, benefits carried, and other similar appropriate information.

(c) That the fraternal beneficial-insurance activities of said corporation maintain reserves not lower than the reserves required by the American Experience Table of Mortality with $3\frac{1}{2}$ per centum interest per annum.

(d) That the supreme legislative body, at a regular or duly called special convention thereof, had, by a majority vote, authorized the division and separation of its activities and the amendment of its charter, under sections 35-922 to 35-928.

(e) That the name under which the fraternal activities of such corporation shall be carried on shall be "-----"

(f) That the name under which the insurance activities of such corporation shall be carried on shall be "-----"

(g) That until otherwise designated by its directors, its principal office shall be at -----

(h) That until otherwise provided the number of its directors shall be nine, and that until their successors shall be elected the names of such directors shall be ----- (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 2.)

§ 35-924. Approval and certificate of Superintendent—Recordation.

The Superintendent of Insurance of the District of Columbia shall examine such certificate, and if satisfied of the truth of the matters set forth in such certificate the Superintendent of Insurance may approve the same and may issue his certificates showing compliance herewith, which certificates shall be recorded in the office of the recorder of deeds for the District of Columbia, and such certificates when so issued shall be conclusive evidence that such corpo-

ration has complied with all of the requirements of sections 35-922 to 35-928 as conditions precedent to the separation and division of its activities as herein provided. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 3.)

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

§ 35-925. Division of activities and property—Directors of insurance activities—Number and selection—Policies as evidence.

From and after the issuance of such certificates by the Superintendent of Insurance the fraternal activities and the fraternal beneficial insurance activities of such corporation shall be divided and separated; and

(a) All of the fraternal activities of said corporation shall continue unchanged under the name chosen therefor in such certificate, which may be the name of the original corporation or any other name chosen therefor, and in it shall remain vested, without the necessity for any further act or deed, all of the fraternal powers, activities, and functions, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such fraternal activities; and it shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected therewith.

(b) All of the insurance activities of said corporation shall continue, under the name chosen therefor in such certificate, as a mutual legal reserve life insurance corporation, and in it shall remain vested without the necessity for any further act or deed all of the fraternal beneficial insurance powers, activities, and functions thereof, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such insurance activities; it shall be absolved and relieved from any and all responsibility, obligations, and liabilities connected with the fraternal activities of the mother corporation, and shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected with and arising from such insurance activities; it shall have authority to make all and every insurance and reinsurance appertaining to or connected with life, accident, health, and disability risks of whatever kind or nature and to grant, purchase, or dispose of annuities and to furnish any aid or service to promote the health or safety of its members or their beneficiaries; such activities to be carried on and conducted for the mutual benefit of its members and their beneficiaries and not for profit, subject to the supervisions imposed by the law of the District of Columbia relating to mutual legal reserve life insurance corporations; that the number of directors shall be fixed by the by-laws and shall be at least nine, who shall be elected by the insured members; the terms of the directors shall be three years from the date of their election, and such directors may be classified so that their terms shall not all expire at the same time; the election shall be held annually, and such directors shall elect the president and other

officers and shall have power to make and promulgate such by-laws, rules, and regulations as may be deemed necessary and proper for the elections herein provided and for the disposition and management of the business, funds, property, and effects of said corporation and shall be vested with the control and supervision of all of the business affairs of said corporation; and said corporation shall have all the powers, rights, and privileges on or after April 12, 1930 held and exercised by mutual legal reserve life insurance companies within the District of Columbia; in any action or suit by or against such corporation the policies, certificates, and other evidences of insurance obligation issued and executed by the mother corporation shall be admissible in evidence without further proof, and shall constitute prima facie evidence of the same obligations against said corporation as against such mother corporation. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 4.)

§ 35-926. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.

The proceedings in sections 35-922 to 35-928 provided, including the amendment of the charter, the issuance of the certificates by the Superintendent of Insurance, the division of assets and liabilities or any other act done under said sections, shall not be or constitute a dissolution of the original corporation, but the resulting corporation shall, so separated and divided, be continuations thereof and under the names as herein authorized, be separate legal entities, and the insurance corporation herein provided for shall be subject to supervision, regulation, and control as a mutual legal reserve life-insurance corporation. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 5.)

§ 35-927. Contracts not impaired—Right of repeal and amendment reserved.

Nothing contained in sections 35-922 to 35-928 and nothing done under said sections shall impair or operate to impair the obligations of any contract; and said sections and any certificate issued thereunder shall be subject to the power of Congress to alter, amend, or repeal at will. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 6.)

§ 35-928. Insurance laws of States and District applicable.

Such corporation shall be subject to all the laws of the respective states, including the District of Columbia, with respect to similar mutual legal reserve life-insurance corporations. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 7.)

Chapter 10.—INDUSTRIAL LIFE INSURANCE

Sec.

35-1001. Conditions of policies.

35-1002. Validity of policy—Good faith of insured material element—Unsound health as defense.

35-1003. Incontestability of policy.

35-1004. Assignment of policy.

35-1005. Beneficiary.

§ 35-1001. Conditions of policies.

Policies of industrial weekly payment life insurance after June 4, 1934, issued or delivered in the District of Columbia shall be subject to the following conditions, in addition to any others prescribed by law

and not inconsistent with the provisions of this chapter. (June 4, 1934, 48 Stat. 834, ch. 373, § 1.)

REPEAL OF INCONSISTENT PROVISIONS

Provisions of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, are repealed by section 4, Ch. VI, of said act which is set out as a note under section 35-301.

§ 35-1002. Validity of policy—Good faith of insured material element—Unsound health as defense.

If payment of such a policy shall be refused because of unsound health at or prior to the date of the policy, the good faith of both applicant and insured shall constitute a material element in determining the validity of the policy; and it shall not be held invalid because of unsound health unless the insurer shall prove that, at or before the date of issue of the policy, the insured or applicant had knowledge of, or reason to know, the facts on which the defense is based, or shall prove that the insurance was procured by the insured or applicant in bad faith or with intent to defraud the company, any provision, agreement, condition, warranty, or clause contained in said policy, or endorsed thereon, or added or attached thereto, to the contrary notwithstanding. Proof by the insurer of fraud, intent to deceive, unsound health, bad faith, breach or (of) warranty or condition precedent, or other matter of defense, shall be subject to the provisions of section 35-203. (June 4, 1934, 48 Stat. 834, ch. 373, § 2.)

CROSS REFERENCE

General provisions concerning formal requisites of insurance policies, see § 35-703 et seq.

NOTES TO DECISIONS

Burden of proof 1
Evidence 2
Good faith 3
Purpose 4
Questions for
Court 5
Jury 6

1. Burden of proof

Where forfeiture clause invoked in action on industrial life policy was conditioned on proof that insured had been hospitalized, had undergone an operation, or had been attended by a physician for a serious disease or injury, and had failed to disclose the facts, effect of this section was to shift the burden of proof and to make insured's good faith concerning representations on which policy issued the test and by its terms to impose on insurer the burden of proving the contrary. *Eureka-Maryland Assur. Co. v. Gray* (1941, 121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

In action on an industrial life policy with defense that insured had been attended by physician for a serious disease which resulted in death and that such was not endorsed on the policy as required by the terms thereof, record established that statutory burden of proof was actually placed upon the insurer to prove the defense by the trial court. *Ferguson v. Quaker City Life Ins. Co.* (D. C. Mun. App. 1957, 129 A. 2d 189).

Where insurer sets up defense of insured's unsound health prior to issuance of policy, whether defense is based on application or on policy provision, insurer has burden of proving that applicant or insured acted in bad faith. *Walton et ano. v. Sun Life Insurance Company of America* (D.C. Mun. App. 1955, 115 A. 2d 310).

This section regarding burden of proof where payment of policy is refused because of unsound health of insured, casts the burden of proof on insurer and requires that it establish that the ailment was serious and that the insured knew, or had reason to know, the facts on which the defense is based. *Washington Nat. Ins. Co. v. Stanton* (1943, 31 A. 2d 680).

2. Evidence

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, evidence was sufficient to sustain insurer's burden under this section of proving insured's unsound health, knowledge of insured's unsound health or reason to know thereof, and bad faith of insured or beneficiary or intent to defraud insurer. *Ferguso v. Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580).

In action on industrial life policy where insurer defended on ground that insured was suffering from serious disease of arthritis at time of issuance of policy but testimony of insured's physician directly rebutted insurer's contention that insured had either real or imputed knowledge of alleged seriousness of her condition and insured's physician testified that the ailment was serious only in sense that it temporarily restricted motion of certain parts of the body, evidence was sufficient for jury. *Washington Nat. Ins. Co. v. Stanton* (1943, 31 A. 2d 680).

3. Good faith

In action to recover under life policy, wherein insurer relied on policy provision that policy was voidable if, within two years prior to date of issuance, insured had undergone hospitalization for condition of a serious nature, test was insured's good faith, and trial court erred in failing to make a finding on that issue. *Walton et ano. v. Sun Life Insurance Co. of America* (D.C. Mun. App. 1955, 115 A. 2d 310).

4. Purpose

The design of this section is to make its terms applicable in all cases in which the defense is that the insured had suffered, before issuance of policy, a serious injury or disease, and had concealed the truth from the insurer. *Eureka-Maryland Assur. Co. v. Gray* (1941, 121 F. 2d 104, 74 App. D. C. 191, certiorari denied 62 S. Ct. 114, 314 U. S. 613, 86 L. Ed. 494).

5. Questions for court

Where insurer defends action on insurance policy on ground of unsound health of insured at or prior to date of policy, and there is no conflict in evidence or no contradiction of showing of existence of serious disease, the trial judge must take the case from the jury and rule as a matter of law in favor of insurer. *Washington Nat. Ins. Co. v. Stanton* (1943, 31 A. 2d 680).

In an action for the reinstatement of an industrial life insurance policy, a liberal view prevails in favor of holders of such policies. But it is equally well established that the rules of liberal construction have no application where the contract is clear and definite. *Capital City Life Insurance Company v. Saunders* (D. C. Mun. App. 1949, 65 A. 2d 588).

6. Questions for jury

Where insurer defends action on insurance policy on ground of unsound health of insured at time or prior to date of policy and plaintiff creates a substantial issue of fact on question of unsound health, it becomes a question for the jury and not for the court. *Washington Nat. Ins. Co. v. Stanton* (1943, 31 A. 2d 680).

§ 35-1003. Incontestability of policy.

Every such policy shall be incontestable upon any ground relating to health after two years from its date of issue (notwithstanding a longer period may be named therein), provided the insured shall be alive at the end of said period. If the policy by its terms shall be incontestable after a shorter period than herein provided the terms of the policy with regard to such period of limitation shall govern. (June 4, 1934, 48 Stat. 834, ch. 373, § 3.)

CROSS REFERENCE

General provisions governing formal requisites of insurance policies, see § 35-703 et seq.

NOTES TO DECISIONS

1. Immediate full benefit

The words "immediate full benefit", as used in industrial life policy, did not make the policy incontestable or require that amount thereof be paid regardless of cause of death, but meant nothing more than that full amount of policy would be paid immediately upon death. *Walker v. Superior Life Ins. Co.* (D. C. Mun. App. 1948, 62 A. 2d 192).

The words "immediate full benefit", appearing on cover page of industrial life policy, did not preclude insurer from rejecting claim upon the policy for insured's death five days after policy had been issued as result of heart attack under provision in limitation of liability clause, excluding heart disease and other enumerated diseases contracted in any time before or within first year from date of policy, where limitation of liability clause appeared inside the policy in the boldest type of any text matter therein. *Id.*

§ 35-1004. Assignment of policy.

Nothing contained in the terms of any such policy shall operate to prevent its valid assignment by the insured; but the company issuing the policy so assigned shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice of such assignment. (June 4, 1934, 48 Stat. 835, ch. 373, § 4.)

§ 35-1005. Beneficiary.

Any individual designated with the consent of the insurer, evidenced by the signature of its president or secretary, or designated upon a form furnished by and filed with the insurer, as beneficiary of such a policy shall be entitled to the proceeds of such policy after the death of the insured in priority to all other claimants, and may sue in his own name for such proceeds if payment is refused by the insurer: *Provided*, That upon the expiration of fifteen days after the death of the insured, unless proof of claim in the manner and form required by the policy, accompanied by the policy for surrender, has theretofore been made by or on behalf of such designated beneficiary, the insurer may pay to any other claimant permitted by the policy. A person specified as one to whom the insured desires payment made, but not formally designated as beneficiary, shall be deemed a beneficiary for the purposes of this section, provided such designation be made in writing and filed with the company during the lifetime of the insured. (June 4, 1934, 48 Stat. 835, ch. 373, § 5.)

Chapter 11.—MARINE INSURANCE

Sec.

- 35-1101. Definitions.
- 35-1102. Powers of Superintendent of Insurance and general insurance laws applicable to marine insurance companies.
- 35-1103. Kinds of insurance that may be written—Capital stock and surplus requirements—Reinsurance companies—Companies excluded.
- 35-1104. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.
- 35-1105. Foreign corporation—Requirements before doing business in District.
- 35-1106. Reinsurance.
- 35-1107. Unearned premium reserve.
- 35-1108. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.
- 35-1109. Statements for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.

Sec.

- 35-1110. Taxation on earning on reserves for unpaid loss and unexpired insurance.
- 35-1111. Taxes on investment income from funds representing capital stock and surplus.
- 35-1112. Report to include all items necessary to enable superintendent of insurance to compute tax—Notification of amount of tax.
- 35-1113. Taxation in lieu of license fees.
- 35-1114. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.
- 35-1115. Penalty for failure to report or pay taxes.
- 35-1116. Syndicate "B" exempt from taxes and fees.
- 35-1117. Insurance companies not exempt from payment of Federal income tax.
- 35-1118. Investment of assets of domestic companies.
- 35-1119. Domestic company may acquire, hold, and convey real estate for certain purposes—Disposition.
- 35-1120. Merger of companies.
- 35-1121. Establishment of foreign connections.
- 35-1122. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.
- 35-1123. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.
- 35-1124. Superintendent of Insurance may issue license to agent or broker to solicit marine insurance.
- 35-1125. Holder of license to maintain office in District of Columbia and to keep book of records—Contents—Superintendent of Insurance may inspect such record—Data secured by superintendent to be confidential.
- 35-1126. Licensee to furnish bond.
- 35-1127. Keeping of classified records.
- 35-1128. Penalties.
- 35-1129. Production of incriminating evidence compellable—Immunity of witness.
- 35-1130. Clerical assistance and departmental expenses.
- 35-1131. Separability of provisions.
- 35-1132. Right to amend or repeal reserved.
- 35-1133. Wagering policies, illegal.

§ 35-1101. Definitions.

Whenever used in sections 35-1101 to 35-1132—

"Marine insurance" means insurance against any and all kinds of loss of or damage to vessels, craft, cars, aircraft, automobiles, and other vehicles, whether operated on or under water, land, or in the air, in any place or situation, and whether complete or in process of or awaiting construction; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, including money loaned on bottomry or respondentia, valuable papers, and all other kinds of property and interests therein, including liabilities and liens of every description, in respect to any and all risks and perils while in course of navigation, transit, travel, or transportation on or under any seas or other waters, on land or in the air or while in preparation for or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including builders' risks, war risks, and for loss of or damage to property or injury or death of any person, whether legal liability results therefrom or not, during, awaiting, or arising out of navigation, transit, travel, or transportation, or the construction or repair of vessels;

"Marine insurance company" means any persons, companies, or associations authorized by sections 35-1101 to 35-1132 to write marine insurance within the District;

"Insurance company" or "company" means any insurer, incorporated or otherwise;

"Domestic company" means an insurance company organized under the laws of the District of Columbia;

"District" means the District of Columbia;

"Superintendent" means the Superintendent of Insurance of the District of Columbia. (Mar. 4, 1922, 42 Stat. 401, ch. 93, title I, § 1.)

REPEAL OF INCONSISTENT PROVISIONS

Provisions of this chapter conflicting with the Fire and Casualty Act, classified to chapter 13 of this title, are repealed by section 46, Ch. II, of said act which is set out as a note under section 35-1301.

CROSS REFERENCES

Definitions concerning fire, casualty, and marine insurance, see § 35-1303.

Liability policy or bond for motor carriers, see § 44-301.

Motor-vehicle liability policies, see § 40-412.

Rates, schedules, and classification of workmen's compensation insurance, see § 35-205.

Taxation, see § 35-1108 et seq.

§ 35-1102. Powers of Superintendent of Insurance and general insurance laws applicable to marine insurance companies.

Unless the context of any section under sections 35-1101 to 35-1132 expressly indicate otherwise, the laws of the District relating to the powers and duties of the superintendent, making of examinations, filing of financial and other statements, legal process, organization and licensing of companies, certification and supervision of agents, deposit of assets, impairment and liquidation proceedings, and other requirements pertaining to insurance in general, shall, in so far as they are made applicable by the terms of such laws, or by the terms of sections 35-1101 to 35-1132, apply to all marine insurance companies transacting business within the District: *Provided*, That, with respect to the filing of statements, the superintendent shall accept a photographic copy of a single original, or a certified copy from the insurance department of the state where the company is organized or has its principal office. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title I, § 2.)

CROSS REFERENCES

Powers and duties of the insurance department with respect to fire, casualty, and marine insurance, see § 35-1304.

§ 35-1103. Kinds of insurance that may be written—Capital stock and surplus requirements—Reinsurance companies—Companies excluded.

A marine, fire-marine, or fire insurance company may be formed, admitted, or licensed to write any or all insurance and reinsurance comprised in any one or more of the following numbered subdivisions:

First. On marine risks as described in section 35-1101 under the definition of "marine insurance."

Second. On property and rents and use and occupancy, against loss or damage by fire, lightning, tempest, earthquake, hail, frost, snow, explosion (other than explosion of steam boilers or flywheels), breakage or leakage of sprinklers or other apparatus erected for extinguishing fires, and on such apparatus against accidental injury; and against liability of the insured for such loss or damage; and on automobiles against loss or damage from collision or theft, and against liability of the owner or user for

injury to person or property caused by his automobile.

Third. Against bodily injury or death by accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including quarantine and identification.

Fourth. Against liability of the insured for the death or disability of another.

Fifth. Against loss of or damage to property resulting from causes other than fire, marine and inland navigation hazards, and against liability of the insured for such loss or damage, and on motor vehicles against fire, marine and inland navigation hazards, and against personal injury and death, and liability of the insured therefor, from explosions of steam boilers and engines, pipes and machinery connected therewith, and breakage of flywheels or machinery, and to make and certify inspections thereof; and against loss of use and occupancy from any cause; against loss by burglary, theft, and forgery.

Sixth. Against loss or damage from failure of debtors to pay their obligations to the insured.

Seventh. Against loss from encumbrances on or defects in titles.

Eighth. Against loss or damage by theft, injury, sickness, or death of animals, and to furnish veterinary services.

Ninth. Against any loss or liability arising from any other casualty or hazard not contrary to public policy, other than that appertaining to or connected with (1) life insurance (including the granting of endowments and annuities), and (2) fidelity and surety bonding.

An insurance company organized for the transaction of one or more of the kinds of insurance permitted under subdivisions three to nine, inclusive, of this section, shall also, if complying with sections 35-1101 to 35-1132, be admitted or licensed to write any or all insurance and reinsurance comprised in any one or more of the other subdivisions of this section: *Provided*, That nothing in this section shall be construed as preventing any insurance company, formed, admitted, or licensed to transact insurance in the District on March 4, 1922, from continuing the writing of those kinds of insurance which it may have been authorized to write on March 4, 1922.

Every company formed, admitted, or licensed to transact in the District any of the kinds of insurance permitted by the several numbered subdivisions of this section shall maintain separate and distinct reserves for each kind of insurance so written, and if a stock company shall not transact the business of insurance in the District unless—

(a) It has a capital stock actually paid in, in cash or invested as provided by law, of at least \$100,000 for the insurance specified in any one subdivision of this section, nor unless it has a surplus of money or other lawful assets over its authorized capital and all other liabilities of at least \$50,000;

(b) With an additional \$50,000 of capital stock and \$25,000 of surplus for the insurance authorized by any other subdivision of this section and which may be transacted by such company;

(c) That every company writing more than one class of insurance, as authorized in the several subdivisions of this section, shall keep a separate account

of all receipts in respect to each class of insurance, as directed by the superintendent, and the receipts in respect to each class of insurance shall be carried to and form a separate insurance fund with an appropriate name, which fund, exclusive of the capital stock and general surplus of the company, shall be as absolutely the security of the policyholders of that class as though it belonged to a company writing no other business than the insurance business of that class, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class, and shall not be applied, directly or indirectly, for any purposes other than those of the class of insurance to which the fund is applicable: *Provided*, That nothing in this subsection shall require the investments of any such fund to be kept separate from the investments of any other fund: *Provided further*, That nothing in this subsection shall be construed as preventing a company, at the end of each calendar year, from declaring dividends out of profits earned in any particular class of insurance, or from allocating such profits, either in part or in whole, to its general surplus: *And provided further*, That nothing in this section shall be applicable to companies operating in the District known as life, health, and accident companies under section 35-202.

Corporations for the sole purpose of reinsuring risks insured by other companies may be organized, or admitted, within the District in the same manner as prescribed for other companies. Such reinsurance companies may transact business with any other insurer or reinsurer, and such reinsurance may include all classes of insurance that may be lawfully written: *Provided*, That any reinsurance company, organized or admitted to reinsure one or more of the enumerated classes of insurance, shall be required to have an aggregate capital and surplus equal to the capital and surplus provided by this section for the direct writing of each class of insurance, and shall be required to hold reserves in the same amount and manner as required of other companies for each such class of insurance which, by the provisions of its charter, it is authorized to transact. Such reinsurance companies shall comply with sections 35-1101 to 35-1132, and with any other law of the District, regulating direct-writing companies, in so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title 2, § 3.)

CROSS REFERENCES

Capital and surplus required of foreign and alien companies, see § 35-1326.

Fire, casualty, and marine insurance companies,

Capital and surplus, see § 35-1316.

Types of insurance which can be written, see § 35-1314.

Fire insurance companies may become perpetual, see § 29-237.

Health and accident companies, see §§ 35-202, 35-501.

Surplus required for operation under Lloyd's plan, see § 35-1324.

Title insurance companies, see § 26-301 et seq.

Title insurance excepted from operation of Fire, Casualty, and Marine Insurance Act, see § 35-1302.

Wagering policies forbidden, see § 35-1133.

§ 35-1104. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.

No domestic mutual company shall be organized or licensed within the District unless it has applications from at least two hundred persons for each class of insurance (as enumerated under the several subdivisions of section 35-1103) it may be authorized to write aggregating not less than \$500,000, the maximum amount of insurance applied for in any application on any risk not exceeding one-half of 1 per centum of the aggregate amount, nor three times the average amount of insurance applied for in the several applications. No such mutual company shall be so licensed for any of the classes of insurance as allowed under the several subdivisions of section 35-1103 unless it has received in cash, with respect to each such class of insurance written, at least one advanced periodical premium on each such application, aggregating at least \$10,000; but if the applications are for employers' liability or workmen's compensation insurance, the premiums on such applications shall aggregate at least \$25,000, and each employer shall be considered a separate risk; nor unless it has a surplus of \$10,000 in money or other lawful investments above its liabilities, including the liability equal to the aggregate amount of premiums so advanced. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 4.)

CROSS REFERENCES

Fire, casualty, and marine insurance.

Capital and surplus requirements, see § 35-1316.

Licensing, see § 35-1305.

Rates, schedules, classifications of workmen's compensation insurance, see § 35-205.

NOTES TO DECISIONS

**Authority of superintendent 1
Regulation 2**

1. Authority of superintendent

There is neither express nor implied authority in the Superintendent of Insurance of the District to amend, add to, or alter insurance law by regulations or to apply the drastic provisions of those rules solely to mutual companies. Without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D.C. 174).

2. Regulation

Continued regulation of marine insurance should remain with the individual states. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.* (1955, 75 S. Ct. 368, 348 U.S. 310, 99 L. Ed. 337, rehearing denied 75 S. Ct. 575, 349 U.S. 907, 99 L. Ed. 1243).

§ 35-1105. Foreign corporation—Requirements before doing business in District.

An insurance company organized under laws other than the laws of the District and desiring to transact business in the District shall satisfy the superintendent that it has, if a capital stock company, a paid-up capital and a surplus of assets, invested in accordance with the laws of the State under which it is organized, over its entire authorized capital and all other liabilities, at least equal to the capital and surplus prescribed under section 35-1103 for the writing of various kinds of insurance; and, if a company without capital stock or an interinsurance exchange, that it has a surplus of assets, invested according to the laws of the State under which it is organized, over all its liabilities, of \$100,000; or if a mutual company other than a life insurance company that

it has a surplus over liabilities amounting to \$100,000, or in lieu thereof a surplus amounting to \$10,000 and an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force; or if a company organized under a foreign Government, Province, or State, that it has a surplus of assets invested according to the laws of the District or of the State in the United States where it has its deposit, held in the United States in trust for the benefit and security of all its policyholders in the United States, over all its liabilities in the United States, of at least \$150,000, and, if writing more than one class of insurance as enumerated and allowed under section 35-1103, an additional \$75,000 for each such additional kind of insurance written; and such company so organized under the laws of a foreign Government or State shall also either deposit with the superintendent securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance) and of the classes in which insurance companies are permitted by sections 35-1101 to 35-1132 to make investments, or with the official of a State of the United States, authorized by the law of such State to accept such deposit, securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance), of the classes in which life insurance companies of such States are permitted to make their investments, and such deposits shall be made for the benefit and security of all the policyholders of such company in the United States, and the company shall file with the superintendent the certificate of such official of any such deposit with such official of any such State. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 5.)

CROSS REFERENCE

Admission of foreign and alien companies, §§ 35-1323 to 35-1327.

§ 35-1106. Reinsurance.

Every insurance or reinsurance company, authorized to transact insurance or reinsurance within the District, may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure all of its risks, within any class of insurance as enumerated under the several subdivisions of section 35-1103, in another company. But no credit shall be taken for the reserve or unearned premium liability on such reinsurance unless the company accepting the reinsurance is licensed by the superintendent, or unless it is licensed in one or more States in the United States and shows the same standards of solvency as would be required if it were at the time of such reinsurance authorized in the District to insure risks of the same kind as those reinsured.

In case such reinsurance is effected with an insurer so authorized, or so recognized for reinsurance in this District, the ceding insurer shall thereafter be charged on the gross premium basis with an unearned premium liability representing the proportion of each obligation retained by it, and the insurer to which the business is ceded shall be charged with an

unearned premium liability representing the proportion of such obligation ceded to it calculated in the same way. The two parties to the transaction shall together carry the same reserve which the ceding insurer would have carried had it retained the risk.

The superintendent shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as he may direct. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 3, § 6.)

CROSS REFERENCE

Deducting reinsured risks in determining limitation of risks, see § 35-1315.

§ 35-1107. Unearned premium reserve.

With respect to marine insurance risks, the unearned premium shall be found by computing 50 per centum of the amount of premiums received and receivable on unexpired risks on time policies running one year or less from date of policy, and 100 per centum of the amount of premiums on all untermi-nated voyage and transit risks. As a basis for unearned premium reserves, untermi-nated voyage or transit risks shall be deemed to expire within thirty days on the average. Every insurance company shall so compute such unearned premium in its annual and other financial statements. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 4, § 7.)

CROSS REFERENCE

Computation of reserves, see § 35-1330.

§ 35-1108. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.

With the exception of license fees, real estate and personal property taxes, and a tax on investment income derived from funds representing reserves, capital stock and surplus as defined by sections 35-1101 to 35-1132, every insurance company organized, admitted, or licensed to transact business within the District shall, with respect to marine insurance written by it within the District, be taxed only on that proportion of the total underwriting profit of the company from marine insurance written within the United States which the net premiums of the company from marine insurance written within the District bear to the total net marine premiums of the company written within the United States. The term "underwriting profit," as used herein, shall be arrived at by deducting from the premiums earned on marine insurance contracts written within the United States during the calendar year (1) the losses incurred and (2) expenses incurred, including all taxes, in connection with such business.

Premiums earned on marine insurance contracts written during the calendar year shall be arrived at as follows:

(1) Gross premiums on marine insurance contracts written during the calendar year, less return premiums and premiums paid for reinsurance.

(2) Add unearned premiums on outstanding marine business at the end of the preceding calendar year.

(3) Deduct unearned premiums on outstanding marine business at the end of the current calendar year.

Losses incurred, as used herein, shall mean gross losses incurred during the calendar year under marine insurance contracts written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collected or collectible from any source applicable to aforesaid losses.

Expenses incurred shall include—

(1) Specific expenses incurred, consisting of all agency commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically for the purpose of doing a marine insurance business.

(2) General expenses incurred, consisting of that proportion of general or overhead expenses, such as salaries of officers and employees, printing and stationery, all Federal Government taxes, and all other expenses not chargeable specifically to a particular class of insurance which the net premiums received from marine insurance bear to the total net premiums received by the company from all classes of insurance written during the current calendar year. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 5, § 8.)

CROSS REFERENCES

Excepted from operation of general statutes for taxation of insurance companies, see § 47-1806.

Syndicate "B" exempted from taxation, see § 35-1116. Taxation upon business written for unauthorized companies, see § 35-1344.

§ 35-1109. Statement for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.

Every company transacting marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items pertaining to its insurance business as enumerated and prescribed in section 35-1108. To determine the basis of the tax on underwriting profit, every company which has been writing marine insurance for five years shall furnish the superintendent a statement of all of the aforementioned items, in the form prescribed by him, for each of the preceding five calendar years. A company which has not been writing marine insurance for five years shall furnish to the superintendent a statement of all of the aforementioned items for each of the calendar years during which it has written marine insurance.

If the superintendent finds the report of the company reporting correct, he shall, if the company has transacted marine insurance for five years, (1) ascertain the total average annual underwriting profit, as hereinbefore defined, derived by the company from its marine insurance business written within the United States during the last preceding five calendar years, (2) ascertain the proportion which the average net annual premiums of the company from marine insurance written by it in the District during the last preceding five calendar years bear to the average total net marine premiums of the company during the same five years, (3) compute an amount of 5 per centum on this proportion of the aforementioned average annual underwriting profit of the company from marine insurance, and (4) charge the amount of tax thus computed to such company as a tax upon the marine insurance written by it in the District during the current calendar year. Thereafter the superintendent shall each year compute the

tax, according to the method described in this section, upon the average annual underwriting profit of such company from marine insurance during the preceding five years, including the current calendar year; namely, at the expiration of each current calendar year, the profit or loss on the marine insurance business of that year is to be added or deducted, and the profit or loss upon the marine insurance business of the first calendar year of the preceding five-year period is to be dropped, so that the computation of underwriting profit for purposes of taxation under sections 35-1101 to 35-1132 will always be on a five-year average: *Provided, however*, That a company which has not been writing marine insurance in the District for five years shall, until it has transacted such business in the District for that number of years, be taxed on the basis of the annual average underwriting profit on marine insurance written within the United States during the preceding five years as averaged for all companies reporting to the superintendent for the current calendar year and which have been transacting marine insurance in the District for the past five years: *Provided further*, That, if at any time none of the companies reporting to the superintendent shall have written marine insurance in the District for five years, a company which has not been writing marine insurance in the District for five years shall be taxed on the basis of an annual average underwriting profit as averaged for all companies reporting to the superintendent for the number of years during which they have written marine insurance in the District, subject, however, to an adjustment in the tax as soon as the superintendent, in accordance with the provisions of this section, is enabled to compute the tax on the aforementioned five-year basis: *And provided further*, That in the case of mutual companies the superintendent shall not include in underwriting profit, when computing the tax prescribed by this section, the amounts refunded by such companies on account of premiums previously paid by their policyholders.

When the superintendent has computed the tax on a company's underwriting profit, he shall forthwith mail to the last-known address of the principal office of such company a statement of the amount so charged against it, which amount the company shall pay to the collector of taxes within thirty days after receipt of such notice from the superintendent, and no further tax, except the taxes on investment income from funds representing reserves, capital stock, and surplus as prescribed by sections 35-1110, 35-1111 and the license fee prescribed by section 35-1113 shall be imposed by the District upon such company, or the agents thereof, for the privilege of transacting the business of marine insurance in the District. (Mar. 4, 1922, 42 Stat. 406, ch. 93, title 5, § 9.)

CROSS REFERENCES

Excepted from operation of general tax laws, see § 47-1906.

Fire, casualty, and marine insurance companies, annual statement, see § 35-1311.

§ 35-1110. Taxation on earning on reserves for unpaid loss and unexpired insurance.

In addition to the tax on underwriting profit as prescribed under sections 35-1108, 35-1109, every insurance company transacting business within the

District shall, with respect to marine insurance written by it within the District, be taxed annually at the rate of 5 per centum on its average earnings on reserves for unpaid losses and unexpired premiums. The reserve for unpaid losses and unexpired premiums shall be arrived at by adding the unpaid loss and unexpired premium reserves on marine insurance risks, written within the District, at the beginning and end of the calendar year, and striking an average. Should any company not carry its unpaid loss and unexpired premium reserves separately for the District, then the tax provided under this section shall be applied to such proportion of the company's total unpaid loss and unexpired premium reserves as the net premiums of the company from marine insurance written within the District during the calendar year bear to the total net marine premiums of the company. Average earnings on reserves for unpaid losses and unexpired premiums shall be deemed, for the purpose of taxation under this section, to mean not more than 2 per centum of these reserves. (Mar. 4, 1922, 42 Stat. 407, ch. 93, title 5, § 10.)

CROSS REFERENCE

Excepted from operation of general tax laws, see § 47-1906.

§ 35-1111. Taxes on investment income from funds representing capital stock and surplus.

In addition to the taxes, as prescribed under sections 35-1108 to 35-1110, every company organized under the laws of the District and transacting marine insurance therein shall, with respect to marine insurance written in the District, pay a tax of 2 per centum on its investment income from funds representing capital stock and surplus as shown by the company's annual statement. Such investment income shall, for purposes of taxation under sections 35-1101 to 35-1132, be arrived at as follows: Add the gross assets at the beginning and end of the calendar year and strike an average. Add capital stock and surplus at the beginning and end of the year and strike an average. Ascertain the proportion which the average capital stock and surplus bears to average gross assets. Credit to investment income on capital stock and surplus such proportion of all income, except income taxed under section 35-1110, derived from interest, dividends, rents, and profits on sales or redemption of assets. Charge against investment income on capital stock and surplus such proportion of all losses on sales or redemption of assets.

Should a company subject to this tax be writing other classes of insurance, and the capital stock and surplus referred to herein relate to all the classes of insurance written without being specifically allocated to the several classes of insurance written, then such proportion of the investment income from funds representing capital stock and surplus, computed according to the method prescribed in the preceding paragraph of this section, shall be applicable to marine insurance for purposes of taxation under this section as the net premiums from marine insurance during the calendar year bear to the net premiums of the company from all the classes of insurance written. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 11.)

CROSS REFERENCE

Excepted from operation of general tax laws, see § 47-1806.

§ 35-1112. Report to include all items necessary to enable Superintendent of Insurance to compute tax—Notification of amount of tax.

Every company writing marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items necessary to compute the taxes as prescribed under sections 35-1110, 35-1111. If the superintendent finds the report of such company correct he shall compute the taxes as prescribed and charge the same to such company. Notification to companies by the superintendent of the amount of tax charged to them and the time and place of payment by the companies shall be the same as is required under section 35-1109, relating to taxation of underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 12.)

CROSS REFERENCES

Excepted from operation of general tax laws, see § 47-1806.

Fire, casualty, and marine insurance companies, annual statements, see § 35-1311.

§ 35-1113. Taxation in lieu of license fees.

In lieu of all other license fees every company writing marine insurance in the District shall pay a single annual fee equal to \$100 if the assets of the company aggregate \$1,000,000 or under, to \$150 if the assets aggregate over \$1,000,000 and do not exceed \$5,000,000, and to \$200 if the assets exceed \$5,000,000. The manner and time of paying this single fee and its remittance to the collector of taxes shall be the same as prescribed under section 35-1109 for the payment of taxes on underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 13.)

CROSS REFERENCES

Excepted from operation of general tax laws, see § 47-1806.

Refund of fees when license refused, see § 47-1018.

§ 35-1114. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.

If a company cease to do a marine insurance business in the District, it shall thereupon make report to the superintendent of the items pertaining to its marine insurance business, as enumerated and described by sections 35-1108 to 35-1113, to the date of its ceasing to do business and not theretofore reported, and forthwith pay to the superintendent the taxes and annual license fee thereon, computed according to sections 35-1101 to 35-1132. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 14.)

CROSS REFERENCES

Excepted from operation of general tax laws, see § 47-1806.

Payment of taxes upon ceasing business, see § 35-1307.

§ 35-1115. Penalty for failure to report or pay taxes.

If a company refuses to make any report for taxation or license fee purposes, or to pay taxes or license fees imposed upon it as required by sections 35-1101 to 35-1132, it shall be liable to the United States for the amount thereof and a penalty of not more than \$200 per month for each month it has failed after

demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of the District law relating to actions brought against insurance companies by policyholders thereof. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 15.)

CROSS REFERENCE

Excepted from operation of general tax laws, see § 47-1806.

§ 35-1116. Syndicate "B" exempt from taxes and fees.

None of the taxes or fees prescribed under sections 35-1108 to 35-1113, shall be imposed upon business written within the District by "Syndicate B," a marine insurance syndicate created by agreement between the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation and a number of subscribing American marine insurance companies, under date of June 28, 1920, for the purpose of insuring all American steel steamships which the United States Shipping Board or United States Shipping Board Emergency Fleet Corporation may hereafter sell to others, to the full extent of the unpaid purchase price thereof, and also such other American steel steamships heretofore sold by said Shipping Board or by said corporation as are acceptable for insurance to the Syndicate B subscribers. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 16.)

TRANSFER OF FUNCTIONS

Acts Sept. 7, 1916, ch. 451, § 3, 39 Stat. 729; June 5, 1920, ch. 250, § 3, 41 Stat. 989, established the United States Shipping Board and enumerated its duties. By Ex. Ord. No. 6166, § 12, June 10, 1933, set out in note under section 132 of title 5, U.S. Code, Executive Departments and Government Officers and Employees, the Board was abolished and its functions, including those over and in respect to the United States Shipping Board Merchant Fleet Corporation, were transferred to the Department of Commerce. Subsequently, by act June 29, 1936, ch. 858, §§ 201, 204, 49 Stat. 1987, sections 1111 and 1114 of title 46, U.S. Code, the United States Maritime Commission was created and the functions of the former United States Shipping Board, including those vested in the Department of Commerce by Ex. Ord. No. 6166, referred to above, were transferred thereto. Section 904 of act June 29, 1936, section 1243 of title 46, U.S. Code, provided that wherever the words United States Shipping Board appeared in prior acts the acts were amended so that the words would be applicable to the United States Maritime Commission. For ablishment of the United States Maritime Commission and transfer of its function and the functions of its chairman, see section 1111 of title 46, U.S. Code, and notes thereunder. See also repeal note preceding section 801 of title 46, U.S. Code.

§ 35-1117. Insurance companies not exempt from payment of Federal income tax.

Nothing in sections 35-1101 to 35-1132 shall be construed so as to relieve any corporation organized or doing business under the provisions of sections 35-1101 to 35-1132 from the payment of taxes on its income under the revenue laws of the United States. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 17.)

§ 35-1118. Investment of assets of domestic companies.

The cash capital of every domestic corporation transacting marine insurance in the District, required to have a capital, to the extent of the minimum capital required by sections 35-1101 to 35-1132 shall be invested and kept invested in—

(1) Stocks or bonds of the United States, or of any state or of the District, or of any county, township, school, or other district or municipality in the United States, or federal farm-loan bonds, not estimated above their par value or their current market value.

(2) Bonds or notes secured by mortgages or deeds of trust of improved unencumbered real estate, or perpetual leases thereof, in the United States, worth not less than 50 per centum more than the amount loaned thereon. Where improvements on land constitute part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgagee in amount not less than the difference between two-thirds the value of the land and the amount of the loan.

(3) Mortgage bonds of railroad companies in the United States and on which default in payment of interest has not occurred within five years prior to the purchase by the company.

(4) Loans upon the pledge of such securities.

The cash capital of every insurance corporation not organized under the laws of the District and transacting marine insurance in the District to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested in the same classes of securities specified in the preceding paragraph of this section for domestic insurance corporations, except that like securities of the home state or foreign country shall be recognized as legal investments for the amount of the minimum capital required. The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the superintendent, may be invested in or loaned on the pledge of any of the securities specified in the preceding paragraph of this section; or in the stocks, bonds, or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States, or of any state thereof, or of the District; or in such real estate as it is authorized by sections 35-1101 to 35-1132 to hold.

The assets of every domestic mutual insurance corporation transacting marine insurance in the District to the extent of an amount equal to the minimum capital required of a like domestic stock corporation shall be invested and kept invested in the same class of securities specified for the investment of the minimum capital of like domestic stock insurance corporations. The residue of the assets of every domestic mutual insurance corporation, over and above said amount, may be invested in or loaned on the pledge of the same classes of securities or property as specified in sections 35-1118, 35-1119 for the investment or loan of the residue of the capital and the surplus money and funds of like domestic stock insurance corporations.

A company doing business in a foreign country may invest the funds required to meet its obligations in such country in conformity to the laws thereof in the same kinds of securities in such foreign country as such company is allowed by law to invest in the United States.

Nothing in sections 35-1101 to 35-1132 shall prohibit a company from accepting in good faith, in order to prevent losses and to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 6, § 18.)

CROSS REFERENCES

Investments of insurance companies, see § 35-202.

Investments for fire, casualty, and marine companies, see § 35-1321.

§ 35-1119. Domestic company may acquire, hold, and convey real estate for certain purposes—Disposition.

A domestic company may acquire, hold, and convey real estate only for the purpose and in the manner following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for branch office or other business facilities necessary for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in subdivisions (3), (4), (5), and (6) of this section which shall not be necessary for its accommodation in the convenient transaction of its business shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the superintendent shall direct in such certificate. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 6, § 19.)

CROSS REFERENCES

Conveyance of real estate, formal requisites, see § 45-302.

Holding real estate by fire, casualty, and marine companies, see § 35-1319.

§ 35-1120. Merger of companies.

Any two or more corporations organized under the laws of the District, and transacting the business of marine insurance, may merge or consolidate into one corporation under the name of any title approved by the superintendent, but no mutual corporation or company shall be merged with a stock corporation or company. The corporations may enter into and make an agreement for such merger or consolidation, prescribing its terms and conditions, the amount of its capital, which shall not be larger in amount than the aggregate amount of capital of the merged or consolidated corporations, and the number of shares into which it is to be divided. Such agreement must

be assented to by a vote of the majority of the number of directors of each corporation prescribed in its charter and must be approved by the votes of stockholders owning at least two-thirds of the stock of each corporation represented and voted upon in person or by proxy at a meeting, called separately for that purpose, upon a notice stating the time, place, and object of the meeting served at least thirty days previously upon each personally or mailed to him at his last known post-office address, and also published at least once a week for four weeks successively in some newspaper printed in the District. Every such agreement must have the approval of the superintendent before the details of said agreement may be carried into effect as provided therein.

The new corporation may require the return of the original certificates of stock held by each stockholder in each of the corporations to be merged or consolidated and issue in lieu thereof new certificates for such number of shares of its own stock as such stockholder may be entitled to receive. Upon such merger or consolidation all rights and property of the several companies shall become the property of the corporation composed of such companies, and the new corporation shall succeed to all the obligations and liabilities of the old corporations in the same manner as if they had been incurred or contracted by it. The stockholders of the old corporations shall continue subject to all the liabilities, claims, and demands existing against them at or before such merger or consolidation. No action or proceeding pending at the time of the consolidation, in which any or all of the old corporations may be a party, shall abate or discontinue by reason of the merger or consolidation, but the same may be prosecuted to final judgment in the same manner as if the merger or consolidation had not taken place, or the new corporation may be substituted in place of any corporation so merged or consolidated by order of the court in which the action or proceeding may be pending. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 7, § 20.)

§ 35-1121. Establishment of foreign connections.

Any domestic company authorized to write insurance or reinsurance within the District may establish and maintain one or more agencies beyond the United States for the transaction of its lawful business upon such terms and conditions as it may prescribe and may omit from its annual report the transactions by any such agency, if beyond the North American Continent, for six months previous to the time when the report is made, but such omitted transactions shall be included in the next annual report. If such company is required by the foreign nation within which it transacts business to make a deposit in the securities of its own Government, or otherwise, the excess of such deposit over the local reserve liability, computed according to the terms of sections 35-1101 to 35-1132, shall be allowed as an asset in the company's home statement. The company shall also be allowed to include in its admitted assets all agents' balances in foreign countries which are collectible and which are not more than one hundred and eighty days past due. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 21.)

§ 35-1122. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.

Corporations engaged exclusively in the writing of insurance in foreign countries may be organized within the District in the same manner and under the same conditions as prescribed by sections 35-1101 to 35-1132 for companies writing risks within the United States. The capital stock of such insurance corporations may be owned by American corporations engaged in the same kind of insurance, and the holding companies shall be given credit for the stock thus owned as admitted assets when rendering their financial statements to the superintendent. Any corporation organized under this section shall pay taxes and fees as provided under sections 35-1108 to 35-1117 and shall comply with and receive the benefit of sections 35-1101 to 35-1132 so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 22.)

§ 35-1123. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.

Any insurance agent or broker, incorporated or unincorporated, or any other person, partnership, or corporation, who or which, with or without compensation, shall, in or from the District, act for or with, or aid, in any manner, either directly or indirectly, any other person, association, partnership, or corporation in soliciting, procuring, or transacting marine insurance with or from any corporation, partnership, association, Lloyd's, individual underwriters, or reinsurers not authorized by license of the superintendent to transact the business of insurance therein, and whether the subject-matter of the insurance or reinsurance is or may be within or without the District, except as provided in sections 35-1124 to 35-1126, shall be guilty of a misdemeanor and shall forfeit to the District the sum of not less than \$100 nor more than \$1,000 for each offense: *Provided*, That for the purposes of sections 35-1123 to 35-1126 any office outside of the United States of an insurer organized under the laws of any foreign country, whether said insurer be licensed to do business in the United States or not, shall be deemed and held to be an insurer not authorized to transact the business of insurance in the District. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 23.)

CROSS REFERENCES

Agents for fire, casualty, and marine insurance, §§ 35-1334 to 35-1345.

Representation of unauthorized companies prohibited except in certain cases, §§ 35-1341, 35-1343, 35-1344.

§ 35-1124. Superintendent of insurance may issue license to agent or broker to solicit marine insurance.

The superintendent, in consideration of the yearly payment of \$100, shall issue to any person or corporation who is trustworthy and is competent to transact a marine insurance business in such manner as to safeguard the interests of the insured and who maintains in this District a regular office for the transaction of an insurance brokerage business a license, revocable for cause by the superintendent, permitting the party named in such license to act within the District as agent for the assured or broker to solicit or negotiate or place contracts of marine

insurance with corporations, partnerships, associations, Lloyd's, individual underwriters, and interinsurers, which are not authorized to transact the business of insurance in this District, and shall renew the same annually, unless revoked for cause: *Provided*, That with respect to insurers organized under the laws of any foreign country and duly licensed to transact the business of insurance in any State or Territory of the United States and with respect to insurers organized under the laws of any State or Territory of the United States, said license shall not issue unless the superintendent shall be satisfied that said insurers show within the United States the same standards of solvency as would be required if said insurers were licensed at the time of issue of said license to transact the business of marine insurance in the District. Said license shall provide and the licensee thereunder shall agree that it may be revoked by the superintendent in his discretion in the event that said licensee does not comply with the terms and conditions of said license and of this chapter: *Provided*, That if a branch, associate, agent, correspondent, or head office of any broker so licensed by the superintendent, or such broker, shall, outside of this District, do or perform any of the acts or things forbidden to an unlicensed broker in this District the superintendent may, in his discretion, cancel and revoke the license of such licensee: *Provided, however*, That nothing herein contained shall authorize any person or corporation so licensed to act as insurer or guarantee the performance of any agreement, instrument, or policy of insurance or reinsurance as aforesaid or countersign or issue in the District any agreement, policy, or other instrument of such insurance unless such person or corporation so licensed shall have complied with the provisions of sections 35-1101 to 35-1132. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 24.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Insurance agents other than life, see §§ 35-1201, 35-1334, 35-1345.

Refund of fees when license refused, see § 47-1018.

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, see § 33-418.

§ 35-1125. Holder of license to maintain office in District of Columbia and to keep book of records—Contents—Superintendent of Insurance may inspect such record—Data secured by Superintendent to be confidential.

Any person or corporation holding such license from the superintendent who shall do or perform any or all of the aforesaid acts in connection with marine insurance with any corporation, person, partnership, association, Lloyd's, individual underwriters, or interinsurers, which are not authorized by license of the superintendent to transact such business in the District, shall (1) maintain in good faith an office in the District, (2) keep in said office a complete book of record of the marine insurance transacted by, through, or with his or its assistance with unauthorized insurers, showing (a) a brief description or identification of the subject-matter and kind of the insurance, (b) the voyage insured, or, if for time, the date of such insurance going into effect and the date

of its termination, (c) the name of the beneficial insured, (d) the amount insured with unauthorized insurers, (e) the rate of premium, (f) the gross premium payable therefor. Such book of record shall also contain statements in the same details of all such insurances canceled or on which premiums have been increased or reduced (including laying-up returns) and the amounts of additional or of return premiums thereon; (3) keep in said office such additional record of the insurance, including the names of the corporations, partnerships, associations, persons, Lloyd's, underwriters, or interinsurers and the amount insured by each. The books of record and all supplementing records shall be open at all times to the inspection of and examination by the superintendent of insurance or anyone appointed by him for said purpose. The data as herein outlined shall be furnished to the superintendent within one month following his request therefor and upon the form furnished by him. Such classified records of any licensee reporting shall be regarded by the superintendent as intended solely for the information of the District and federal governments and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to any person or corporation not legally authorized to receive the same shall be guilty of a misdemeanor and subject, upon conviction, to a fine of \$2,000 or imprisonment for one year, or to both such fine and imprisonment. Any licensee under sections 35-1123 to 35-1126 failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month he has failed. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 25.)

§ 35-1126. Licensee to furnish bond.

Each person or corporation to whom such a license as broker shall be issued shall, before transacting business thereunder, execute and deliver to the superintendent a bond in the penal sum of not less than \$5,000, with such surety or sureties as the superintendent shall require and approve, conditioned that the said broker will faithfully comply with all the requirements of sections 35-1123 to 35-1126. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 9, § 26.)

§ 35-1127. Keeping of classified records.

Every insurance company organized or admitted to write marine insurance within the District shall keep a classified record of all its marine insurance transactions in the United States, setting forth for each calendar year the volume of risks and the premiums involved with respect to (1) hull and time freight insurance; (2) cargo and voyage freight insurance and other voyage interests; (3) builders' risk insurance; (4) reinsurance ceded to American companies; (5) reinsurance ceded to American branch offices of alien admitted companies; (6) reinsurance ceded to any foreign office of alien admitted companies and reinsurance ceded to nonadmitted alien insurers; (7) reinsurance received from American companies; (8) reinsurance received from any foreign office of admitted alien companies and reinsurance received from alien nonadmitted insurers.

The data as herein outlined shall be furnished to the superintendent within two months following his request therefor and upon the form furnished by him. Such classified records of any individual company reporting shall be regarded by the superintendent as intended solely for the information of the District and federal governments, and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to a competitor shall be guilty of a misdemeanor and subject upon conviction to a fine of \$2,000, or imprisonment for one year, or to both such fine and imprisonment. Any company or admitted branch office failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month it has failed. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 10, § 27.)

§ 35-1128. Penalties.

Any person, corporation, association, or partnership who violates any of the provisions of sections 35-1101 to 35-1132, or fails to comply with any duty imposed upon him or it by any provision of said sections for which violation or failure no penalty is elsewhere provided by said sections or by the laws of the District, shall upon conviction thereof be fined not exceeding \$500. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 28.)

§ 35-1129. Production of incriminating evidence compellable—Immunity of witness.

No person shall be excused from attending and testifying or producing any books, papers, or other documents before any court or magistrate upon any investigation, proceeding, or trial for a violation of any of the provisions of sections 35-1101 to 35-1132 upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced by him shall be used against him upon any criminal investigation, proceeding, or trial. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 29.)

CROSS REFERENCE

Testimony and the production of books and papers, see § 35-1346.

§ 35-1130. Clerical assistance and departmental expenses.

For the purpose of carrying out the provisions of sections 35-1101 to 35-1132 the superintendent of insurance is authorized to appoint, in addition to the present force, an examiner, a clerk-stenographer and to increase the contingent expenses of the insurance department in the sum of \$800. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 12, § 30.)

CODIFICATION

The provisions for a salary of \$3,000 per annum for the examiner and a salary of \$1,800 per annum for the clerk-stenographer have been deleted, and are now covered by

the Classification Act of 1949, as amended, U.S. Code title 5, chapter 21, subchapter V.

CROSS REFERENCE

Receivership expenses, see § 35-1308.

§ 35-1131. Separability of provisions.

Should any of sections 35-1101 to 35-1132 be held unconstitutional or invalid the constitutionality or validity of said sections as a whole or of any part thereof, other than the part so held unconstitutional or invalid, shall not be affected. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 31.)

REPEAL OF INCONSISTENT PROVISIONS

Section 31 of act Mar. 4, 1922, provided in part: "That this Act [§§ 35-1101 to 35-1132] shall supersede the provisions of any other law of the District in conflict therewith."

§ 35-1132. Right to amend or repeal reserved.

The right to alter, amend, or repeal sections 35-1101 to 35-1132 is hereby reserved. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 32.)

§ 35-1133. Wagering policies, illegal.

No insurance shall be made by any person or persons, bodies politic or corporate, on any ship or ships, or on any goods, merchandise, or effects laden or to be laden on board of any ship or ships, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering or without benefit of salvage to the insurer; and every such insurance shall be null and void to all intents and purposes. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 656.)

Chapter 12.—INSURANCE AGENTS OTHER THAN LIFE

Sec.

35-1201. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

35-1202. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

§ 35-1201. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—penalties.

No person, firm, or corporation shall act as agent for any insurance company or association, or act as insurance broker or agent for procuring or placing insurance for commissions, compensation, gain, or profit, without first having obtained a license as an insurance agent or broker from the Superintendent of Insurance of the District. Every such license certificate shall have printed conspicuously upon its face the words "General insurance license," and for such license the sum of fifty dollars shall be paid annually in the month of March to the collector of taxes of said District. All licenses for insurance companies, their agents, or solicitors, who may apply for permission to do business in the District of Columbia shall date from the first of the month in which application is made and expire on the thirtieth day of April following, and payment shall be made in proportion. No person, firm, or corporation, or association shall allow or pay any commission, rebate, or compensation whatever, directly or indirectly, to, for, or in behalf of any person, firm, or

corporation doing business in the District of Columbia not licensed as herein provided. Any violation of this section shall be a misdemeanor and, on conviction in the Municipal Court for the District of Columbia, be subject to the penalties provided in section 35-201 for the misdemeanors therein described: *Provided*, That licenses to firms, corporations, or associations shall be held to extend only to the bona fide copartners, not exceeding two in one firm, and to the secretary and one assistant secretary of each corporation or association so licensed, any one of whom may be held and dealt with on behalf of such firm, corporation, or association for any violation of the provisions hereof. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 654; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CODIFICATION

As enacted this section provided at the end that: "And provided further, That all moneys paid as fines under the provisions hereof shall be turned over to the proper custodian of the relief or pension fund of the fire department of the District, to be used and accounted for agreeably to the then existing rules for the use of such relief or pension fund." Act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12 [§ 4-503], provides that the "Police relief fund" and the "Fireman's relief fund" should be known as the "Policemen and firemen's relief fund, District of Columbia," and prescribes the moneys of which such fund shall consist.

REPEAL OF INCONSISTENT PROVISIONS

Provisions of this chapter conflicting with the Life Insurance Act, classified to chapters 3 to 8 of this title, are repealed by section 4, Ch. VI of said act which is set out as a note under section 35-301.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Fire, casualty, and marine insurance agents, see §§ 35-1334 to 35-1345.

Life insurance,

Agents, see § 35-425 et. seq.

Brokers, see § 35-428.

Marine insurance agents, see § 35-1124.

Refund of fees when license refused, see § 47-1018.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33-418.

Transacting business for unauthorized company, see § 35-1123.

NOTES TO DECISIONS

Injunction 3

Licensed

Agents 1

Corporations 2

Mandamus 4

Regulations 5

1. Licensed agents

Broker licensed under this section may act as agent for any company authorized to do business in the District. *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

An agent licensed to represent one company is entitled to apply for and receive another license to represent another company. *United States ex rel. Kreh v. Ingram* (38 App. D. C. 379).

2. Licensed corporations

"All insurance companies are compelled to comply with the provisions of the several sections relating to them before they can carry on business. . . . The companies are under no obligation to apply for licenses for their agents or brokers. They must apply for their own licenses." *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

3. Injunction

Superintendent of Insurance of the District has no statutory authority to issue license to mutual insurance companies writing taxicab insurance, and injunction may be issued to restrain him from doing so. *Hutchins Mut. Ins. Co. v. Hazen* (1939, 105 F. 2d 53, 70 App. D.C. 174).

4. Mandamus

The issuance of a license to represent another company may be compelled by mandamus. *United States ex rel. Kreh v. Ingram* (38 App. D. C. 379).

5. Regulations

Superintendent of Insurance does not have power "to make regulations for the classification of persons required to take out a 'general insurance license' by the provisions of 1901 Code, § 654 (§ 35-1201)." *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

§ 35-1202. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

Nothing contained in sections 35-101 to 35-108, 35-201 to 35-205, 35-1201, 35-1202 shall be held to interfere with or abridge the rights of, or apply to, any fraternal beneficial societies, orders, or associations under sections 35-901 to 35-917: *Provided*, That any insurance company or agent licensed to do business in the District of Columbia may employ solicitors, and the license fee to be paid for each solicitor so employed shall be five dollars per year, payable in the month of March, and such license shall have printed on its face the words "Insurance solicitor's license," and shall contain the name of the company for which such solicitor is employed, and no other: *Provided*, That nothing herein contained shall be held to prevent any life or fire insurance company from carrying on the business commonly known as industrial insurance, and the license fee to be paid for solicitors for such industrial insurance shall be two dollars for every such solicitor, to be paid in the month of March in each year. Such license certificate shall have conspicuously printed on its face "Industrial insurance license," and shall also express upon its face the name of the company for which such solicitor is employed; and any certificate of license granted under this section or the next preceding section may be assigned, upon application to the Superintendent of Insurance, by canceling the old certificate and issuing a new one of like tenor to the assignee for the unexpired term, for which assignment a fee of twenty-five cents shall be paid to the collector of taxes; and any person who shall act as solicitor for any such insurance company, without having first procured such license therefor, or shall solicit for any company other than the one named in such license, shall be guilty of a misdemeanor and, on conviction thereof in the Municipal Court for the District of Columbia be punished by a fine of not less than ten dollars nor more than fifty dollars, and in default of payment of such fine by imprisonment in the jail of said District for a term of not less than ten days nor more than thirty days, at the discretion of the court: *Provided*, That nothing in sections 35-101 to 35-108, 35-201 to 35-205, 35-1113, 35-1201, 35-1202 shall be held to prevent any life insurance company organized in the District of Columbia under special act of Congress, but which has

discontinued writing new insurance, from collecting premiums or dues upon any undetermined policies under which such company has liabilities, provided such company has sufficient assets and reserves to safely meet such liabilities. (Mar. 3, 1901, 31 Stat. 1293, ch. 854, § 655; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

- Sec.
- 35-1301. Short title.
- 35-1302. Application of chapter—Life, title, fidelity, and surety companies and pension plans excepted.
- 35-1303. Definitions.
- 35-1304. Records of Insurance Department—Power to make rules.
- 35-1305. Certificate of authority—Necessity for—Expiration—Requirements.
- 35-1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.
- 35-1307. Taxes, report and payment upon ceasing business—Penalties.
- 35-1308. Receivership—Grounds for—Injunction—Hearing—Liquidation by Superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.
- 35-1309. "Insolvency" defined.
- 35-1310. "Impairment of capital or surplus" defined.
- 35-1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.
- 35-1312. False statements—Penalties.
- 35-1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.
- 35-1314. Classification of insurance—Fire and marine—Casualty—Risks insurable—Fidelity and surety risks excepted.
- 35-1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.
- 35-1316. Capital and surplus, minimum requirements.
- 35-1317. Existing companies, application of act—Capital and surplus requirements.
- 35-1318. Formation of domestic companies—Filing articles of incorporation, by-laws, charter and policy forms—Issuance of certificate of authority to do business.
- 35-1319. Real estate which may be held by domestic companies—Sale of certain real estate within five years after acquisition—Extension of time for sale.
- 35-1320. Borrowing money, mutual company may borrow to create surplus fund, comply with law, or defray expenses of organization—Approval of superintendent—Interest rate—Repayment—Obligation of company.
- 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.
- 35-1322. Agency contracts, exclusive—Approval of Superintendent required—Prohibited provisions.
- Sec.
- 35-1323. Foreign or alien companies, admission—Certificate of authority required.
- 35-1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.
- 35-1325. Certificate of authority, application by foreign or alien companies—Form and execution.
- 35-1326. Application for certificate of authority, foreign or alien companies—Delivery of instruments concerning company to Superintendent—Service of process—Deceptive names prohibited—Capital and surplus—Investments—Examination by Superintendent.
- 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.
- 35-1328. Names of mutual or reciprocal companies—Requirements—Exceptions.
- 35-1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.
- 35-1330. Reserves, computation.
- 35-1331. Policy forms filed with the Superintendent—Power to disapprove.
- 35-1332. Accident and health policies, required provisions.
- 35-1333. Discriminations prohibited.
- 35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.
- 35-1335. Commissions to unlicensed persons prohibited.
- 35-1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.
- 35-1337. Effective dates of licenses and proration of fees.
- 35-1338. Temporary transfer of licenses—Renewal.
- 35-1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal.
- 35-1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.
- 35-1341. Unauthorized solicitation or representation.
- 35-1342. Exemption from license—Sale of accident insurance in railroad ticket offices, common carriers—Travel bureau—Business of ocean marine insurance, insurance covering railroad property and other common carriers.
- 35-1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.
- 35-1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form and contents—Revocation or refusal.
- 35-1345. License fees.
- 35-1346. Testimony—Production of books—No refusal because of self-incrimination—Exemption from punishment except for perjury.
- 35-1347. Penalties not otherwise prescribed.
- 35-1348. Appeal from Superintendent to Commissioners—Time for—Hearing on appeal—Effect of Commissioners' decision.
- 35-1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.
- 35-1350. Separability of provisions.
- § 35-1301. Short title.
- This chapter shall be known as the "Fire and Casualty Act." (Oct. 9, 1940, 54 Stat. 1063, ch. 792, Ch. I, § 1.)
- EFFECTIVE DATE
- Section 48 of act Oct. 9, 1940, provided that: "Except where otherwise specifically provided herein, this Act [this

chapter] shall become effective thirty days after approval [Oct. 9, 1940]."

REPEAL OF INCONSISTENT PROVISIONS

Section 46 of act Oct. 9, 1940, ch. 792, Ch. II, provided that: "All laws or parts of laws, insofar as they relate to business affected hereby and are in conflict with any provisions of this act [Fire and Casualty Act, §§ 35-1301 to 35-1350], are hereby repealed."

CROSS REFERENCES

Insurance companies, see chapters 1 and 2 of this title.
Marine insurance companies, see chapter 11 of this title.

§ 35-1302. Application of chapter—Life, title, fidelity, and surety companies and pension plans excepted.

All fire, marine, and casualty insurance companies now or hereafter incorporated or formed in the District, or authorized to do business in the District, all brokers and all agents and other representatives of such companies, shall, to the extent hereinafter provided, be subject to this chapter: *Provided*, That this chapter shall not affect the business of life and title insurance, and shall not affect the right or authority of any solvent company to make contracts of fidelity or surety, and shall not affect a plan under which any person provides pension benefits to his employees. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, Ch. I, § 2.)

CROSS REFERENCES

Effect on existing companies, see § 35-1317.
Regulation of fire insurance rates, see §§ 35-1401 to 35-1409.

§ 35-1303. Definitions.

In this chapter, unless the context otherwise requires—

"District" means District of Columbia.

"Commissioners" means the commissioners of the District of Columbia.

"Superintendent" means the Superintendent of Insurance of the District of Columbia, or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan Number 5 of 1952.

"Department" means the Department of Insurance of the District of Columbia.

"Company" means an insurance, surety, or indemnity company, and shall be deemed to include a corporation, company, partnership, association, individual, or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance, surety, or indemnity business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

"Authorized company" means a company which has authority from the Superintendent to do business in the District as provided under section 35-1305.

"Unauthorized company" means a company which does not have authority from the Superintendent to do business in the District as provided under section 35-1305.

"Domestic company" means a company incorporated or organized under the laws of the District.

"Foreign company" means a company incorporated or organized under the laws of any State of the United States.

"Alien company" means a company incorporated or organized under the laws of any country other than the United States.

"Reciprocal" includes interinsurance exchange.

"Person" includes individuals, corporations, associations, exchanges, and partnerships.

Personal pronouns include all genders; the singular includes the plural and the plural includes the singular.

"Policy" means an insurance policy or contract, including contracts of fidelity and surety, and includes any contract wherein one party called the "company," for a consideration, undertakes to pay money or its equivalent, or to do an act valuable to any other party upon the happening of the hazard or peril insured against whereby the party insured suffers loss or injury or is subjected to legal liability.

"Officer," when used to refer to officer of the company, includes an attorney-in-fact.

"Policy writing agent" means any person who is not a salaried employee of a company, and whose residence or principal place of business is located in the District, and who is authorized in writing by any company authorized to transact business in the District to countersign policies and to solicit, negotiate, or effect contracts of insurance, surety, or indemnity for such company in the District.

"Soliciting agent" means any person who is not a salaried employee of a company and whose residence or principal place of business is located in the District, and who is authorized by a company having authority to transact business in the District, or by a policy-writing agent, to solicit in the District contracts of insurance, surety, or indemnity in behalf of such company or agent.

"Broker" means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance, surety, or indemnity.

"Salaried company employee" means any person regularly employed by an authorized company, and who is paid a regular wage or salary to perform certain duties and functions authorized by such company. For the purposes of this chapter the term "salaried company employee" shall not include employees engaged solely in office duties or in the inspection, rating, or classifying of risks or in the supervision of agents, or any employee not engaged in the solicitation or writing of policies, or officers of companies or associations engaged in the performance of their usual and customary executive duties.

"Surplus" means the excess of admitted assets over liabilities and capital in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock.

"Liabilities" means all debts due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by this chapter.

"Admitted assets" includes the investments authorized or permitted by this chapter, and in addition thereto only the following:

(1) Cash in a company's principal or branch offices or in possession of a company or in transit, and

cash deposited with the officers of any state or subdivision thereof, or the Dominion of Canada, when such deposit is necessitated by the laws of such state or subdivision thereof, or by the laws of the Dominion of Canada.

(2) Cash deposited in sound banks and trust companies.

(3) The amount fairly estimated as recoverable on cash deposited in closed banks and trust companies.

(4) Bills and accounts receivable collateralized by securities of the kind in which the company is authorized to invest.

(5) Bills receivable not past due for risks taken by companies authorized to transact fire and marine business described in section 35-1313 that are not in excess of the unearned premiums thereon.

(6) Gross premiums or premium deposits in course of collection not more than ninety days past due, less commissions due thereon to agents.

(7) Amounts fairly estimated as recoverable from advances made on contracts under surety bonds.

(8) Amounts due from solvent insurance companies, bureaus, or company associations, and amounts fairly estimated as recoverable from insolvent insurance companies.

(9) The interest accrued during the twelve months immediately preceding on mortgage loans other than those upon which the company is proceeding for the enforcement of security.

(10) The rents accrued on the company's property during the twelve months immediately preceding.

(11) Interest due and accrued on bonds conforming to this chapter and not in default.

(12) Amounts due and accrued on dividends declared on shares of stock conforming to this chapter.

(13) Interest due and accrued on collateral loans which is not in excess of the value of the collateral over the amount loaned thereon.

(14) Interest due and accrued on deposits in sound banks and trust companies.

(15) Interest accrued on tax-anticipation warrants.

(16) Amounts due for tax refunds allowed but unpaid from the United States or any state. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, Ch. I, § 3; June 30, 1953, 67 Stat. 120, ch. 168.)

AMENDMENT

1953—Act June 30, 1953, changed the definition of "Superintendent" by inserting "or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan Number 5 of 1952."

CROSS REFERENCES

Additional definition of "company," see § 35-1343.

"Encumbrances on real estate" defined, see § 35-1321.

"Impairment of capital or surplus" defined, see § 35-1310.

"Insolvency" defined, see § 35-1309.

Marine insurance, definitions, see § 35-1101.

§ 35-1304. Records of Insurance Department—Power to make rules.

The office of the superintendent shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as the superintendent for good reason may

decide otherwise, or except as it may be provided otherwise herein.

The superintendent shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this chapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this chapter. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, Ch. II, § 1.)

CROSS REFERENCES

Power and duties of insurance department with respect to marine insurance, see § 35-1102.

Power of Superintendent to,

Alter or prescribe forms for annual statements, see § 35-1311.

Disapprove inequitable policy forms, see § 35-1331.

Prescribe form of application of foreign and alien companies to do business in the District, see § 35-1325.

Rules and regulations,

Generally, see § 35-102.

Governing liability policies or bonds for motor carriers, see § 44-301.

§ 35-1305. Certificate of authority—Necessity for—Expiration—Requirements.

It shall be the duty of the superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The superintendent may, however, satisfy himself by such investigation as he may deem proper or necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the superintendent authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate shall be made to expire on the 30th day of April next succeeding the date of its issuance. No company shall transact any business in or from the District until it shall have received a certificate of authority as authorized by this section, and no company shall transact any business not specified in such certificate of authority. No domestic mutual company shall transact any business in the District until it has bona fide applications for insurance covering not less than two hundred separate risks in not less than twenty policies to be issued to not less than twenty members, and has received the cash premium therefor, and has a surplus of not less than the amount provided under sections 35-1315, 35-1316. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, Ch. II, § 2.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

General penalties for violation of the insurance laws, see § 35-1347.

Issuance of certificate, see § 35-1318.

Licensing,

Health and accident business, generally, see § 35-201.

Marine insurance companies, see § 35-1104.

§ 35-1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.

The Superintendent shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of this chapter, or which—

- (a) is impaired in capital or surplus;
- (b) is insolvent;
- (c) is in such a condition that its further transaction of business in the District would be hazardous to its policyholders or creditors, or to the public;
- (d) has refused or neglected to pay a valid final judgment against such company within thirty days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmance on appeal;
- (e) has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;
- (f) has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Superintendent, his deputies, or duly appointed examiners;
- (g) has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;
- (h) fails to file with the Superintendent a copy of an amendment to its charter or articles of association within thirty days after the effective date of such amendment;
- (i) has had its corporate existence dissolved or its certificate of authority revoked in the State in which it was organized;
- (j) has had all its risks reinsured in their entirety in another company, without prior approval of the Superintendent; or
- (k) has made, issued, circulated, or caused to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting either its status or the terms of any policy issued or to be issued by it, or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or has used any name or title of any policy or class of policies misrepresenting the true nature thereof.

The Superintendent shall not revoke or suspend the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing: *Provided*, That if the Superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required: *Provided further*, That in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such company to a penalty of not more than \$200 when in his judgment he finds that public interest would be best served by the continued operation of

the company. The amount of any such penalty shall be paid by the company through the office of the Superintendent to the Collector of Taxes, District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, Ch. II, § 3; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 1; Feb. 22, 1958, 72 Stat. 21, Pub. L. 85-334, § 4.)

AMENDMENTS

1958—Act Feb. 22, 1958, added subdiv. (k) relating to misrepresentations of status, policies, benefits, dividends or surplus, and inserted provisions relating to the administration of oaths to witnesses by the Superintendent, and to the perjury penalties for testifying falsely thereunder.

1944—Act April 22, 1944, added the proviso at the end thereof relating to the penalty of a fine in lieu of revocation or suspension.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

CROSS REFERENCES

Examination of companies, see § 35-1313.
General penalties for violation of the insurance laws, see § 35-1347.

Receivership proceedings, see § 35-1308.
Revocation of licenses, certificates, and permits in general, see § 35-102.

§ 35-1307. Taxes, report and payment upon ceasing business—Penalties.

If a company shall cease to do business in the District, it shall thereupon make report to the superintendent of the taxable premiums collected which have not been reported prior to the date of the cessation of business, and shall forthwith pay to the collector of taxes of the District, through the superintendent, a tax thereon computed according to law. If a company fails or refuses to make such a report or to pay the tax imposed upon it as required by law, it shall be liable to the District for the amount of such taxes, plus a penalty of 8 per centum per month for each month or part thereof during which such taxes remain unpaid. (Oct. 9, 1940, 54 Stat. 1067, ch. 792, Ch. II, § 4.)

CROSS REFERENCES

Marine insurance excepted from operation of General Tax Laws, see § 47-1806.

Payment of taxes upon ceasing business, see § 35-1114.

Taxation of insurance companies, generally, see §§ 35-1108 to 35-1117, 47-1806 et seq.

§ 35-1308. Receivership — Grounds for — Injunction—Hearing—Liquidation by Superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.

The superintendent may, through the corporation counsel of the District, apply to the United States District Court for the District of Columbia for a rule directing any company organized under the laws of the District or any company in the course of organization to show why the superintendent should not take possession of its property and conduct its business as the nature of the case and the interests of

the policyholders, creditors, stockholders, or the public may require, whenever any such company is—

- (a) Insolvent; or
- (b) Has neglected or refused to observe a lawful order of the superintendent to make good any deficiency in its capital or surplus; or
- (c) Has by contract of reinsurance or otherwise transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction, the effect of which is to merge substantially its entire property or business in the property or business of any other company, without having first obtained the written approval of the superintendent; or
- (d) Is found after an examination by the superintendent to be in such condition that its further transaction of business would be hazardous to its policyholders; or
- (e) Has violated its charter; or
- (f) Is carrying on activities against public policy.

Upon such application, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith, and shall either deny the application or direct the superintendent to take possession of the property and conduct the business of such company and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed, and that the company can properly resume the possession of its property, and the conduct of its business. If on the like application and rule to show cause, and after a hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent, or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted. For the purpose of this section, the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents, and to employ clerks and assistants as may by him be deemed necessary. The fair and reasonable compensation of such special deputies, clerks, and assistants, and all the expenses of taking possession of and conducting the business of any such company shall, subject to the approval of the court, be paid out of the funds or assets of such company. The court may require a corporate surety bond or bonds from the superintendent in such amount as it may deem necessary. (Oct. 9, 1940, 54

Stat. 1067, ch. 792, Ch. II, § 5; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District."

CROSS REFERENCES

General provisions concerning expenses of regulating marine insurance companies, see § 35-1130.

Revocation or suspension of certificate of authority, see § 35-1306.

§ 35-1309. "Insolvency" defined.

Any insurance company whose assets are not sufficient to reinsure its outstanding risks in a solvent insurance company shall be deemed insolvent, and may be proceeded against as provided in this chapter. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, Ch. II, § 6.)

CROSS REFERENCES

Definitions, see § 35-1303.

Power of Superintendent to examine and determine solvency of health and accident companies, see §§ 35-201, 35-202.

§ 35-1310. "Impairment of capital or surplus" defined.

Any company whose capital has been reduced to an amount less than that required by this chapter, or whose surplus of admitted assets in excess of all liabilities is less than the amount required by this chapter, shall be deemed to be impaired in capital or surplus, and may be proceeded against as provided in this chapter. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, Ch. II, § 7.)

CROSS REFERENCES

Superintendent to examine and determine whether capital or surplus of health and accident companies is impaired, see §§ 35-201, 35-202.

"Surplus" defined, other definitions, see § 35-1303.

§ 35-1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31 immediately preceding on forms furnished by the superintendent. The superintendent shall have authority to extend the time for filing such statement by any company for reasons which he shall deem good and sufficient. Such statement shall be verified by the oath of the president and secretary of the company, or, in their absence, by two other principal officers. The superintendent shall annually in the month of December furnish to each of the companies authorized to do business in the District blanks necessary for the filing of the statement herein required. Such blanks shall conform substantially to the form of statement adopted by the National Association of Insurance Commissioners. The superintendent shall have power to make such modifications and additions in said blank forms of statement as he may deem desirable and necessary to ascertain the condition and affairs of the company. The superintendent shall also have power to require that at least once in the month of March in each year a summary of such annual statement

shall be published by the company in a daily newspaper published in the District. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, Ch. II, § 8.)

CROSS REFERENCES

Annual statement for tax purposes, see §§ 35-1109, 35-1112.

Annual statement of companies operating upon Lloyd's plan, see § 35-1324.

General power of Superintendent to make rules and regulations, see § 35-1304.

Refund of taxes erroneously or unlawfully collected, see § 47-1017 et seq.

Taxation of business transacted by unauthorized company, see § 35-1344.

Taxation of health and accident companies, see § 35-202.

§ 35-1312. False statements—Penalties.

Any director, officer, agent, or employee of any company who subscribes to, makes or concurs in making or publishing any annual or other statement required by law, knowing the same to contain any material statement which is false, shall be fined not more than \$5,000 or imprisoned for not more than five years, or both. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, Ch. II, § 9.)

CROSS REFERENCE

General penalties, see § 35-1347.

§ 35-1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.

The superintendent may examine the books, papers, property, and affairs of any agent or company organized or doing business in the District, and of any company engaged in or professing to be engaged in organizing, promoting, or soliciting stock or capital contributions to or aiding in the formation of any company, or any company which holds the capital stock of another company for the purpose of controlling the management thereof as voting trustee or otherwise. The superintendent, his deputy, or any examiner designated by the superintendent, may examine under oath the officers and agents of such company, and all persons deemed to have material information regarding the company's property or business. Every such company, its officers, and agents shall produce at the home office of the company at the time designated by the superintendent its books of original entry, and all records and papers in its or their possession relating to its or their business or affairs. The officers and agents of such company shall facilitate such examination insofar as it is in their power to do so. The expense of such examination shall be paid by the company examined. Any officer, director, agent, or employee of any company who makes or causes to be made any false entry in any book, report, or statement of such company with intent to injure or defraud such company or any other company or person, or to deceive any officer of such company, or the superintendent, and any person who with like intent aids or abets any officer, director, agent, or employee in any violation of this chapter shall be fined not more than \$1,000, or shall be imprisoned for not more than five years, or both. The superintendent may, in lieu of such examination of a foreign or alien company, accept the report on the examination of

such company made by the insurance department or other insurance supervising official in any other state or any government outside the United States. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, Ch. II, § 10.)

CROSS REFERENCES

General penalties, see § 35-1347.

General provisions for examination of insurance companies, see § 35-108 and notes.

Inspection and examination of insurance companies, see §§ 35-108, 35-201, 35-202, 35-903.

Revocation or suspension of certificate of authority for failure to comply with this section, see § 35-1306.

Superintendent's right to examine health and accident companies to determine solvency, see §§ 35-201, 35-202.

§ 35-1314. Classification of insurance—Fire and marine—Casualty—Risks insurable—Fidelity and surety risks excepted.

Any company authorized to do business in the District may, when empowered by its charter, make all or any one or more of the kinds of insurance and reinsurance comprised in either or both of the following classes, subject to and in accordance with the provisions of this chapter:

(1) *Fire and marine*.—On houses, buildings, and all other kinds of property against loss, damage, or damages by fire, lightning, or storm; to insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers or water pipes; and to make all kinds of insurance against loss of or damage to goods, merchandise, or other property caused by fire, risks of transportation, or navigation, the action of the elements or adverse manifestations of nature, as well as all and every risk or peril to which the subject of insurance may be exposed, against which it is not contrary to public policy to insure, including every insurable interest therein or in the use thereof, or profit or income therefrom, or legal liability therefor, but not to include injury to the person nor loss caused by breach of trust.

(2) *Casualty*.—(a) Upon the health of persons, or against injury, disablement, or death of persons resulting from traveling or general accidents by land or water, and against liability of the assured for injuries to employees or other persons; (b) against liability of the assured for loss or destruction of or damage to property; (c) upon the lives of domestic animals; (d) against loss of or damage to glass and its appurtenances; (e) against loss of or damage to any property resulting from the explosion of or injury to any boiler, heater, unfired pressure vessel, pipes, or containers connected therewith, any engine, turbine, compressor, pump, or wheel or any apparatus generating, transmitting or using electricity, or any other machine or apparatus connected with or operated by any of the previously named boilers, vessels, or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise; (f) against loss by burglary or theft, or both, and against loss of or damage to moneys and securities; (g) to guarantee and indemnify merchants, traders, and those engaged in business and giving credit, from loss and damage by reason of giving and extending credit to their customers and those dealing with them; (h) against loss or damage by water or other fluid or

substance to any property resulting from the breakage or leakage of sprinklers or water-pipes; (i) to insure against any other casualty risk which may lawfully be the subject of insurance, and which it is not contrary to public policy to insure: *Provided*, That this section shall not be construed as having any effect whatever upon the right or authority of any solvent company to make contracts of fidelity or surety. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, Ch. II, § 11.)

CROSS REFERENCES

Insurance under Employers' Compensation Act, see § 35-205.

Kinds of insurance which may be written by marine insurance companies, see § 35-1103.

Liability policy or bond for motor carriers, see § 44-301.

Motor vehicle liability policies, powers of department, form and requisites of policies, see § 40-412.

Wagering policies prohibited, see § 35-1133.

§ 35-1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.

No company other than a mutual or reciprocal company doing business in the District shall expose itself to any loss on any one risk or hazard in the District to an amount exceeding ten per centum of the sum of its capital stock and surplus without the written prior consent of the superintendent. No mutual or reciprocal company shall expose itself to any loss on any one risk or hazard in the District to an amount exceeding ten per centum of its surplus without written prior consent of the superintendent. No portion of any such risk or hazard which shall have been reinsured in a company authorized to do business in the District shall be included in determining limitation of risk: *Provided*, That the provisions of this section shall not apply to the insurance of workmen's compensation, employers' liability, marine, or inland marine risks. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 12.)

CROSS REFERENCES

Limitation of risk for companies operating on Lloyd's plan, see § 35-1324.

Reinsurance of risks, see § 35-1106.

§ 35-1316. Capital and surplus, minimum requirements.

Every stock company authorized to do business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$150,000, and a surplus of not less than \$150,000. Every domestic mutual company and every domestic reciprocal company shall have and shall at all times maintain a surplus of not less than \$150,000, and every foreign or alien mutual company and every foreign or alien reciprocal company shall have and shall at all times maintain a surplus of not less than \$200,000. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 13.)

CROSS REFERENCES

Capital and surplus required of,

Foreign and alien companies, see § 35-1326.

Health and accident companies, see §§ 35-201, 35-202.

Marine insurance companies, see §§ 35-1103, 35-1104.

Surplus required for operation under Lloyd's plan, see § 35-1324.

§ 35-1317. Existing companies, application of act—Capital and surplus requirements.

No company shall be exempt from the provisions of this chapter by reason of its having been incorpo-

rated in the District or elsewhere prior to the effective date of this chapter, except that, in the case of companies authorized in the District on October 9, 1940, and continuously authorized thereafter without any increase of authority, the minimum capital and surplus required of a stock company, and the minimum surplus required of a mutual or reciprocal company, or of a Lloyd's organization by the laws of the District heretofore applicable shall not be increased by this chapter, and provided also that in the case of such continuously authorized companies the provisions of section 35-1327 relating to the names of companies, and the provisions of section 35-1328 relating to the amount of surplus necessary to the issuance of policies having no provision for contingent liability, shall not be applicable. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 14.)

REFERENCE IN TEXT

"Effective date of this chapter", referred to in the text, means the effective date of act Oct. 9, 1940. See Effective Date note post.

EFFECTIVE DATE

Chapter effective 30 days after Oct. 9, 1940, see section 48 of act Oct. 9, 1940, set out as a note under section 35-1301.

§ 35-1318. Formation of domestic companies—Filing articles of incorporation, bylaws, charter and policy forms—Issuance of certificate of authority to do business.

Any domestic stock, mutual, or reciprocal company desiring to transact business in the District shall, after complying with the general laws of the District governing the formation of companies or corporations, file with the Superintendent copies of its articles or incorporation, by-laws, charter, proposed forms of policies, and such other information as may be necessary to manifest and explain the organization, objects, and purposes of the company, and to satisfy the Superintendent that such company has complied with the laws of the District regarding the formation of companies. Thereafter, upon application made to the Superintendent upon such forms as the Superintendent shall prescribe, the Superintendent, subject to the provisions of section 35-1305, shall issue to the company a certificate of authority to transact business in the District. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, Ch. II, § 15.)

§ 35-1319. Real estate which may be held by domestic companies—Sale of certain real estate within five years after acquisition—Extension of time for sale.

A domestic company may acquire, hold, and convey real estate for the purpose and in the manner only following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in paragraphs (3), (4), (5), and (6) of this section, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the Superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the Superintendent shall direct in such certificate. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, Ch. II, § 16.)

CROSS REFERENCE

Holding real estate, marine insurance companies, see § 35-1119.

§ 35-1320. Borrowing money, mutual company may borrow to create surplus fund, comply with law, or defray expenses of organization—Approval of superintendent—Interest rate—Repayment—Obligation of company.

A domestic mutual company may borrow or assume liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of law or as a surplus fund upon agreement which shall first be submitted to and approved by the superintendent that such loan or advance with interest at a rate not exceeding six per centum per annum shall be repaid only with the approval of the superintendent whenever in his judgment the company shall be in possession of sufficient surplus in excess of a surplus equal to the amount required by this chapter. Any such loan or advance shall not form a part of the legal liabilities of the company, but until such loan or advance has been repaid all statements published by such company or filed with the superintendent shall show the amount thereof then remaining unpaid. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, Ch. II, § 17.)

§ 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.

A domestic company shall invest its funds only in—

(1) Bonds or other evidences of indebtedness of the United States, or of any State; or of the Dominion of Canada, or of any Province thereof; or obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development.

(2) Bonds or other evidences of indebtedness of any county, city, town, village, school district, or other municipal district within the United States or the Dominion of Canada which shall be a direct obligation of the county, city, town, village, or district issuing the same.

(3) Bonds or notes secured by mortgages or deeds of trust on unencumbered real estate or perpetual leases thereon in the United States or Dominion of Canada worth not less than fifty per centum more than the amount loaned thereon. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgage in an amount not less than the difference between two-thirds of the value of the land and the amount of the loan: *Provided*, That for the purposes of this section real estate shall not be deemed to be encumbered within the meaning of this section by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint drive-ways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

(4) Bonds or notes secured by mortgages insured by the Federal Housing Administrator and in debentures issued by the Federal Housing Administrator: *Provided*, That the restrictions in subparagraph (3) of this section in regard to the ratio of the loan to the value of the property shall not apply to such insured mortgages.

(5) Bonds or other evidences of indebtedness of the farm-loan banks authorized under the Federal Farm Loan Act or Acts amendatory thereof or supplementary thereto, and bonds or other evidences of indebtedness of national mortgage associations.

(6) Stock or bonds and other evidences of indebtedness of any solvent corporation of any State or Territory of the United States or of the District or of any Province of the Dominion of Canada, excepting stock in its own corporation: *Provided*, That no such investment shall be made in or loan made upon the security of any such stocks upon which dividends in cash during the period of five years next preceding such purchase in each fiscal year for said five years shall not have been paid, and upon which bonds any regular interest payment shall have been defaulted any time within five years prior to such purchase or loan.

(7) Loans upon the pledge of any of the securities aforesaid.

(8) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(9) The bonds of the Home Owners' Loan Corporation, a corporation organized under and pursuant to the authority of sections 1461—1468 of title 12, U.S. Code.

No loan or investment shall be made by any such company, unless the same shall have been authorized by the board of directors or by a committee thereof charged with the duty of supervising loans or investments.

No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for

such purchase or sale on account of said company, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company.

Nothing in this chapter shall prohibit a company from accepting in good faith, to protect its interest, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Oct. 9, 1940, 54 Stat. 1072, ch. 792, Ch. II, § 18; July 19, 1954, 68 Stat. 494, ch. 546, § 2.)

AMENDMENT

1954—Act July 19, 1954, permitted investment in obligations issued or guaranteed as to principal and interest by International Bank for Reconstruction and Development.

CROSS REFERENCES

Definitions, see § 35-1303.

Investments of,

Health and accident companies, see § 35-1118.

Marine companies, see § 35-1118.

§ 35-1322. Agency contracts, exclusive—Approval of Superintendent required—Prohibited provisions.

No domestic company authorized to do an insurance business in the District shall have or make any contract with any person whereby such person is granted the exclusive right or privilege to solicit, procure, write, produce, or manage the entire insurance business of such company, or to collect premiums therefor, unless such contract is filed with and approved in writing by the Superintendent. The Superintendent shall not approve any such contract which—

(a) Subjects the company to excessive charges for expenses or commissions; or

(b) Gives to such person the right to manage any of the affairs of such company or the exclusive right to solicit, procure, write, or produce the entire insurance business for such company, or to collect the premiums therefor for such unreasonable period as may jeopardize the interests or security of the company's policyholders. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, Ch. II, § 19.)

CROSS REFERENCE

Licensing of agents, see §§ 35-1334 to 35-1345.

§ 35-1323. Foreign or alien companies, admission—Certificate of authority required.

Upon complying with the provisions of this chapter, a foreign or alien company organized as a stock, mutual, or reciprocal company, or as a Lloyd's organization, but not otherwise, may be authorized by certificate of authority to transact in the District the kind or kinds of business which a domestic company similarly organized may be authorized to transact under this chapter. Such certificate of authority shall be issued as provided under section 35-1305. The issuance of a certificate of authority to a Lloyd's organization shall be subject to the provisions of section 35-1324. Any company chartered by special act of the legislature of its State of domicile prior to the effective date of this chapter, as provided in section 48 of this Act, as a company without capital stock but doing business exclusively on the stock plan and maintaining at all times a surplus of not less than \$300,000 shall, in the administration

of this chapter, be considered as a stock company. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, Ch. II, § 20; June 27, 1960, 74 Stat. 222, Pub. L. 85-526, § 1)

REFERENCES IN TEXT

Section 48 of this Act, referred to in the text, means section 48 of act Oct. 9, 1940, which is set out as a note under section 35-1301.

AMENDMENT

1960—Act June 27, 1960, inserted the last sentence.

CROSS REFERENCES

Definitions, see § 35-1303.

Establishment of foreign branches, see §§ 35-1121, 35-1122.

Foreign and alien companies, admission, see § 35-1105.

§ 35-1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.

Individuals and aggregations of individuals transacting an insurance business upon the plan known as Lloyd's whereby the individual underwriters become liable severally for specified proportions of the whole amount insured by a policy, heretofore organized under the laws of a State of the United States, or of a foreign government, may be authorized to transact business in the District, upon the following conditions:

1. They shall comply with and be subject to the same terms, conditions, and provisions as are imposed by this chapter upon foreign stock insurance companies, except as provided in the next succeeding paragraph and except that the maximum amount of insurance to be assumed by an individual underwriter upon any single risk for each kind of insurance shall not exceed 10 per centum of the value of the cash and securities deposited in trust by such underwriter, plus the share of admitted assets other than underwriter's deposits of such Lloyd's belonging to such underwriter, less the share of liabilities and reserves of such Lloyd's allocable to such underwriter, but in no event shall it exceed 10 per centum of the value of cash or securities deposited in trust by such underwriter;

2. They shall have and shall at all times maintain surpluses of not less than \$300,000 in the aggregate and shall at all times have on deposit with an insurance department of a State of the United States, or with a bank or trust company designated by such insurance department, for the benefit of all policyholders within the United States the sum of at least \$350,000 in cash or in securities such as are required for the investment of the assets of insurance companies authorized to do business in the District: *Provided*, That they shall not be required to establish or maintain such a deposit if they have on deposit in the hands of a bank or trust company in the United States as trustee cash deposits or securities issued by the United States worth not less than \$2,000,000 in the aggregate and held in trust for the benefit of all policyholders in the United States;

3. They shall file with the superintendent an authenticated copy of their powers of attorney and an authenticated copy of the trust agreement, or other agreement under which deposits made by underwriters are held;

4. They shall notify the superintendent forthwith of any amendments to their powers of attorney, de-

posit agreement, or other documents underlying their organization, by filing with the superintendent an authenticated copy of such document as amended.

5. They shall notify the superintendent forthwith of any change in their names or change of attorney-in-fact, or change of address of their attorney-in-fact;

6. In the case of an alien Lloyd's, their annual statement shall embrace only their condition and transactions in the United States, and may be verified by the oath of their resident manager or other person or persons having proper authority;

7. There shall be filed with the superintendent by the attorney-in-fact at the time of filing the annual statement, or more often if the superintendent requires, a statement verified by the appropriate official of such Lloyd's, setting forth—

(a) the names and addresses of all the underwriters of such Lloyd's;

(b) a description of the cash and securities deposited in trust by each underwriter;

(c) the maximum amount of insurance assumed by each underwriter upon any single risk or each kind of insurance;

(d) that the maximum amount of insurance assumed upon any single risk for each kind of insurance by any individual underwriter does not exceed the limitation provided for in paragraph one of this section.

(Oct. 9, 1940, 54 Stat. 1073, ch. 792, Ch. II, § 20a.)

CROSS REFERENCES

Admission of foreign and alien companies, see § 35-1105.

Capital and surplus requirements, general provisions, see § 35-1316.

Limitation of risk, see § 35-1315.

§ 35-1325. Certificate of authority, application by foreign or alien companies—Form and execution.

A foreign or alien company, in order to procure a certificate of authority to transact business in the District shall make application therefor to the superintendent on forms prescribed and furnished by the superintendent. Such forms shall be executed for the company, by its president or vice-president, or executive officer corresponding thereto, and verified by such officer, and if a corporation the corporate seal shall be thereto affixed, attested by its secretary or other proper officer. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, Ch. II, § 21.)

CROSS REFERENCES

Admission of foreign and alien marine companies, see § 35-1105.

Powers and duties of Superintendent, see § 35-1304.

§ 35-1326. Application for certificate of authority, foreign or alien companies—Delivery of instruments concerning company to Superintendent—Service of process—Deceptive names prohibited—Capital and surplus—Investments—Examination by Superintendent.

A foreign or alien company shall deliver to the superintendent (a) application of the company for a certificate of authority; (b) a copy of its articles of incorporation or articles of association and amendments thereto, duly certified by the proper officer of the state or country under whose laws the company is organized or incorporated, or if reciprocal, the

power of attorney of the attorney-in-fact; (c) if an alien company, a copy of the appointment and authority of its United States manager, certified by a proper officer of the company; (d) a copy of its by-laws and regulations; (e) forms of contracts and policies it proposes to issue in the District, and forms of the applications therefor, if any; (f) the instrument authorizing service of process on the superintendent required by section 35-1327; (g) a statement of its financial condition and business as of the end of the preceding calendar year, complying as to form and verification with the requirements of this chapter for annual statements, or financial statement as of such later date as the superintendent may require; (h) a copy of the last report of examination, certified to by an insurance commissioner or other proper supervisory official; (i) a certificate from the proper official of the state or country wherein it is incorporated or organized, that it is duly incorporated or organized and is authorized to write the kind or kinds of insurance which it proposes to write in the District. Before a certificate of authority to transact business in the District is issued to a foreign or alien company, such company shall satisfy the superintendent that (a) the company is duly organized under the laws of the state or country under whose laws it professes to be organized and is authorized to do the business it is transacting or proposes to transact; (b) its name is not the same as, or so deceptively similar to, the name of any domestic company, or the name of any department of the federal government or existing corporation authorized to transact business in the District as to mislead the public or cause confusion; (c) if a stock company, it has a paid-up capital and surplus at least equal to the capital and surplus required by this chapter, or, if a mutual company or reciprocal, it has a surplus and provision for contingent liability of policyholders at least equal to the surplus and provision for contingent liability of policyholders required by this chapter; (d) its funds are invested in accordance with the laws of its domicile, and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies. Before issuing a certificate of authority to a foreign or alien company, the superintendent may cause an examination to be made of the condition and affairs of such company. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, Ch. II, § 22.)

CROSS REFERENCES

Capital and surplus requirements, general provisions, see § 35-1316.

Foreign and alien marine companies, admission, see § 35-1105.

§ 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.

(a) *Service of process upon unauthorized company.*—(1) The issuance or delivery of a policy or contract of insurance in this District, to a citizen or resident thereof, by a foreign or alien company transacting business in this District without a certificate of authority, shall be deemed equivalent to

an appointment by such company of the superintendent and his successor or successors in office to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it, arising out of such policy or contract of insurance, and said issuance or delivery shall be a signification of its agreement that any such process against it which is so served shall be of the same legal force and validity as if served upon the company.

(2) Service of such process upon the superintendent, and the responsibility of the superintendent in regard thereto, shall be in accordance with the provisions for service of process upon authorized companies as provided in subsection (b).

(b) *Attorney for services of process.*—Every foreign or alien company now or hereafter authorized to transact business in the District shall file with the superintendent a duly executed instrument appointing and constituting him and his successors true and lawful attorney for such company, upon whom all lawful process in any action or legal proceeding against it in the District may be served, and therein shall agree that any lawful process against it, which may be served upon its said attorney as herein provided, shall be of the same force and validity as if served upon the company, and that the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by delivering to and leaving the same with the superintendent or his deputy, and service thereof upon such attorney shall be deemed service upon the company. The superintendent shall forthwith forward such process by prepaid registered mail or by certified mail to the company, or, in the case of an alien company, to the United States manager or last-appointed United States general agent of the company. The registry receipt evidencing the deposit by the superintendent, or his deputy, of such process, in the United States mails in the manner herein prescribed, shall be prima facie evidence of the completion of such service. Failure of any such company to file such an instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such company transacting business in the District without designating an attorney for service of process as herein provided shall, upon information filed by the corporation counsel of the District in the Municipal Court for the District of Columbia be fined upon conviction not less than \$10 nor more than \$500 for each day during which the company shall have operated in violation of this section. (Oct. 9, 1940, 54 Stat. 1075, ch. 792, Ch. II, § 23; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1 (49).)

AMENDMENT

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery, see § 14-407.

Existing companies, non-application of section to, see § 35-1317.

General penalties, see § 35-1347.

§ 35-1328. Names of mutual or reciprocal companies—Requirements—Exceptions.

Except as otherwise provided in section 35-1317, no mutual company shall be authorized to transact business in the District unless the name of such company shall include the word "mutual," and no reciprocal or interinsurance exchange shall be authorized to transact business in the District unless the name or designation under which reciprocal or interinsurance contracts are to be exchanged shall include the words "reciprocal" or "interinsurance exchange," or be supplemented by the following words immediately below the name or designation under which such contracts are exchanged: "A reciprocal" or "an interinsurance exchange." (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 24.)

§ 35-1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.

The maximum premium shall be expressed in the policy of a mutual company, and it may be solely a cash premium, or may be a cash premium and an additional contingent premium, which contingent premium shall be not less than the cash premium, but no mutual company, except as otherwise provided in section 35-1317, shall issue any policy for a cash premium without an additional contingent premium until and unless it possesses a surplus of not less than \$300,000. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 25.)

§ 35-1330. Reserves, computation.

In determining the financial condition of companies authorized under this chapter, allowance shall be made for proper and adequate reserves for liabilities, including reserves for—

- (a) Unpaid losses and the expenses of the adjustment thereof;
- (b) Unearned premiums;
- (c) Commissions, taxes, and all other legal obligations, contingent or otherwise, of which the company has knowledge.

The computation of such reserves shall be in accordance with the provisions of the form of annual statement required under section 35-1311, and every authorized company shall maintain such reserves at all times. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 26.)

CROSS REFERENCE

Computation of unearned premium reserves, see § 35-1107.

§ 35-1331. Policy forms filed with the Superintendent—Power to disapprove.

The superintendent may require that all policy forms used by every authorized company covering risks in the District be filed with the superintendent.

The superintendent shall have authority to disapprove the use in the District of any policy form which is inequitable, or does not comply with the requirements of the law of the District. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 27.)

CROSS REFERENCE

General powers of superintendent, see § 35-1304.

NOTES TO DECISIONS

Generally 1
Construction of policies 2

1. Generally

The Superintendent of Insurance is required to regulate insurance carriers, to see that they maintain adequate reserves, to scrutinize their costs and fix their rates, all policy forms used by fire, liability and marine insurance companies must be filed with him, and he may disapprove use of any form which is inequitable or which does not comply with requirements of law. *Bennett v. Amalgamated Cas. Ins. Co.* (1953, 200 F. 2d 129, 91 U.S. App. D. C. 279).

The duty of Superintendent of Insurance is to see that form of taxicab liability policies accurately and equitably meet requirements of Public Utilities Commission. *Id.*

2. Construction of policies

Words used in automobile insurance policy should be given their common, ordinary, or "popular" meaning, rather than meaning of lexicographers or those skilled in niceties of language. *Unkelsbee v. Homestead Fire Ins. Co. of Baltimore* (D. C. Mun. App. 1945, 41 A. 2d 168).

The maxim "expressio unius est exclusio alterius" as applied to an automobile insurance policy is an aid to construction of policy and not a rule of law, and is not to be arbitrarily applied. *Id.*

§ 35-1332. Accident and health policies, required provisions.

The Superintendent may require that the provisions and conditions contained in any policy of insurance against loss or damage from sickness or bodily injury or death of the insured by accident issued by any company authorized by this chapter to transact business in the District be made to conform to the requirements prescribed under section 35-712. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 28.)

CROSS REFERENCES

Benefits from health and accident insurance are not subject to claims of creditors, see § 35-717.

Minors may contract for health and accident insurance, see § 35-430.

§ 35-1333. Discriminations prohibited.

Discrimination between individual risks of the same class or hazard in the amount of premiums or rates charged for any policy, or in the benefits or amount of insurance payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited, and the superintendent is empowered after investigation to order removed at such time and in such manner as he shall specify any such discrimination which his investigation may reveal. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, Ch. II, § 29.)

§ 35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.

No company authorized to do business in the District shall, by its representatives or otherwise, make, write, issue, or deliver any contract of insurance,

surety, or indemnity, except title and ocean marine insurance, on any person, property, business activity, or insurable interest within the District except through regularly constituted policy-writing agents or authorized salaried employees licensed in the District as provided in this chapter.

No such contract covering persons, property, business activities, or insurable interests in the District, except contracts of title and ocean marine insurance, shall be written, issued, or delivered by any authorized company or by any of its representatives unless such contract is duly countersigned in writing by a person who is licensed as provided in this chapter to countersign such contracts, and no salaried officer, manager, or other salaried employee of any authorized company, unless he be licensed as provided in this chapter, shall write, issue, or countersign any such contract.

No company, agent, or salaried company employee shall make any agreement as to a policy other than that which is plainly expressed in the policy issued.

No company, agent, salaried company employee, or broker shall pay or offer to pay or allow as an inducement to any person to insure any rebate of premium or any special favor or advantage whatever in the dividends to accrue thereon, or any inducement whatever not specified in the policy.

Every company authorized by this chapter to do business in the District shall file annually with the Superintendent on or before the fifteenth day of April, and at such other times as they may be appointed, a list of agents and salaried employees of said company who are authorized to solicit, write, effect, issue, or deliver policies for such company in the District, except that the names of soliciting agents may be filed either by the company or by the policy-writing agent.

Any policy-writing agent or salaried company employee authorized by any company to solicit, negotiate, bind, write, or issue policies or applications therefor shall, in any controversy between the insured or his representative and the said company, be held to be the agent of the company which issued or effected the policy solicited or so applied for, anything in the application or policy to the contrary notwithstanding.

Any payment made by or on behalf of the insured to any broker for policies issued to such broker for delivery to the insured or issued directly to the insured on the order of such broker, shall, in controversies between the insured and the company, be deemed to have been paid to the company.

No soliciting agent shall have any authority to countersign any policy. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, Ch. II, § 30; Feb. 22, 1958, 72 Stat. 22, Pub. L. 85-334, § 5.)

AMENDMENT

1958—Act Feb. 11, 1958, removed life insurance from the enumerated exceptions to the prohibition against doing business except through regularly constituted policy writing agents or authorized salaried employees, and with the contract countersigned by someone licensed to do so.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer

to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Definitions, see § 35-1303.

Exclusive agency contracts must be approved by Superintendent, see § 35-1322.

General provisions concerning agents, see §§ 35-1201, 35-1202.

Marine insurance, agents for, see §§ 35-1123 to 35-1126.

§ 35-1335. Commissions to unlicensed persons prohibited.

No company, policy-writing agent, soliciting agent, broker, or salaried employee shall pay any money or commission or brokerage or give or allow any valuable consideration to any person for or because of service in the District in negotiating or effecting a policy on any person, property, business activity, or insurable interest in the District, unless said person is duly licensed in conformity with this chapter as a broker or as an agent or salaried employee of the company issuing the policy. This section shall not apply to contracts of reinsurance, and shall not apply to persons and kinds of insurance exempted under section 35-1342. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, Ch. II, § 31.)

§ 35-1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.

Any person hereafter desiring to engage in business in the District as a policy-writing agent, soliciting agent, broker, or salaried company employee, as defined by this chapter shall, before engaging in such business, secure from the Superintendent a license authorizing him to engage in such business. The person to whom the license may be issued shall file sworn answers to such interrogatories as the Superintendent may require. Before the Superintendent shall issue or renew a license to any policy-writing agent, soliciting agent, or salaried company employee, he shall require the company or policy-writing agent desiring the appointment of such person to certify—

(a) That the person to be appointed, if not a salaried company employee, is a resident of this District, or that his principal office for the conduct of such business is in or will be maintained in the District;

(b) That he is personally known to the person making the certification;

(c) That he has had experience or instructions necessary to the proper conduct of the kind or kinds of business to which the license is to extend;

(d) That he has a good business reputation, is trustworthy, and is worthy of a license.

Resident and nonresident brokers shall, as a prerequisite to the issuance of a license, file with the Superintendent a corporate surety bond in an amount not less than \$1,000 for the benefit of any person who may suffer loss resulting from fraud or dishonesty on the part of said resident or nonresident broker. Before the Superintendent shall issue

a license to any policy-writing agent, soliciting agent, salaried company employee, or resident broker, who has not previously been licensed under this chapter, he shall personally, or through his deputy or any person regularly employed in the department, within a reasonable time, and in a designated place within the District, subject each such person to a personal written examination relating to such person's knowledge of the kind or kinds of business to which the license may extend and his competency to act as such policy-writing agent, soliciting agent, broker, or salaried company employee. The Superintendent may in his discretion limit the scope of such examination to such particular kind or kinds of business in which the person to be licensed is to be principally engaged. The Superintendent shall issue or renew such license as may be applied for when he is satisfied that the person to be licensed is (a) competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for, and that not more than 25 per centum of his commission income from business to which the license applies will result from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of section 35-1340 and (b) that he has a good business reputation and has had experience, training, or education, or is otherwise qualified in the line or lines of business in which the license would entitle him to engage, and, except in the case of a nonresident broker or salaried company employee, is a resident of the District, or maintains his principal office for the conduct of such business in the District; and (c) is reasonably familiar with the insurance laws of the District, and with the provisions, terms, and conditions of the policies he is proposing to solicit, negotiate, or effect, and is worthy of a license. In the case of a nonresident applying for a broker's license, the Superintendent may waive the examination requirement and accept in lieu thereof evidence that the applicant holds a license as broker or agent in the State where his principal business is conducted. The Superintendent may also waive the examination requirement in the case of any person who has been licensed in the District prior to the effective date of this chapter. The examination requirement shall be waived in the case of any applicant for a license under this section who holds a license under section 35-425, if the company desiring the appointment of such applicant certifies in writing to the Superintendent that such applicant will solicit only accident and health insurance on its behalf. Licenses may be issued in the names of individuals, or in the names of firms, partnerships, or corporations, including banks, trust companies, real-estate offices, and building and loan associations: *Provided*, That on such licenses in addition to the name of the applicant, there shall be listed the name of every member or officer of such firm, partnership, or corporation who solicits insurance or who countersigns policies: *Provided further*, That such named persons as well as the licensee shall be subject to all requirements of this chapter, and that the Superintendent shall have authority at any time to require the applicant fully to disclose the identity of all stockholders,

partners, officers, and employees, and he may in his discretion refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct, meets the standards of this section applicable to persons applying as individuals. No person shall be licensed as agent, broker, or salaried company employee when it appears to the Superintendent that said license is sought primarily for the purpose of obtaining commissions on policies on which he on his own account pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, Ch. II, § 32; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 3; June 30, 1953, 67 Stat. 120, ch. 168; Feb. 22, 1958, 72 Stat. 23, Pub. L. 85-334, § 6.)

AMENDMENTS

1958—Act Feb. 22, 1958, substituted "Provided further, That such named persons as well as the licensee shall be subject to all requirements of this chapter, and that the Superintendent shall have authority at any time to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and he may in his discretion refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct, meets the standards of this section applicable to persons applying as individuals" for "And provided further, That such named persons shall be subject to all requirements of this chapter, and that no officer or employee of such organizations other than those specifically named in such license shall be required to comply with this section, unless the duties of such officers or employees include soliciting or the countersigning of policies", inserted "who has not previously been licensed under this chapter" following "or resident broker,", "In addition to the name of the applicant", following "Provided, That on such licenses", and deleted "on forms furnished by the Superintendent" following "interrogatories as the Superintendent may require", and "Following such examination", preceding "the Superintendent shall issue or renew."

1953—Act June 30, 1953, inserted immediately after "prior to the effective date of this chapter" the following: "The examination requirement shall be waived in the case of any applicant for a license under this section who holds a license under section 26 of the Life Insurance Act (§ 35-425), if the company desiring the appointment of such applicant certifies in writing to the Superintendent that such applicant will solicit only accident and health insurance on its behalf."

1944—Act Apr. 22, 1944, substituted "\$1,000" for "\$5,000."

EFFECTIVE DATE

Chapter effective 30 days after Oct. 9, 1940, see section 48 of act Oct 9, 1940, set out as a note under section 35-1301.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

NOTES TO DECISIONS

Powers of superintendent of insurance 1
Qualification of corporate broker 2
Renewal of license 3

1. Powers of superintendent of insurance

However desirable it might be for superintendent of insurance for the District of Columbia to be empowered to act at all times in public interest in insurance field, neither superintendent nor courts could supply powers which Congress had never conferred. *Atlantic Insurance Agency, Inc. v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

Insurance superintendent is not authorized to deny renewal of license as insurance broker in District of Columbia to corporation which in every respect has originally been found by him to be qualified under, and to have complied with, statutes, even though it later develops that an ownership interest in corporation has been acquired by person deemed by superintendent to be untrustworthy. *Id.*

2. Qualification of corporate broker

To extent that corporation is to act as insurance broker in District of Columbia, it is not the corporate entity but its personnel actually performing functions of broker that are to be examined, and if license is to be issued to corporation, names of individual, competent qualified personnel must appear thereon. *Atlantic Insurance Agency, Inc. v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

3. Renewal of license

District of Columbia Insurance Commissioner's authority to refuse to renew insurance broker's license and considerations to govern his action with regard to renewal are not the same, and are not to be exercised for the same reasons, as his authority to deny original application. *Atlantic Insurance Agency, Inc. v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

If license as insurance broker in District of Columbia is to be issued to corporation, superintendent, when passing upon original application, must satisfy himself that corporation is trustworthy, taking into account such factors as its financial solvency, its standing with tax authorities, its relationship with insurance companies it will represent, their standing to do business in district, and similar criteria upon which his judgment may be based; but once superintendent has found corporation trustworthy and has issued license, presumption of trustworthiness continues, though license renewal application will be subject to conditions of § 35-1339 specifying when renewal may be denied. *Id.*

§ 35-1337. Effective dates of licenses and proration of fees.

All licenses issued under this chapter shall date from the first of the month in which the application for license is made, and shall expire on the 30th day of April next succeeding, and payment of the fees for such licenses shall be prorated accordingly. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, Ch. II, § 33.)

CROSS REFERENCE

License fees, see § 35-1345.

§ 35-1338. Temporary transfer of licenses—Renewal.

In the event of the death or disability of any person licensed as a policy-writing agent, soliciting agent, or salaried company employee, the Superintendent may transfer such license to another person without the payment of an additional fee, and may renew such license: *Provided, however,* That no person shall act as policy-writing agent, soliciting agent, or salaried company employee under any transferred license or renewal thereof for a period in excess of six consecutive months. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, Ch. II, § 34.)

§ 35-1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal.

Upon application for renewal of an expiring license and the payment of the applicable fee prescribed in section 35-1345, the Superintendent shall issue the license applied for when he is satisfied that the applicant therefor meets the conditions set forth in sections 35-1336 and 35-1340. Before the Superintendent shall refuse to renew any such license he shall give to the applicant an opportunity to be fully heard and to introduce evidence in his behalf. If the Superintendent shall refuse to renew any such license he shall give the applicant written notice thereof and he shall not, for a period of ten days from the date of that notice, take any action to stop the applicant from continuing in business, within which period the applicant may apply to any court as provided in section 35-1349, for leave, in the discretion of the court, to continue in business until an appeal from such refusal is decided. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, Ch. II, § 35; Feb. 22, 1958, 72 Stat. 25, Pub. L. 85-334, § 7.)

AMENDMENT

1958—Act Feb. 22, 1958, provided for a hearing, and for a ten-day written notice before any action is taken to stop the applicant from continuing in business during which time he may seek leave of court to continue in business until an appeal from such refusal is decided.

**OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN
NUMBER 5 OF 1952**

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

NOTES TO DECISIONS

Misrepresentation 1
Powers of superintendent of insurance 2
Qualification of corporate broker 3
Trial de novo 4

1. Misrepresentation

Where evidence amply supported finding that policy-writing agent for insurance company violated insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled and that agent represented that it had authority to solicit and procure policies of insurance when it had no license to do so, refusal of Superintendent of Insurance to renew agent's license was proper. *Columbia Auto Loan v. Jordan* (1952, 196 F. 2d 568, 90 U. S. App. D. C. 222).

2. Powers of superintendent of insurance

However desirable it might be for superintendent of insurance for the District of Columbia to be empowered to act at all times in public interest in insurance field, neither superintendent nor courts could supply powers which Congress had never conferred. *Atlantic Insurance Agency, Inc., v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

If license as insurance broker in District of Columbia is to be issued to corporation, superintendent, when passing upon original application, must satisfy himself that corporation is trustworthy, taking into account such factors as its financial solvency, its standing with tax authorities, its relationship with insurance companies it will represent, their standing to do business in district, and similar criteria upon which his judgment may be based; but once superintendent has found corporation trustworthy and has issued license, presumption of trustworthiness continues, though license renewal application will be subject to conditions of this section specifying when renewal may be denied. *Id.*

3. Qualification of corporate broker

To extent that corporation is to act as insurance broker in District of Columbia, it is not the corporate entity but its personnel actually performing functions of broker that are to be examined, and if license is to be issued to corporation, names of individual, competent qualified personnel must appear thereon. *Atlantic Insurance Agency, Inc., v. Jordan, Superintendent of Insurance* (1956, 229 F. 2d 758, 97 U. S. App. D. C. 184).

Insurance superintendent is not authorized to deny renewal of license as insurance broker in District of Columbia to corporation which in every respect has originally been found by him to be qualified under, and to have complied with, statutes, even though it later develops that an ownership interest in corporation has been acquired by person deemed by superintendent to be untrustworthy. *Id.*

District of Columbia Insurance Commissioner's authority to refuse to renew insurance broker's license and considerations to govern his action with regard to renewal are not the same, and are not to be exercised for the same reasons, as his authority to deny original application. *Id.*

4. Trial de novo

Where Superintendent of Insurance of the District of Columbia refused to renew license of policy-writing agent for an insurance company, and agent, in bringing suit in federal district court to review the action of the Superintendent chose to frame his complaint broadly and seek the fullest measure of relief, court did not err in conducting a de novo trial which explored grounds beyond those on which the Superintendent rested his refusal to renew. *Columbia Auto Loan v. Jordan* (1952, 196 F. 2d 568, 90 U. S. App. D. C. 222).

Due process of law did not entitle policy-writing agent to a formal hearing before Superintendent of Insurance of the District of Columbia when Superintendent refused to renew agent's license, in view of the fact that administrative action could be challenged in federal court in any or every respect in which the order might be invalid, and in view of the fact that agent had right to de novo hearing to explore evidence on which Superintendent acted, and reasons and calculations on which he reached his conclusions. *Id.*

**§ 35-1340. Revocation and suspension of licenses—
Grounds for—Notice and hearing—Evidence.**

The Superintendent may revoke or suspend the license of any policy-writing agent, soliciting agent, broker, or salaried company employee when and if, after investigation, it appears to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation, or that such person has otherwise shown himself untrustworthy or incompetent to act in any of the foregoing capacities, or that such person has—

(a) violated any of the provisions of the insurance laws of the District; or

(b) has failed within a reasonable time to remit to any company all moneys which he has collected, and to which the company is entitled; or

(c) has been guilty of rebating or has misrepresented the provisions of the policies which he is selling, or the policies of other companies;

(d) has countersigned policies in blank; or that

(e) more than 25 per centum of his commission income from business to which the license applies results from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of this section; or that

(f) said license is being used primarily for the purpose of obtaining commissions on policies on which he, on his own account, pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from

the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member.

Before the Superintendent shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf: *Provided*, That in lieu of revoking or suspending the license of any policy-writing agent, soliciting agent, broker, or salaried company employee for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than \$200 when in his judgment he finds that public interest would be best served by the continued operation of such person. The amount of any such penalty shall be paid by such person through the office of the Superintendent to the Collector of Taxes, District of Columbia. At any hearing provided by this section, the Superintendent shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, Ch. II, § 36; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 2; Feb. 22, 1958, 72 Stat. 25, Pub. L. 85-334, § 8.)

AMENDMENTS

1958—Act Feb. 22, 1958, inserted "otherwise shown himself untrustworthy or incompetent to act in any of the foregoing capacities, or that such person has—" preceding subdiv. (a), authorized the Superintendent to administer oaths to witnesses, and provided that false testimony after such oath shall be subject to the penalties of perjury.

1944—Act Apr. 22, 1944, added the proviso to last paragraph relating to the imposition of an alternate penalty of a fine.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

CROSS REFERENCES

General penal provisions, see § 35-1347.

Perjury, see § 22-2501.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33-418.

Revocation or suspension of licenses, certificates, and permits in general, see § 35-102.

§ 35-1341. Unauthorized solicitation or representation.

It shall be unlawful for any person, without conforming to the provisions of this chapter, directly or indirectly to represent himself as having authority to solicit, negotiate, effect, procure, receive, or forward directly or indirectly any policy or renewal thereof, or to attempt to effect insurance, surety, or indemnity contracts covering any person or insurable interest in the District, or to countersign any policy or renewal thereof. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, Ch. II, § 37.)

CROSS REFERENCE

Representation of unauthorized companies, see § 35-1123.

§ 35-1342. Exemption from license—Sale of accident insurance in railroad ticket offices, common carriers—Travel bureau—Business of ocean marine insurance, insurance covering railroad property and other common carriers.

The provisions of this chapter relating to the licensing of policy-writing agents, soliciting agents, salaried company employees, and brokers shall not apply to the sale of personal accident insurance in the ticket offices of railroad companies or other common carriers, or in the offices of travel bureaus, nor to the business of ocean marine insurance, nor to insurance covering the property of railroad companies and other common carriers engaged in interstate commerce. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, Ch. II, § 38; Feb. 22, 1958, 72 Stat. 26, Pub. L. 85-334, § 9.)

AMENDMENT

1958—Act Feb. 22, 1958, deleted references to life insurance, and fraternal benefit societies.

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

§ 35-1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.

Except as provided in section 35-1344, no person shall act as agent in the District for any company which is not authorized to do business in the District, nor shall any person directly negotiate for or solicit applications for policies of, or for membership in, any company which is not authorized to do business in the District. The term "company" as used in this section shall include any association, society, company, corporation, joint-stock company, individual, partnership, trustee, or receiver engaged in the business of assuming risks of insurance, surety, or indemnity, and any Lloyd's organization, assessment, or cooperative fire company, or any reciprocal or interinsurance exchange, and any company, association, or society, whether organized for profit or not, conducting a business, including any of the principles or features of insurance, surety, or indemnity. Any person who violates any provision of this section upon conviction shall be fined not less than \$100 nor more than \$1,000 for each offense, or be imprisoned for not more than twelve months, or both, and any such person shall be personally liable to any resident of the District having claim against any such unauthorized company under any policy which said person has solicited or negotiated, or has aided in soliciting or negotiating: *Provided*, That the provisions of this section shall not apply to any person who negotiates with an unauthorized company for policies covering his own property or interests, nor shall the provisions of this section apply to the officers, agents, or representatives of any company which is in process of organization under the laws of the District, and which is authorized temporarily to solicit or secure memberships or applications for policies for the purpose of completing such organization. Prosecutions for violations of this section shall be upon information filed in the Municipal Court for the

District of Columbia by the corporation counsel or any of his assistants. (Feb. 22, 1958, 72 Stat. 26, Pub. L. 85-334, § 10.)

AMENDMENT

1958—Act Feb. 22, 1958, deleted "fraternal beneficial association, order, or society" from the enumerated forms of the term "company."

OFFICE OR AGENCY ABOLISHED BY REORGANIZATION PLAN NUMBER 5 OF 1952

References in act Feb. 22, 1958, to any office or agency abolished by Reorg. Plan No. 5 of 1952 are deemed to refer to the Commissioners of the District, or to any office, officer or agency designated by them, see note under § 35-404.

CROSS REFERENCES

Definitions generally, see § 35-1303.

General penalties, see § 35-1347.

NOTES TO DECISIONS

Defenses 1
Evidence 2
Instructions 3
Prosecution, pending proceedings as bar 4
Questions for jury 5

1. Defenses

Accused charged with soliciting insurance for company unauthorized to do business in District of Columbia could not defend on ground that company had been granted permits to do business where such permits were not perpetual. *Stover v. District of Columbia* (1943, 32 A. 2d 536).

2. Evidence

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, evidence which had a direct bearing on solicitation was properly admitted. *Stover v. District of Columbia* (1943, 32 A. 2d 536).

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, evidence that company once had permit to do business as a fraternal organization was properly excluded as immaterial in view of inclusion of fraternal organizations in section 35-1342 on which prosecution was based. *Id.*

3. Instructions

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, instruction to acquit if accused did not personally solicit was properly refused, since Congress never intended that liability should be limited to those who personally solicit. *Stover v. District of Columbia* (1943, 32 A. 2d 536).

4. Prosecution, pending proceedings as bar

The trial judge properly refused to continue prosecution for soliciting insurance business for an unauthorized company, pending trial of suit by company to enjoin officials from interfering with its business. *Stover v. District of Columbia* (1943, 32 A. 2d 536).

5. Questions for jury

In prosecution for soliciting insurance for company unauthorized to do business in District of Columbia, accused's guilt was for jury. *Stover v. District of Columbia* (1943, 32 A. 2d 536).

§ 35-1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form, and contents—Revocation or refusal.

Any agent or broker licensed in the District may, upon payment of a license fee, as provided under section 35-1345, be licensed to procure policies from companies which are not authorized to do business in the District where such person is, after diligent effort, unable to procure policies to cover the kind or kinds of business required from companies duly authorized to transact business in the District. Each agent or broker so licensed shall pay to the

collector of taxes, through the superintendent, on February 1 and August 1 of each year, a sum equal to 2 per centum of the amount of the gross premiums upon all kinds of policies procured by him during the immediately preceding six months' period ending December 31 and June 30, respectively, and, in default of such payment, the superintendent, through the corporation counsel, may bring suit to recover the same. Each agent or broker so licensed to procure policies from unauthorized companies shall execute and file with the department on or before the 10th day of each month an affidavit covering the transactions of the previous calendar month, setting forth (1) the description and location of the insured property or risk, and the name of the assured; (2) the amount insured in the policy or contract; (3) the gross premiums charged thereon; (4) the name of the company whose policy or contract is issued, and the kind or kinds of business effected; and (5) that said agent or broker after diligent effort was unable to procure the policies or contracts required to protect the property or risk described in the affidavit from companies duly authorized to transact business in the District.

Each agent or broker so licensed to procure policies from unauthorized companies shall keep a separate account of the business transacted thereunder, which shall be open at all times to the inspection of the superintendent. The license provided for in this section may be revoked or renewal thereof refused for failure to pay the tax or to file the affidavit specified herein, or if the agent or broker procured policies from unauthorized companies without exercising diligent effort to secure the required business in duly authorized companies, or if the agent or broker procured policies from unauthorized companies whose standards of solvency and management do not meet the requirements necessary for the protection of the policyholders, or if the agent or broker has placed with any unauthorized company any risk which could be placed with an authorized company except for abnormal provisions of the policy, or if the agent or broker has procured from an unauthorized company any policy which covers a risk of a class generally covered in the District by authorized companies and which authorized companies would cover at a rate not higher than that charged by authorized companies on other District risks of the same class. (Oct. 9, 1940, 54 Stat. 1080, ch. 972, Ch. II, § 40; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 4.)

AMENDMENT

1944—Act Apr. 22, 1944, inserted "or if the agent or broker has placed with any unauthorized company any risk which could be placed with an authorized company except for abnormal provisions of the policy, or if the agent or broker has procured from an unauthorized company any policy which covers a risk of a class generally covered in the District by authorized companies and which authorized companies would cover at a rate not higher than that charged by authorized companies on other District risks of the same class."

§ 35-1345. License fees.

Annual fees to be paid through the superintendent to the collector of taxes for licenses issued under this chapter shall be as follows:

(a) For policy-writing agent or for firms, partnerships, or corporations licensed as such, \$50, without regard to the number of companies represented: *Provided*, That, in the case of firms, partnerships, and corporations, an additional fee of \$5 shall be charged for each person in excess of two who is named in such license as required under section 35-1336.

(b) For soliciting agent, \$5 for each company represented by such soliciting agent, or for each company represented by any policy-writing agent through which such soliciting agent solicits: *Provided*, That no soliciting agent shall be required to pay for soliciting agents' licenses a sum in excess of \$15 for any one licensing year.

(c) For salaried company employee authorized to sign policies and to solicit insurance, \$50, without regard to the number of companies represented by such salaried company employee.

(d) For salaried company employee authorized to solicit but not authorized to sign policies, \$5 for each company represented by said employee: *Provided*, That the aggregation of such fees shall not exceed \$15 for any one license year.

(e) For nonresident or resident brokers, \$25, except that the fee shall be \$5 in case the applicant for a resident broker's license is subject also to the fee prescribed under paragraphs (a) or (c) hereof.

(f) For license to procure lines in unauthorized companies, \$15.

(g) Under the license issued to any policy-writing agent or salaried company employee, or in the name of any firm, partnership, or corporation as provided under section 35-1336, and for which license a fee has been paid in accordance with paragraphs (a) or (c) hereof, there may be added names of persons who are employed in or who actively function through the District office of the policy-writing agent, salaried company employee, or firm, partnership, or corporation, and who have company authority to sign but not to solicit policies. For such persons there shall be charged a fee of \$1 per year for each company whose policies such person is authorized to sign.

(h) Broker's licenses may be issued in the names of individuals, firms, partnerships, or corporations. In the case of firms, partnerships, or corporations, the authority to solicit shall extend only to the individuals who are designated in the license and in the application therefor as having authority to solicit, and there shall be charged for each such individual in excess of two an additional fee of \$5.

(i) Licenses to procure lines in unauthorized companies shall be issued in the names of individuals only. (Oct. 9, 1940, 54 Stat. 1081, ch. 792, Ch. II, § 41.)

CROSS REFERENCES

Effective date of license, proration of fees, see § 35-1337.
Refund of fees when license refused, see § 47-1018.
Refund of license fees erroneously or unlawfully collected, see § 47-1017 et seq.

§ 35-1346. Testimony—Production of books—No refusal because of self-incrimination—Exemption from punishment except for perjury.

No person shall be excused from testifying or from producing books, accounts, and papers in any pro-

ceeding based upon or growing out of any violation of the provisions of this chapter, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 42.)

CROSS REFERENCE

Marine insurance companies, testimony and the production of books and papers, see § 35-1129.

§ 35-1347. Penalties not otherwise prescribed.

Any person who violates any of the provisions of this chapter, or fails to comply with any duty imposed upon such person by any of the provisions of this chapter, for which violation or failure no penalty is elsewhere provided by this chapter, or by the laws of the District, shall, upon conviction thereof, be fined for each offense not exceeding \$1,000 or be imprisoned for not more than twelve months, or both. Prosecutions authorized by this section shall be upon information filed in the Municipal Court for the District of Columbia by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

False statements or reports, see §§ 35-1312, 35-1313.
Penalty against agent for representing unauthorized company, see § 35-1343.
Penalty upon foreign or alien companies for transacting business before designating attorney to receive service of process, see § 35-1327.
Revocation or suspension of,
Agent's license, see § 35-1340.
Certificate of authority, see § 35-1306.

§ 35-1348. Appeal from Superintendent to Commissioners—Time for—Hearing on appeal—Effect of Commissioners' decision.

Any person aggrieved by any action of the superintendent may, within twenty days after such action was taken, appeal in writing from such action to the commissioners. The hearings on said appeal may be either orally or in writing at the discretion of the commissioners, and they shall not be required to take evidence on such appeal. The decision of the commissioners on any question of fact on such appeal shall be final and conclusive, except the appeal provided for herein shall not affect the right to proceed under the provisions of section 35-1349. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 44.)

NOTES TO DECISIONS

1. Standing to sue

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Supt. of Ins. et al.* (1956, 148 F. Supp. 317).

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *Id.*

§ 35-1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.

Any person affected by an order, ruling, proceeding, or action of the superintendent, or any person acting in his behalf and at his instance, may contest the validity of the same in any court of competent jurisdiction by appeal or through any other appropriate proceedings. In said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 45.)

NOTES TO DECISIONS

Hearing 1
Insurer has right of appeal 2

1. Hearing

Due process of law did not entitle policy-writing agent to a formal hearing before Superintendent of Insurance of the District of Columbia when Superintendent refused to renew agent's license, in view of the fact that administrative action could be challenged in federal court in any or every respect in which the order might be invalid, and in view of the fact that agent had right to de novo hearing to explore evidence on which Superintendent acted, and reasons and calculations on which he reached his conclusions. *Columbia Auto Loan v. Jordan* (1952, 196 F. 2d 568, 90 U. S. App. D. C. 222).

2. Insurer has right of appeal

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Supt. of Ins. et al.* (1956, 148 F. Supp. 317).

§ 35-1350. Separability of provisions.

Should any section or provision of this chapter be held unconstitutional or invalid, the validity of the chapter as a whole, or of any part thereof, other than the part decided to be unconstitutional or invalid, shall not be affected. (Oct. 9, 1940, 54 Stat. 1083, ch. 792, Ch. II, § 47.)

Chapter 14.—REGULATION OF FIRE INSURANCE RATES

Sec.

- 35-1401. Definitions.
- 35-1402. Rates included in and excluded from regulation.
- 35-1403. Adjustment of rates—Powers and duties of Superintendent — Removal of discriminations—Appeal from Superintendent's rulings.

Sec.

- 35-1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.
- 35-1405. Standard provisions required in policies—Deviations—Duration of deviation—Rate in excess of standard.
- 35-1406. Rating bureau records—Agency records.
- 35-1407. Examination by Superintendent—Consolidated reports of classified experience by rating bureau.
- 35-1408. Effectiveness of rates, rating methods, rules, policy forms, etc., dependent upon filing with and approval of Superintendent.
- 35-1409. Penalties.

§ 35-1401. Definitions.

In this chapter, unless the context otherwise requires—

"District" means the District of Columbia;

"Superintendent" means the superintendent of insurance of the District of Columbia;

"Company" means any insurer, whether stock, mutual, reciprocal, interinsurer, Lloyd's, or any other form or group of insurers;

"Agent" means and shall include any individual, co-partnership, or corporation acting in the capacity of or licensed as a "policy-writing agent", "soliciting agent", or "salaried company employee", as defined under section 35-1303; and

"Broker" means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance. (June 1, 1944, 58 Stat. 267, ch. 224, § 1.)

REPEAL OF INCONSISTENT PROVISIONS

Section 10 of act June 1, 1944, provided that: "All laws or parts of laws, insofar as they relate to business affected hereby and in conflict with any of the provisions of this Act [§§ 35-1401 to 35-1409], are hereby repealed."

SEPARABILITY OF PROVISIONS

Section 11 of act June 1, 1944, provided that: "Should any section or provision of this Act [§§ 35-1401 to 35-1409] be decided by the courts to be unconstitutional or invalid, the validity of the Act as a whole, or of any part thereof, other than the part decided to be unconstitutional, shall not be affected."

§ 35-1402. Rates included in and excluded from regulation.

The provisions of this chapter shall apply to insurance in the District of Columbia against loss of or damage to property or any valuable interest therein by or as a consequence of fire, lightning, tornado, windstorm, and explosion, or any one or more of such hazards, including all supplemental, additional, or extended forms of coverage written in connection with fire insurance, and including any policy which insures property, while it is at a permanent location, against the hazard of fire, lightning, tornado, windstorm, or explosion; but this chapter shall not apply to ocean marine, transportation, boiler and machinery, or motor-vehicle insurance, nor to insurance covering the property of interstate common carriers, nor to any form of insurance designated by the Superintendent as inland marine insurance. (June 1, 1944, 58 Stat. 267, ch. 224, § 2.)

§ 35-1403. Adjustment of rates—Powers and duties of Superintendent—Removal of discriminations—Appeal from Superintendent's rulings.

The Superintendent is empowered to investigate the necessity for an adjustment of the rates on any

or all risks or classes of risks within the scope of this chapter, and to order an adjustment of such rates whenever he determines, after investigation of the experience showing premiums and losses for a period of not less than five years next preceding such investigation, that the rates for any one or more classes of risks are excessive, inadequate, or unreasonable. In determining the necessity for an adjustment of rates, the Superintendent shall give consideration to all factors reasonably attributable to the risks, to the conflagration or catastrophe hazard, both within and without the District, and to a reasonable profit. The Superintendent is also empowered, after investigation, to order removed, at such time and in such manner as he shall specify, any unfair discrimination existing between individual risks or classes of risks.

Any person, firm, or corporation aggrieved by any order, ruling, proceeding, or action of the Superintendent, or any person acting in his behalf and at his instance, may appeal to the Commissioners of the District, or contest the validity of such order, ruling, proceeding, or action in any court of competent jurisdiction by appeal or through any other appropriate proceedings, as provided under sections 35-1348 and 35-1349. (June 1, 1944, 58 Stat. 267, ch. 224, § 3.)

NOTES TO DECISIONS

Appropriate proceedings 1
Contest validity 2
Due process 3
Function of district court 4
Hearings 5
Insurer has right of appeal 6
Person aggrieved 7
Remand 8
Standing to sue doctrine 9

1. Appropriate proceedings

Under this section provision that any person aggrieved may contest validity of superintendent's order fixing insurance rates in any court of competent jurisdiction by appeal or through any other "appropriate proceeding", a civil action for injunction is an appropriate proceeding. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

2. Contest validity

Under this section providing that any person aggrieved may "contest validity" of superintendent's order fixing insurance rates in any court of competent jurisdiction by appeal or through any other appropriate proceedings, the quoted clause means to test validity in every or any respect in which order might be invalid and includes right to present evidence and to explore evidence on which superintendent acted and the reasons and calculations upon which he reached his conclusions. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

Under this section requiring that insurance superintendent must find that existing insurance rates are excessive, inadequate, or unreasonable before adjusting rates and that he must give consideration to all factors reasonably attributable to conflagration or catastrophe hazards, and to reasonable profit and permitting aggrieved person to contest order in any court of competent jurisdiction, the superintendent's findings as to such factors can be tested. *Id.*

3. Due process

Where insurance companies had right under this section to file bill in equity court, to seek therein an injunction of enforcement of order fixing insurance rates and as a necessary incident to such procedure to have, upon proper preliminary showing, a stay of enforcement of order pendente lite, to participate in trial de novo on issue of validity of order and to have court decide that issue, if such statutory rights were satisfied, the insurance com-

panies could not claim procedural contravention of the due process clause. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

4. Function of district court

Under this section authorizing any person aggrieved by insurance superintendent's rate order to contest validity of order in any court of competent jurisdiction, function of District Court is not that of a federal court acting on a state-made order, but is one of the functions which it possesses as local court of general jurisdiction. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

The congressional plan for determination of local insurance rates in District of Columbia can include the District Court as part of the procedure. *Id.*

5. Hearings

This section authorizing insurance superintendent to adjust insurance rates whenever he determines after "investigation" that rates are excessive, inadequate, or unreasonable, does not require that a quasi-judicial hearing be conducted. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

Even if requirement of this section that there be an investigation before establishment of insurance rates by superintendent could not be satisfied in absence of hearing, such requirement as an element of investigation, without more, was satisfied by hearing at which insurance companies were given an opportunity to state and support their objections to report and rate order, already issued. *Id.*

This section providing that any person aggrieved by insurance superintendent's order adjusting rates may contest validity of order in any court of competent jurisdiction gives complete right to full hearing de novo upon which court will determine validity of order in all respects in which it is contested, and, therefore, mere lack of quasi-judicial hearing before superintendent is not fatal. *Id.*

6. Insurer has right of appeal

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1956, 148 F. Supp. 317).

7. Person aggrieved

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1956, 148 F. Supp. 317).

8. Remand

In action to enjoin enforcement of insurance superintendent's order fixing insurance rates, where trial court in opinion stated that court reached conclusion that insurance companies had not sustained their contention that rates fixed by superintendent were confiscatory but findings of fact and conclusions of law were silent on that issue, the trial court had not determined such issue, so that, where trial court was in error in view on which it rested judgment, that order was invalid, case would be remanded in order that complete determination of issues might be made. *Jordan v. American Eagle Fire Ins. Co.* (1948, 169 F. 2d 281, 83 U.S. App. D.C. 192).

9. Standing to sue doctrine

Statutory right to sue, which is based upon this section authorizing person aggrieved by action of Superintendent of Insurance of District of Columbia to appeal to District Commissioners or contest the validity of such action by appeal or other appropriate proceeding in a court of competent jurisdiction, enlarges the "standing-to-sue doctrine," which forbids suits by parties who are merely taxpayers, who are interested in obtaining government contracts, desirous of preventing competition caused by government activity, etc. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1956, 148 F. Supp. 317).

§ 35-1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.

Within one hundred and twenty days after June 1, 1944, and under the supervision of the Superintendent, the insurance companies authorized to effect insurance in the District against the risk of loss or damage by hazards within the scope of this chapter shall organize a rating bureau for the purpose of administering rates for such insurance, and all such companies now or hereafter authorized to transact such business in the District shall be members of such bureau. The government of the rating bureau shall be vested in its members and it shall not be subject to the direction or control of any other bureau, association, corporation, company, individual, or group of individuals. The rating bureau shall have power to establish reasonable agreements and bylaws for its governance, and shall be permitted to adopt reasonable rules and regulations necessary to carry out its functions, but such agreements, bylaws, rules, and regulations shall not be inconsistent with the provisions of this chapter, and the same and amendments thereto shall be approved by the Superintendent before becoming effective. The rating bureau, subject to the approval of the Superintendent, shall apportion the expenses of its operation among its members in proportion to the premium income on risks in the District. (June 1, 1944, 58 Stat. 268, ch. 224, § 4.)

§ 35-1405. Standard provisions required in policies—Deviations—Duration of deviation—Rate in excess of standard.

No company, agent, or broker shall issue or deliver, or offer to issue or deliver, or knowingly permit the issuance or delivery of, any policy of insurance in the District which does not conform to the requirements approved by the Superintendent: *Provided, however,* That a company may deviate from such requirements if the company has filed with the rating bureau and with the Superintendent the deviation to be applied, and provided such deviation is approved by the Superintendent. If approved, the deviation shall remain in force for a period of one year from the date of approval by the Superintendent, unless such approval is withdrawn by the Superintendent for cause after notice to the insurer, or withdrawn by the insurer with the approval of the Superintendent.

It is further provided that a rate in excess of that promulgated by the rating bureau may be charged, provided such higher rate is charged with the knowledge and written consent of the insured and the Superintendent. (June 1, 1944, 58 Stat. 268, ch. 224, § 5.)

NOTES TO DECISIONS

1. Deviation

Insurer could appeal from action of Superintendent of Insurance of District of Columbia in approving applications of other insurers for deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of Ins. et al.* (1956, 148 F. Supp. 317).

Fire insurer had standing to sue, as a "person aggrieved", the Superintendent of Insurance of the District of Columbia and other fire insurers to contest validity of superintendent's approval of other insurers' application for downward deviation in fire and extended coverage rates. *National Capital Ins. Co. et al. v. Jordan, Sup't of age rates. Id.*

§ 35-1406. Rating bureau records—Agency records.

The rating bureau shall keep a record of all rates, schedules, and proceedings. Every agent shall keep a record of every policy contract issued by or through his agency. (June 1, 1944, 58 Stat. 268, ch. 224, § 6.)

§ 35-1407. Examination by Superintendent—Consolidated reports of classified experience by rating bureau.

The Superintendent, his deputy, or duly authorized examiner, is authorized and empowered to examine all records of the rating bureau, companies, and agents, and to require every company to furnish statistical reports of premiums and losses in such form and according to such classifications as the Superintendent shall prescribe and any other information which the Superintendent may deem necessary for the administration of this chapter. The Superintendent may require the rating bureau to consolidate the reports of classified experience. (June 1, 1944, 58 Stat. 269, ch. 224, § 7.)

§ 35-1408. Effectiveness of rates, rating methods, rules, policy forms, etc., dependent upon filing with and approval of Superintendent.

No rate, premium, schedule, rating method, rule, bylaw, agreement, or regulation shall become effective or be charged, applied, or enforced in the District by the rating bureau, or by any company, agent, or broker governed by the provisions of this chapter, until it shall have been first filed with and approved by the Superintendent: *Provided,* That a rate or premium used or charged in accordance with a schedule, rating method, or rule previously approved by the Superintendent need not be specifically approved by the Superintendent. No company, agent, or broker shall issue any form of policy, clause, warranty, rider, or endorsement until such form shall have been filed with and approved by the Superintendent. (June 1, 1944, 58 Stat. 269, ch. 224, § 8.)

§ 35-1409. Penalties.

Any company or any agent or broker guilty of violating any of the provisions of this chapter shall be subject to the provisions of sections 35-1306 and 35-1340. (June 1, 1944, 58 Stat. 269, ch. 224, § 9.)

Chapter 15.—REGULATION OF CASUALTY AND OTHER INSURANCE RATES

Sec.

- 35-1501. Definitions.
- 35-1502. Scope of chapter.
- 35-1503. Making of rates.
- 35-1504. Supervision of rates.
- 35-1505. Cooperative and concerted action authorized.
- 35-1506. Cooperative and concerted action regulated.
- 35-1507. Information to be furnished by companies.
- 35-1508. Authority and duty of Superintendent.
- 35-1509. Penalties.
- 35-1510. Judicial review.

§ 35-1501. Definitions.

In this chapter, unless the context otherwise requires—

"District" means the District of Columbia.

"Superintendent" means the Superintendent of Insurance of the District of Columbia.

"Insurance" includes (but is not limited to) fidelity, surety, and guaranty bonds.

"Company" means any insurer, whether stock, mutual, reciprocal, interinsurer, Lloyd's, or any other form or group of insurers.

"Policy" means an insurance policy or contract as defined by chapter 13 of this title.

"Agent" means and shall include any individual, copartnership, or corporation acting in the capacity of or licensed as a "policy-writing agent", "soliciting agent", or "salaried company employee" as defined by chapter 13 of this title. (May 20, 1948, 62 Stat. 242, ch. 324, § 1.)

EFFECTIVE DATE

Section 13 of act May 20, 1948, provided that: "This Act [§§ 35-1501 to 35-1510] shall become effective thirty days after approval [May 20, 1948]."

REPEAL OF INCONSISTENT PROVISIONS

Section 11 of Act May 20, 1948, provided that:

"All laws or parts of laws, insofar as they relate to business affected hereby and are in conflict with any of the provisions of this Act [§§ 35-1501 to 35-1510], are hereby repealed: *Provided*, That this Act shall not be construed as repealing or amending the Act [§ 44-301] entitled 'An Act to amend an Act entitled "An Act to provide that all cabs for hire in the District of Columbia be compelled to carry insurance for the protection of passengers, and for other purposes", approved June 29, 1938', approved December 15, 1942."

SEPARABILITY OF PROVISIONS

Section 12 of act May 20, 1948, provided that:

"If any section or provision of this Act [§§ 35-1501 to 35-1510] is held unconstitutional or invalid, the validity of the Act as a whole or of any part thereof, other than the part decided to be unconstitutional or invalid, shall not be affected."

§ 35-1502. Scope of chapter.

This chapter shall apply to all forms of casualty, motor vehicle, explosion, sprinkler leakage, and inland marine insurance in the District and to all forms of insurance within the scope of chapter 13 of this title, except those forms of insurance not enumerated herein which are within the scope of chapter 14 of this title: *Provided*, That this chapter shall not apply to reinsurance other than joint reinsurance to the extent provided in this chapter, and shall not apply to:

(a) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; (b) title insurance; (c) accident and health insurance; (d) insurance against loss of or damage to aircraft or to liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft; (e) to insurance issued to self-insurers and insuring against loss in excess of at least \$10,000 resulting from any one accident or event, except when rates therefor are made by a rating organization. (May 20, 1948, 62 Stat. 242, ch. 324, § 2.)

EFFECTIVE DATE

See note following § 35-1501.

§ 35-1503. Making of rates.

(a) Rates for insurance within the scope of this chapter shall not be excessive, inadequate, or unfairly discriminatory.

(b) Due consideration shall be given to past and prospective loss experience within and outside the

District, to physical hazards, to safety and loss prevention factors, to underwriting practice and judgment, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by companies to their policyholders, members, or subscribers; to past and prospective expenses both country-wide and those specially applicable to the District; to whether classification rates exist generally for the risks under consideration; to the rarity or peculiar characteristics of the risks; and to all other relevant factors within and outside the District.

(c) Nothing in this section shall be taken to prohibit as unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon the size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations attributable to such risks provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

(d) Nothing in this chapter shall be construed to require uniformity in insurance rates, classifications, rating plans, or practices.

(e) Nothing in this chapter shall abridge or restrict the freedom of contract of companies, agents, brokers, or employees with reference to the commissions or salaries to be paid to such agents, brokers, or employees by companies.

(f) Rates may become effective immediately upon filing or at such future time as the company or rating organization making them may specify. They shall thereafter remain in effect unless and until changed by the company or rating organization making them, or adjusted by order of the Superintendent in accordance with the provisions of this chapter. Rates for contracts or policies described in the last sentence of subsection (c) of section 35-1504 may become effective when made and filing thereof shall be made promptly thereafter.

(g) No company, agent, or broker shall make, issue, or deliver, or knowingly permit the making, issuance, or delivery of any policy of insurance within the scope of this chapter contrary to pertinent filings which are in effect for the company as provided in this chapter, except that upon the written application of the insured stating his reasons therefor, filed with and approved by the Superintendent, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. (May 20, 1948, 62 Stat. 243, ch. 324, § 3.)

EFFECTIVE DATE

See note following § 35-1501.

§ 35-1504. Supervision of rates.

(a) On and after July 1, 1948, every company shall file with the Superintendent, either directly or through a licensed rating organization of which it is a member or subscriber, except as to rates on inland marine risks which are not made by a rating organization and which by general custom of the business are not written according to manual rates or rating plans, all rates and rating plans, rules, and classifications which it uses or proposes to use in the District.

(b) Whenever it shall be made to appear to the Superintendent, either from his own information or from complaint of any party alleging to be aggrieved thereby, that there are reasonable grounds to believe that the rates on any or on all risks or classes of risks or kinds of insurance within the scope of this chapter are not in accordance with the terms of this chapter, it shall be his duty, and he shall have the full power and authority, to investigate the necessity for an adjustment of any or all such rates.

(c) After such an investigation of any such rates, the Superintendent shall, before ordering any appropriate adjustment thereof, hold a hearing upon not less than ten days' written notice specifying the matters to be considered at such hearing, to every company and rating organization which filed such rates, provided the Superintendent need not hold such hearing in the event he is advised by every such company and rating organization that they do not desire such hearing. If after such hearing the Superintendent determines that any or all of such rates are excessive or inadequate, he shall order appropriate adjustment thereof. Pending such investigation and order of the Superintendent, rates shall be deemed to have been made in accordance with the terms of this chapter. No order of adjustment shall affect any contract or policy made or issued prior to the effective date of such order unless (i) the adjustment to be effected is substantial and exceeds the cost to the companies of making the adjustment and (ii) the order is made after the prescribed investigation and hearing and within thirty days after the filing of rates affected. In no event shall an order of adjustment affect an existing contract or policy other than one of workmen's compensation or automobile liability insurance required by law, order, rule, or regulation of a public authority, or a contract or policy of any type as to which the rates are not, by general custom of the business or because of rarity and peculiar characteristics, written according to normal classification or rating procedure.

(d) In determining the necessity for an adjustment of rates, the Superintendent shall be bound by all of the provisions of section 35-1503.

(e) The Superintendent is further empowered to investigate and to order removed at such time and in such manner as he shall specify any unfair discrimination existing between individual risks or classes of risks. (May 20, 1948, 62 Stat. 243, ch. 324, § 4.)

EFFECTIVE DATE

See note following § 35-1501.

§ 35-1505. Cooperative and concerted action authorized.

Subject to the provisions of this chapter, two or more companies may cooperate or act in concert with each other—

(a) as a rating organization, for the purpose of making rates, rating plans, or rating systems. No company shall be deemed to be a rating organization;

(b) as an advisory organization, for the purpose of preparing policy forms, making underwriting rules, surveys, or inspections incident to but not including the making of rates, rating

plans, or rating systems, or collecting and furnishing to companies or rating organizations loss or expense statistics or other statistical data, and acting in an advisory as distinguished from a rate making capacity;

(c) as a group or fleet of companies operating under the same general management and control, for the purpose of conducting a complete insurance service;

(d) as a group, association, or other organization for the purpose of joint underwriting or joint reinsurance, or of equitable apportionment and proper rating of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods.

No company shall be required by this chapter to be a member or subscriber of any rating organization. (May 20, 1948, 62 Stat. 244, ch. 324, § 5.)

EFFECTIVE DATE

See note following § 35-1501.

§ 35-1506. Cooperative and concerted action regulated.

(a) Every group, association, or other organization of companies authorized to act as such under the terms of this chapter, except groups or fleets described in subsection (c) of section 35-1505, shall file with the Superintendent (1) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation, and of its bylaws, rules, and regulations governing the conduct of its business; (2) a list of its members and subscribers, if any; (3) the name and address of a resident of the District upon whom notices or orders of the Superintendent or process affecting it may be served; and shall notify the Superintendent promptly of any change in the foregoing.

(b) No group, association, or organization shall engage in any unfair or unreasonable practice in the conduct of its business.

(c) No rating organization shall conduct its business with respect to insurance on risks located within the District without a license from the Superintendent. To obtain such a license, a rating organization shall, in addition to the matters specified in subsection (a) of this section, supply to the Superintendent a statement relating to its qualifications as a rating organization and its ability adequately to administer the rates, rules, and regulations which it may make in behalf of its members and subscribers.

If the Superintendent finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization, he shall forthwith issue a license specifying the kinds of insurance and subdivisions thereof for which the applicant is authorized to act as a rating organization, but, if the Superintendent does not so find within thirty days after he has received such application, he shall, at the request of the applicant, give the applicant a full hearing.

Licenses issued pursuant to this section shall remain in effect until suspended or revoked by the Superintendent unless voluntarily surrendered by the rating organization. The fee for said license shall be \$250 and shall be paid by the applicant

through the Superintendent to Collector of Taxes, District of Columbia. Licenses issued pursuant to this section may, at the request of the rating organization, be amended by the Superintendent so as to include authority with respect to additional kinds of insurance and subdivisions thereof, provided the rating organization satisfies the Superintendent that such amendment would not in any way be contrary to or inconsistent with the provisions of this chapter: *Provided*, That an additional fee in the amount of \$50 shall be charged for such amendment.

The license of any rating organization may be suspended or revoked by the Superintendent for failure to comply with this chapter or for incompetence or untrustworthiness. The Superintendent shall not revoke or suspend the license of any rating organization until he has given it not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor and has afforded the rating organization an opportunity to be heard. In lieu of revoking or suspending the license of any rating organization after hearing and for the causes named herein, the Superintendent may subject such rating organization to a penalty of not more than \$250 when in his judgment he finds that the public interest would be best served by the continued operation of the rating organization. The amount of any such penalty shall be paid by the rating organization through the Superintendent to Collector of Taxes, District of Columbia.

(d) Every licensed rating organization shall, subject to reasonable rules and regulations, permit any company not a member to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act; shall give notice of changes in such rules and regulations to its subscribers; and shall furnish its rating service without discrimination to its members and subscribers.

(e) No licensed rating organization shall adopt any rule, effect any agreement, or take any action contrary to or inconsistent with the provisions of this chapter or which would have the effect of prohibiting, restricting, or regulating the payment or allowance by any of its members or subscribers of dividends, savings, or unabsorbed premium deposits; nor practice or sanction any plan or act of boycott, coercion, or intimidation; nor enter into or sanction any contract or act by which any person is restrained from lawfully engaging in the business of insurance.

(f) Every member of or subscriber to a licensed rating organization shall adhere to the filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings if it has filed with the rating organization and with the Superintendent the deviation to be applied and information necessary to justify the deviation and provided such deviation is approved by the Superintendent. If approved, the deviation shall remain in force until such approval is withdrawn by the Superintendent after notice to the company or withdrawn by the company with the approval of the Superintendent. The Superintendent shall approve any such deviation unless he finds that the deviation to be applied would not be uniform in its application or would be inconsistent with the

provisions of this chapter, but unless he approves the deviation within thirty days he shall, within a reasonable time, grant a hearing to the applicant at the applicant's request. (May 20, 1948, 62 Stat. 245, ch. 324, § 6.)

EFFECTIVE DATE

See note following § 35-1501.

§ 35-1507. Information to be furnished by companies.

(a) Every rating organization and every company which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(b) Every rating organization and every company which makes its own rates shall provide within the District reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to revise the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or company fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such company on such request may, within thirty days after written notice of such action, appeal to the Superintendent, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or company, may affirm or reverse such action.

(c) No company, agent, broker, or rating organization may willfully withhold required information from or give false or misleading information to the Superintendent.

(d) No company, agent, or broker shall fail to furnish to an insured any policy or comparable evidence of insurance to which the insured is entitled. (May 20, 1948, 62 Stat. 246, ch. 324, § 7.)

EFFECTIVE DATE

See note following § 35-1501.

NOTES TO DECISIONS

1. Evidence of insurance

Where evidence amply supported finding that policy-writing agent for insurance company violated insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled and that agent represented that it had authority to solicit and procure policies of insurance when it had no license to do so, refusal of Superintendent of Insurance to renew agent's license was proper. *Columbia Auto Loan v. Jordan* (1952, 196 F. 2d 588, 90 U. S. App. D. C. 222).

§ 35-1508. Authority and duty of Superintendent.

In addition to any powers hereinbefore expressly enumerated in this chapter, the Superintendent shall have full power and authority, and it shall be his duty, to enforce by regulations, orders, or otherwise all and singular, the provisions of this chapter, and the full intent thereof. In particular he shall have the authority and power—

(a) to examine all records of companies and rating organizations and to require any or every company, agent, broker, and rating organization

to furnish under oath such information as he may deem necessary for the administration of this chapter. The expense of such examination shall be paid by the company or rating organization examined. In lieu of such examination the Superintendent may, in his discretion, accept a report of examination made by any other insurance supervisory authority;

(b) to make and enforce such reasonable orders, rules, and regulations as may be necessary in making this chapter effective, but such orders, rules, and regulations shall not be contrary to or inconsistent with the provisions of this chapter;

(c) to issue an order, after a full hearing to all parties in interest requiring any group, association, or organization of companies and the members thereof to cease and desist from any unfair or unreasonable practice;

(d) The Superintendent may designate one or more rating organizations or other agencies to assist him in gathering statistical data and in making such compilations thereof as may be necessary for the proper administration of this chapter. Such compilations shall be made available, subject to reasonable rules promulgated by the Superintendent, to companies and rating organizations.

The Superintendent shall have no authority at any hearing to compel the attendance of witnesses and he shall not be required to adhere to formal

rules of pleading or evidence. At the request of a party or parties in interest made prior to any hearing, he shall administer oaths to witnesses and shall permit such party or parties, at the cost and expense of one who so requests, to have made a record of the hearing, which record upon request of such party or parties the Superintendent shall certify. (May 20, 1948, 62 Stat. 246, ch. 324, § 8.)

EFFECTIVE DATE

See note following § 35-1501.

§ 35-1509. Penalties.

Any company, broker, or agent guilty of violating any of the provisions of this chapter or any order, rule, or regulation issued pursuant to this chapter, shall be subject to the provisions of sections 35-1306 and 35-1340, respectively. (May 20, 1948, 62 Stat. 247, ch. 324, § 9.)

EFFECTIVE DATE

See note following § 35-1501.

§ 35-1510. Judicial review.

Any person, firm or corporation aggrieved by any order, ruling, proceeding, or action of the Superintendent may contest the validity of such order, ruling, proceeding, or action in any court of competent jurisdiction by appeal or through any other appropriate proceedings, as provided under section 35-1349. (May 20, 1948, 62 Stat. 247, ch. 324, § 10.)

EFFECTIVE DATE

See note following § 35-1501.

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TITLE 36.—LABOR

Chap.	Sec.	
1. Apprentices	36-101	
1A. Voluntary Apprentices	36-121	
2. Child Labor and Work Permits	36-201	
3. Employment of Women	36-301	
4. Minimum Wage Law	36-401	
5. Workmen's Compensation	36-501	
6. Payment and Collection of Wages	36-601	

Chapter 1.—APPRENTICES

§§ 36-101 to 36-111. Repealed. Apr. 22, 1944, 58 Stat. 195, ch. 174, § 10.

Sections, act Mar. 3, 1901, 31 Stat. 1253, ch. 854, §§ 173, and 402 to 411, related to apprentices, and are now covered by §§ 36-121 to 36-133.

Section 36-101 stated who might bind a minor child as an apprentice.

Section 36-102 related to jurisdiction of the probate court to bind out certain children.

Section 36-103 related to the protection of apprentices by the probate court.

Section 36-104 related to the term of apprenticeship.

Section 36-105 related to the terms and filing of the contract.

Section 36-106 related to the hearing and determination of complaints of apprentices or masters by the probate court.

Section 36-107 related to the removal of apprentices from the District.

Section 36-108 related to the assignment of apprenticeship contracts.

Section 36-109, amended act Feb. 17, 1909, 35 Stat. 623, ch. 134, related to actions for damages against persons concealing, harboring, or aiding an apprentice to run away.

Section 36-110 related to the form of the contract of apprenticeship.

Section 36-111 related to the payment of money by the master.

Sections 36-103, 36-104, 36-105, 36-107, 36-108, 36-110, and 36-111, were additionally repealed by act May 21, 1946, 60 Stat. 207, ch. 267, § 13.

EFFECTIVE DATE OF REPEAL

Repeal effective April 22, 1944, see section 11 of act April 22, 1944, set out as a note under section 32-781.

Chapter 1A.—VOLUNTARY APPRENTICES

Sec.	
36-121.	Purposes of chapter.
36-122.	Apprenticeship Council—Membership—Term—Compensation.
36-123.	Director of Apprenticeship—Assistance furnished.
36-124.	Meetings of Apprenticeship Council—Rules and regulations—Reports.
36-125.	Administration of chapter—Responsibility of Board of Education.
36-126.	Apprenticeship committees.
36-127.	"Apprentice" defined.
36-128.	Apprenticeship agreements—Contents.
36-129.	Registration and approval of agreements—Agreements extending into majority of apprentice.
36-130.	Violations of agreements—Hearings—Determinations—Appeals.
36-131.	Application of chapter.
36-132.	"Secretary of Labor" defined.
36-133.	Separability of provisions.

CROSS REFERENCES

Binding out inmates of National Training School for Boys as apprentices, see § 32-819.

Binding out inmates of National Training School for Girls as apprentices, see § 32-909.

Powers and duties of Board of Public Welfare concerning apprentices and contracts of apprenticeship, see § 3-117 et seq.

Wages of minors, see § 36-408 et seq.

§ 36-121. Purposes of chapter.

It is the purpose of this chapter to open to young people in the District of Columbia the opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship under approved apprenticeship agreements providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an apprenticeship council; to provide for the establishment of local joint trade apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a director of apprenticeship within the District of Columbia; to provide for reports to the Congress and to the public regarding the status of apprenticeship in the District of Columbia; to establish a procedure for the determination of apprenticeship agreement controversies; and to accomplish related ends. (May 21, 1946, 60 Stat. 204, ch. 267, § 1.)

§ 36-122. Apprenticeship Council—Membership—Term—Compensation.

Without regard for any other provision of law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Commissioners of the District of Columbia shall appoint an Apprenticeship Council, composed of three representatives each from employer and employee organizations, respectively. The Superintendent of Schools in the District of Columbia or, if he shall so designate, his representative in charge of trade and industrial education, and the Director of the District of Columbia Employment Center shall, ex officio, be members of said council, without vote. The terms of office of the members of the Apprenticeship Council first appointed by the Commissioners shall expire as designated by them at the time of making the appointment: One representative each of employers and employees being appointed for one year; one representative each of employers and employees being appointed for two years; and one representative each of employers and employees for three years. Thereafter, each member shall be appointed

for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. The compensation of each member may be fixed without regard to the provisions of the Classification Act of 1949, as amended, and each member of the council, not otherwise compensated by public money, shall be paid not more than \$10 per day for each day spent in attendance at meetings of the Apprenticeship Council. (May 21, 1946, 60 Stat. 204, ch. 267, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENT

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

§ 36-123. Director of Apprenticeship—Assistance furnished.

The Secretary of Labor shall appoint a Director of Apprenticeship who shall serve without compensation and who shall have no vote. Without regard for the provisions of any other law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Director of Apprenticeship shall be chosen from among the employees of the Apprentice-Training Service actually engaged in formulating and promoting standards of apprenticeship under the provisions of Public Law Numbered 308. The Apprentice-Training Service is further authorized to supply the Director or the council with such clerical, technical, and professional assistance as shall be deemed by said Service to be essential to effectuate the purposes of this chapter. (May 21, 1946, 60 Stat. 204, ch. 267, § 3.)

REFERENCES IN TEXT

Public Law Numbered 308, referred to in the text, is act Aug. 16, 1937, 50 Stat. 664, ch. 663, §§ 1-4, and is classified to U.S. Code, title 29, §§ 50-50b.

§ 36-124. Meetings of Apprenticeship Council—Rules and regulations—Reports.

The Apprenticeship Council shall meet at the call of the Director, or the chairman thereof, and shall aid in formulating policies for the effective administration of this chapter. Subject to the approval of the Secretary of Labor, the Apprenticeship Council shall establish standards for apprenticeship agreements in accordance with those prescribed by this chapter, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of said chapter, and shall perform such other functions as are necessary to carry out the intent of this chapter. Not less than once every two years the Apprenticeship Council shall make a report through the Commissioners of its activities and findings to the Congress and to the public. (May 21, 1946, 60 Stat. 205, ch. 267, § 4.)

§ 36-125. Administration of chapter—Responsibility of Board of Education.

The Director, under the supervision of the Secretary of Labor and with the advice and guidance of the Apprenticeship Council, is authorized to administer the provisions of this chapter in cooperation

with the Apprenticeship Council and local joint trade apprenticeship committees, to set up conditions and training standards for apprentices, which conditions or standards shall in no case be lower than those prescribed by this chapter; to act as secretary of the Apprenticeship Council and of joint trade apprenticeship committees; to approve, if, in his opinion, approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established by or in accordance with this chapter; to terminate or cancel any apprenticeship agreement in accordance with the provisions of such agreement; and to perform such other duties as are necessary to carry out the intent of this chapter: *Provided*, That the administration and supervision of related and supplemental instruction for apprentices, coordination of the instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the District Board of Education. (May 21, 1946, 60 Stat. 205, ch. 267, § 5.)

§ 36-126. Apprenticeship committees.

Local joint trade apprenticeship committees in any trade or group of trades may be approved by the Apprenticeship Council. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives appointed by the groups or organizations they represent, or the committee may consist of the employer and not less than two representatives from the recognized bargaining agency. In a trade or group of trades in which there is no bona fide employee organization, the Apprenticeship Council may appoint a joint trade apprenticeship committee from persons known to represent the interests of employers and of employees, or the council may act itself as such joint committee. Subject to the review of the council, and in accordance with standards established by or under authority of this chapter, joint trade apprenticeship committees may set up standards to govern the training of apprentices and give such aid as may be necessary in effectuating such standards. (May 21, 1946, 60 Stat. 205, ch. 267, § 6.)

§ 36-127. "Apprentice" defined.

The term "apprentice", as used herein, shall mean a person at least sixteen years of age who has entered into a written agreement, hereinafter called an apprenticeship agreement, with an employer, an association of employers, or an organization of employees, which apprenticeship agreement provides for not less than four thousand hours of reasonably continuous employment for such person and for his participation in an approved program of training through employment and through education in related and supplemental subjects. (May 21, 1946, 60 Stat. 205, ch. 267, § 7.)

§ 36-128. Apprenticeship agreements—Contents.

Every apprenticeship agreement entered into under this chapter shall contain—

- (1) the names and signatures of the contracting parties, including the apprentice's parent or guardian if he be a minor;
- (2) the date of birth of the apprentice;

(3) a statement of the trade, craft, or business which the apprentice is to be taught and the time at which the apprenticeship will begin and end;

(4) a statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than one hundred and forty-four hours per year;

(5) a statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process;

(6) a statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated;

(7) a statement providing for a period of probation during which time the apprenticeship agreement shall be terminated by the Director at the request in writing of either party, and providing that after such probationary period the apprenticeship agreement may be terminated by the Director by mutual agreement of all parties thereto, or canceled by the Director for good and sufficient reasons;

(8) a provision that all controversies or differences concerning the apprenticeship agreement which cannot be adjusted by conference between the apprentice and the employer or under the terms of the apprenticeship standard shall be submitted to the Director for determination as provided for in section 36-129;

(9) a provision that an employer who is unable to fulfill his obligation under the apprenticeship agreement may, with the approval of the Director or under the direction of the joint trade apprenticeship committee, transfer such contract to any other employer: *Provided*, That the apprentice consents and that such other employer agrees to assume the obligations of said apprenticeship agreement;

(10) such additional terms and conditions as may be prescribed or approved by the council not inconsistent with the provisions of this chapter. (May 21, 1946, 60 Stat. 206, ch. 267, § 8.)

§ 36-129. Registration and approval of agreements—Agreements extending into majority of apprentice.

No apprenticeship agreement shall be registered or approved by the Director under the provisions of this chapter unless it conforms with the standards established by or in accordance with this chapter and is in the best interests of the apprentice. Where a minor enters into an agreement for a period of training extending into his majority, and such agreement has been approved by the Director, then such apprenticeship agreement shall, if the parties therein so provide, have the same force and effect during the period covered by the majority of such minor as if such agreement were entered into during the majority of such minor. (May 21, 1946, 60 Stat. 206, ch. 267, § 9.)

§ 36-130. Violations of agreements—Hearings—Determinations—Appeals.

(a) Upon the complaint of any interested person or upon his own initiative, the Director may investi-

gate to determine if there has been a violation of the terms of an apprenticeship agreement made under this Act, and he may hold hearings, inquiries, and other proceedings necessary to such investigation and determination. The parties to such an agreement shall be given a fair and impartial hearing after reasonable notice thereof. All such hearings, investigations, and determinations shall be made under authority of reasonable rules and procedures prescribed by the Apprenticeship Council, subject to the approval of the Secretary of Labor.

(b) The determination of the Director shall be filed with the council. If no appeal therefrom is filed with the council within ten days after the date thereof, as herein provided, such determination shall become the order of the council. Any person aggrieved by any determination or action of the Director may appeal therefrom to the council, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved or affected by any determination or order of the council may appeal therefrom to the United States District Court for the District of Columbia at any time within thirty days after the date of such order, by service of a written notice of appeal on the Director. Upon service of said notice of appeal, said council, by its secretary, shall forthwith file, with the clerk of said district court to which said appeal is taken, a certified copy of the order appealed from, together with findings of fact on which the same is based. The person serving such notice of appeal shall, within five days after the service thereof, file a copy of the same, with proof of service, with the clerk of the court to which such appeal is taken; and thereupon said district court shall have jurisdiction over said appeal, and the same shall be entered upon the records of said district court and shall be tried therein de novo according to the rules relating to the trial of civil actions, so far as the same are applicable. Any person aggrieved or affected by any determination, order, or decision of the district court may appeal therefrom to the Court of Appeals for the District of Columbia in the same manner as provided by law for the appeal of civil action. (May 21, 1946, 60 Stat. 206, ch. 267, § 10; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 36-131. Application of chapter.

The provisions of this chapter shall apply to any person, firm, corporation, or craft in the District of Columbia which has voluntarily elected to conform with its provisions. (May 21, 1946, 60 Stat. 207, ch. 267, § 11.)

§ 36-132. "Secretary of Labor" defined.

As used or referred to in this chapter the term "the Secretary of Labor" shall mean the administrator of that Department or agency of the United States Government authorized to administer the provisions of Public Law Numbered 308. (May 21, 1946, 60 Stat. 207, ch. 267, § 12.)

REFERENCE IN TEXT

Public Law Numbered 308, referred to in the text, is act Aug. 16, 1937, 50 Stat. 664, ch. 663, §§ 1-4, and is classified to U.S. Code, title 29, §§ 50-50b.

§ 36-133. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (May 21, 1946, 60 Stat. 207, ch. 267, § 14.)

Chapter 2.—CHILD LABOR AND WORK PERMITS

Sec.

- 36-201. Regulation of child labor—Employment of children under fourteen years of age—Distribution of newspapers permitted.
- 36-202. Employment of children under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.
- 36-203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.
- 36-204. Employment of minors under sixteen years of age prohibited in certain occupations.
- 36-205. Employment of minors under eighteen years of age prohibited in certain occupations—Employment of females under eighteen in certain occupations.
- 36-206. Employment as messenger between ages of eighteen and twenty-one years prohibited during certain hours.
- 36-207. Employment or exhibition of minor under sixteen years of age as performer.
- 36-207a. Work permits for minors between ages of fourteen and eighteen years authorized for stage appearances—Regulations.
- 36-208. Work or vacation permit—Procurement by employer.
- 36-209. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.
- 36-210. Application for permit—Evidence required to be furnished—Physician's certificate—School record.
- 36-211. Evidence of age.
- 36-212. Vacation permits.
- 36-213. Employer to notify department at commencement and termination of employment of minor—Issuance of new certificates.
- 36-214. Employer to furnish, on demand, proof of age of employee.
- 36-215. Penalties.
- 36-216. Director of department of school attendance and work permits to enforce law—Inspection of places in which minors are employed.
- 36-217. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.
- 36-218. Hours of employment—Work permit to be secured.
- 36-219. Badge to be obtained.
- 36-220. Street-trades badges—Evidence upon which issued.
- 36-221. Information to be contained on—Record to be kept—Badges not transferable—Principal of schools to keep list—Revocation if detrimental to minor—Badges to expire annually.
- 36-222. Penalties for violations of sections 36-217 to 36-224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.
- 36-223. Persons selling merchandise to minor under sixteen years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties.

Sec.

- 36-224. Loitering around salesrooms of newspapers prohibited during school hours.
- 36-225. Board of Education to appoint inspectors—Appointments, how made.
- 36-226. Separability of provisions.
- 36-227. Board of Education to supervise and have appellate jurisdiction over agents and employees.
- 36-228. Juvenile court has jurisdiction.

§ 36-201. Regulation of child labor—Employment of children under fourteen years of age—Distribution of newspapers permitted.

No child under fourteen years of age shall be employed, permitted, or suffered to work in the District of Columbia, in, about, or in connection with any gainful occupation, with the exemption of housework performed outside of school hours in the home of the child's parent or legal guardian or agricultural work performed outside of school hours in connection with the child's own home and directly for the child's parent or legal guardian: *Provided*, That boys ten years of age and over may be employed outside of school hours in the distribution or sale of newspapers, subject to the provisions of sections 36-217 to 36-224. (May 29, 1928, 45 Stat. 998, ch. 908, § 1.)

CROSS REFERENCES

Compulsory school attendance and work permits; department created; school census, see § 31-201 et seq.

Federal Wage and Hour Law, child labor provisions, see U.S. Code, title 29, § 212.

Power and duties of Board of Public Welfare, see § 36-222.

Wages of minors, see § 36-408 et seq.

§ 36-202. Employment of children under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.

No minor under eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work, or housework, or in the distribution or sale of newspapers, as prescribed in section 36-201, and except in newspaper stuffing, subject to the provisions of section 36-217, more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than eight hours in any one day, nor shall any girl under eighteen years of age or boy under sixteen years of age be so employed, permitted, or suffered to work before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening of any day, nor shall any boy between sixteen and eighteen years of age be so employed before the hour of six o'clock in the morning or after the hour of ten o'clock in the evening of any day. Every employer shall post and keep conspicuously posted in the establishment, in or about which any minor is employed, permitted, or suffered to work, a printed notice, furnished by the official authorized to enforce this chapter, setting forth the legal regulations governing the employment and hours of work of minors and occupations prohibited to minors in such establishments, and, in addition, shall keep accessible in the place of employment a list of minors under eighteen employed, permitted, or suffered to work, and an accurate time record showing the hours of beginning and ending work each day and the hours when the time allowed for meals begins and ends for said minors.

The presence of any such minor in the place of work for a longer time in the day or week than stated in the printed regulation hours shall be prima facie evidence of a violation of the provisions of this section. (May 29, 1928, 45 Stat. 999, ch. 908, § 2.)

§ 36-203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.

No minor shall be employed, permitted, or suffered to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health, safety or welfare of such minor. It shall be the duty of the Board of Education of the District of Columbia, and the said board shall have power, jurisdiction, and authority, after hearing duly held, to issue general or special orders prohibiting the employment of such minors in any employment or at any place of employment dangerous or prejudicial to the life, health, safety, or welfare of such minors: *Provided*, That no such order shall permit the employment of any minor at any employment specified in sections 36-204 to 36-207 at a lower age than the age therein specified. (May 29, 1928, 45 Stat. 999, ch. 908, § 3.)

§ 36-204. Employment of minors under sixteen years of age prohibited in certain occupations.

No minor under sixteen years of age shall be employed, permitted, or suffered to work at any of the following occupations: (1) In the operation of any machinery operated by power other than hand or foot power; or (2) in oiling, wiping, or cleaning machinery or assisting therein. (May 29, 1928, 45 Stat. 999, ch. 908, § 4.)

§ 36-205. Employment of minors under eighteen years of age prohibited in certain occupations—Employment of females under eighteen in certain occupations.

No minor under eighteen years of age shall be employed, permitted, or suffered to work (1) at operating any freight or passenger elevator, or (2) in any quarry, tunnel, or excavation, or (3) in any tobacco warehouse or cigar or other factory or place where tobacco is manufactured or prepared. No girl under the age of eighteen years shall be employed, permitted, or suffered to work in any retail cigar or tobacco store, or in any hotel or for any apartment-house, or as an usher, attendant, or ticket seller in any theater or place of amusement, or as a messenger in the distribution or delivery of goods or messages for any person, firm, or corporation engaged in the business of transmitting or delivering messages. (May 29, 1928, 45 Stat. 999, ch. 908, § 5.)

§ 36-206. Employment as messenger between ages of eighteen and twenty-one years prohibited during certain hours.

No male between the ages of eighteen and twenty-one shall be employed, permitted, or suffered to work as a messenger for any person, firm, or corporation engaged in the business of transmitting or delivering messages before five o'clock in the morning or after twelve o'clock midnight of any day nor shall any female between the ages of eighteen and twenty-one be so employed before the hour of six o'clock in the morning, or after the hour of seven o'clock in the evening of any day. (May 29, 1928, 45 Stat. 1000, ch. 908, § 6.)

§ 36-207. Employment or exhibition of minor under sixteen years of age as performer.

No person having in his custody or control a minor under the age of sixteen years shall employ, exhibit, apprentice, sell, give away, or in any way dispose of such minor with a view to such minor being employed as an acrobat, or a gymnast, or a contortionist, or ropewalker, or in any exhibition of like character, or as a beggar, or street singer, or street musician, or cause or procure such minor to be so engaged. (May 29, 1928, 45 Stat. 1000, ch. 908, § 7; Dec. 26, 1941, 55 Stat. 863, ch. 632, § 1.)

AMENDMENT

1941—Act Dec. 26, 1941, added the word "street" before the word "musician."

§ 36-207a. Work permits for minors between ages of fourteen and eighteen years authorized for stage appearances—Regulations.

The Board of Education of the District of Columbia, or a duly authorized agent thereof, is authorized to issue a work permit to any minor under eighteen years of age, said permit authorizing and permitting the appearance of such minor on the stage of a duly licensed legitimate or vaudeville theater within the District of Columbia, in any professional travelling theatrical production, or act, or in a musical recital or concert: *Provided*, That such minor is at least seven years of age: *Provided further*, That such minor shall not appear on said stage in more than two performances in any one day, nor more than eight performances in any one week, and shall not appear on said stage after the hour of 11:30 postmeridian. Application for such permit should be made by the parent or guardian of such minor to the Board of Education of the District of Columbia or a duly authorized agent thereof, at such time as the Board may require. The Board or its agent may issue a permit if satisfied that the parent or guardian of such minor has made adequate provision for the educational instruction of such minor and for safeguarding his health and for the proper supervision of such minor.

The Board is authorized to promulgate such rules and regulations as may be necessary to protect properly the health, morals, and safety of minors coming within the purview of this chapter. (May 29, 1928, ch. 908, § 7a, as added Dec. 26, 1941, 55 Stat. 863, ch. 632, § 2, and amended July 3, 1952, 66 Stat. 329, ch. 569, § 1.)

AMENDMENT

1952—Act July 3, 1952, reduced age requirement from 14 to 7 years, deleted provisions requiring minor to have completed eight grades of elementary instruction or its equivalent and the restrictions on hours per performance by day and weeks, reduced the number of performances a week from twelve to eight, and substituted 11:30 postmeridian for 11:00 postmeridian.

§ 36-208. Work or vacation permit—Procurement by employer.

No minor between fourteen and eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work or housework as specified in section 36-201, unless his employer procures and keeps on file and accessible to any attendance officer, inspector, or other person authorized to enforce this chapter a work or vacation

permit issued as hereinafter prescribed, except that children between fourteen and eighteen years of age may be employed without a permit outside of school hours in irregular or casual work usual to the home of the employer: *Provided*, That such employment shall not be in connection with nor form a part of the business, trade, profession, or occupation of the employer: *And provided further*, That such employment shall not be specifically prohibited by any provision of this chapter or by any order issued under the authority of section 36-203. (May 29, 1928, 45 Stat. 1000, ch. 908, § 8.)

§ 36-209. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.

The work or vacation permit required by this chapter shall be issued only by the director of the department of school attendance and work permits created under the board of education according to the provisions of sections 31-211 to 31-213, or by any person duly authorized by said director, and shall state the name, sex, color, date, and place of birth, and place of residence of the minor, the grade last completed by said minor, and the kind of evidence of age accepted, and such other details as may be necessary for the identification of the minor. It shall certify that all the requirements for issuing a work or vacation permit under the provisions of this chapter have been fulfilled and shall be signed by the person issuing it. It shall state the name and address of the employer for whom and the nature of the specific occupation in which the work permit authorizes the minor to be employed, and no permit shall be valid except for the employer so named and for the occupation so designated. It shall bear a number, shall show the date of its issue, and shall be signed by the minor for whom it is issued in the presence of the person issuing it, and shall be mailed to the employer by the issuing officer, and in no case given to the minor. A record giving in full for each applicant the facts with reference to his sex, color, date, and place of birth, name and address of parent, guardian, or custodian, name and address of employer, and nature of the specific occupation in which the minor is to be employed, grade and school last attended, evidence of age, and date of issuance or date of refusal of certificate, with reason, shall be kept in the department of school attendance and work permits, together with the physician's certificate of physical fitness, the school record, and the employer's statement of intention to employ the child. Lists shall be sent weekly to each school during the school term giving the names and addresses of all children from that school to whom permits have been issued or refused. (May 29, 1928, 45 Stat. 1000, ch. 908, § 9.)

§ 36-210. Application for permit—Evidence required to be furnished—Physician's certificate—School record.

The officer authorized in section 36-209 to issue work or vacation permits shall issue such permits only upon the application in person of the minor desiring employment, accompanied, if said minor is under sixteen years of age, by his parent, guardian, or

custodian, and after having received, examined, and approved and filed the following papers, namely:

(a) A statement signed by the prospective employer or by some one duly authorized on his behalf, stating that he expects to give such minor present employment, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and of days per week which said minor shall be employed, and agreeing to send the notice of the commencement of employment, and to return the permit according to the provisions of this chapter.

(b) Evidence of age as provided in section 36-211, showing that the minor is at least fourteen years of age.

(c) A certificate of physical fitness, if such minor is under sixteen years of age; otherwise no such certificate of physical fitness shall be required. Such certificate of physical fitness shall be signed by a medical inspector of the public schools of the District of Columbia, assigned by the Board of Health for such purpose. It shall show the height and weight of the minor and shall state that the said minor has been thoroughly examined by the said physician at the time of his application for a permit, has attained the normal development of a minor of his age and is in sound health, and is physically qualified for the employment specified in the statement submitted in accordance with the requirements of this chapter.

(d) A school record, if such minor is under sixteen years of age; otherwise no such record shall be required. Such school record shall be filled out and signed by the teacher of the class last attended by the minor and countersigned by the principal of the school, public, private, or parochial, which the minor has last attended or by some one duly authorized by him: *Provided*, That the signature of the teacher shall not be required in the case of a school record filled out during the summer vacation period of the public schools. It shall certify that the said minor is able to read and write correctly sentences in the English language, has satisfactorily completed the eighth grade of the elementary school course prescribed for the public schools in the District of Columbia, or has regularly received in a private or parochial school instruction deemed equivalent by the Board of Education to that prescribed for the completion of the eighth grade in the public schools. Such school record shall give also the full name, date of birth, grade last completed, and residence of the minor as shown on the records of the school. (May 29, 1928, 45 Stat. 1001, ch. 908, § 10.)

§ 36-211. Evidence of age.

The evidence of age required by this chapter shall consist of one of the following proofs of age, which shall be required in the order herein designated:

(a) A birth certificate or attested transcript issued by a registrar of vital statistics or other officer charged with the duty of recording births.

(b) A baptismal record or duly certified transcript thereof showing the date of birth and place of baptism of the minor.

(c) A bona fide contemporary record of the date and place of the child's birth kept in the

Bible in which the records of the births in the family of the child are preserved, or other documentary evidence satisfactory to the director of the department of school attendance and work permits, such as a passport showing the age of the child, a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the child, or a life-insurance policy: *Provided*, That such other satisfactory documentary evidence has been in existence at least one year prior to the time it is offered in evidence: *And provided further*, That a school record or a parent's, guardian's, or custodian's affidavit, certificate, or other written statement of age shall not be accepted except as specified in paragraph (d).

(d) A certificate of physical age, signed by a medical inspector of the public schools assigned by the Board of Health for such purposes and based upon a physical examination, which shall state the height and weight of such minor and other evidence upon which the opinion as to the age of such minor is founded. A parent's, guardian's, or custodian's affidavit of age, and a record of the age as given in the register of the school first attended by the minor, if obtainable, or in the earliest available school census, shall accompany the physician's certificate of age. And no work or vacation permit shall be issued if any of the above possible sources shows the minor to be under the age of fourteen.

The proof of age specified in subdivision (a) shall be accepted in preference to that specified in any subsequent subdivision, and no proof of age permitted by any subsequent subdivision shall be accepted unless there be received and filed substantial evidence that the proof required by the preceding subdivisions can not be obtained. Should such preferred proof of age be later procured, or if subsequent proof of age shall be procured and shall conclusively establish the falsity of the proof previously accepted, the director of the department of school attendance and work permits shall cancel the permit and issue or refuse a new one according to the age thus established. (May 29, 1928, 45 Stat. 1001, ch. 908, § 11.)

§ 36-212. Vacation permits.

The director of the department of school attendance and work permits, or any person duly authorized by him, shall have authority to issue a vacation permit to a minor between the age of fourteen and sixteen years, permitting employment during the regular summer vacation period of the public schools, or during the school term at such time as the public schools are not in session, if the age of such minor has been proved according to section 36-211, and such minor has in all other respects, except as to completion of the eighth grade, fulfilled the requirements for a work permit specified in sections 36-201 to 36-227. These permits shall be different in color from the work permit allowing employment while school is in session and shall state the periods during which its use is valid. (May 29, 1928, 45 Stat. 1002, ch. 908, § 12.)

§ 36-213. Employer to notify department at commencement and termination of employment of minor—Issuance of new certificates.

Every employer receiving a work or vacation permit shall notify the department in writing within three days of the time of the commencement of the employment of such minor, and within three days after termination of the employment shall return said permit to the department. Failure to so notify shall be cause for the cancellation of the permit; and failure to so return it shall be cause for the refusal of further permits upon the application of such employer. Returned permits shall be filed and the proper school authorities notified. A new certificate shall not be issued to any minor except upon presentation of a new promise of employment and a new certificate of physical fitness. (May 29, 1928, 45 Stat. 1002, ch. 908, § 13.)

§ 36-214. Employer to furnish, on demand, proof of age of employee.

Whenever any person authorized to enforce this chapter shall have reason to doubt that any minor employed in any occupation for which a permit is required by this chapter, and for whom a work permit or vacation permit is not on file, has reached the age of eighteen years, such person may make demand on such minor's employer that such employer shall either furnish him within ten days the evidence required for a work permit showing that the minor is in fact eighteen years of age, or shall refuse to employ or permit or suffer such child to work. In case such evidence is not furnished to such person within ten days after such demand, the employer shall not thereafter continue to employ such minor or permit or suffer such minor to work in such establishment. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of this chapter, that such minor is under eighteen years of age and is unlawfully employed. (May 29, 1928, 45 Stat. 1002, ch. 908, § 14.)

§ 36-215. Penalties.

Whoever employs or permits or suffers any minor to be employed or to work in violation of any of the provisions of sections 36-201 to 36-214, or of any order issued under the provisions of section 36-203, or interferes with, obstructs, or hinders the department enforcing the child labor law, its officers or agents, or any other person authorized to inspect places of employment under this chapter and whoever, having under his control or custody any minor, permits or suffers him to be employed or to work in violation of any of the provisions of sections 36-201 to 36-214, shall for a first offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment not less than ten days nor more than thirty days, or in the discretion of the court by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment not less than thirty days nor more than ninety days, or in the discretion of the court by both such fine and imprisonment. Every day during which any violation of this chapter continues shall constitute a

separate and distinct offense. (May 29, 1928, 45 Stat. 1003, ch. 908, § 15.)

§ 36-216. Director of department of school attendance and work permits to enforce law—Inspection of places in which minors are employed.

It shall be the duty of the director of the department of school attendance and work permits organized under the Board of Education of the District of Columbia and of the authorized inspectors and agents of said department to cause all the provisions of this chapter to be enforced, to make complaints against persons violating its provisions, and to prosecute violations of the same. The director of the said department, its inspectors, and agents are empowered and instructed to visit and inspect at any time, and as often as shall be necessary in order effectively to enforce the provisions of this chapter, all places where minors are employed, and shall have authority to enter any place or establishment covered by the terms of this chapter, and to have access to work or vacation permits kept on file by the employer and such other records as may aid in the enforcement of this chapter. All persons authorized to issue certificates of physical fitness and all attendance officers and probation officers are likewise empowered to visit and inspect at all reasonable hours all places where minors may be employed. (May 29, 1928, 45 Stat. 1003, ch. 908, § 16.)

CROSS REFERENCE

Director of department of school attendance and work permits, see §§ 31-211 to 31-213.

§ 36-217. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.

No boy under sixteen years of age shall be employed in the stuffing of newspapers, nor shall the work of any boy between the ages of sixteen and eighteen so employed exceed forty hours in any one week, nor shall he be employed on more than one night in any one week. No boy under twelve years of age and no girl under eighteen years of age shall distribute, sell, expose, or offer for sale any newspapers, magazines, periodicals, or any other articles or merchandise of any description, or distribute handbills or circulars, in any street or public place, or exercise the trade of bootblack or any other trade, in any street or public place: *Provided*, That the provisions of this chapter shall not apply to boys ten years of age and over engaged in the distribution of newspapers, magazines, or periodicals on fixed routes. (May 29, 1928, 45 Stat. 1003, ch. 908, § 17.)

§ 36-218. Hours of employment—Work permit to be secured.

No boy under sixteen years of age shall work or shall be employed or permitted or suffered to work at any of the trades or occupations mentioned in section 36-217, in any street or public place after the hour of seven postmeridian or before the hour of six antemeridian, or, unless holding a work permit issued in accordance with the provisions of this chapter, during the hours when the public schools are in session. (May 29, 1928, 45 Stat. 1003, ch. 908, § 18.)

§ 36-219. Badge to be obtained.

No boy under sixteen years of age shall work at any time, or be employed or permitted or suffered to work at any time, in any of the trades or occupations mentioned in section 36-217, unless he shall have procured and shall carry on his person in plain sight while so working a badge as hereinafter provided, issued by the director of the department of school attendance and work permits, or some person duly authorized by him, and unless he complies with all the legal requirements concerning school attendance. (May 29, 1928, 45 Stat. 1004, ch. 908, § 19.)

§ 36-220. Street-trades badges—Evidence upon which issued.

The officer authorized by this chapter to issue street-trades badges shall issue such a badge only upon application of the minor desiring it, accompanied by the parent, guardian, or custodian of such minor, and after having received, examined, approved, and filed the following papers: (1) Evidence that the minor is of the age required by section 36-217, which shall consist of the same evidence as is required for a work permit under this chapter; (2) evidence of physical fitness, which shall consist of a certificate of physical fitness issued as required for a work permit under this chapter; (3) a statement signed by the principal of the school and the teacher of the class which the minor is attending, stating that such minor is regularly enrolled in school and showing the grade such minor has attained, and certifying that in their opinion the minor is physically and mentally qualified to undertake the work contemplated without retarding his progress in school: *Provided*, That a work permit issued as required by this chapter may be accepted by the issuing officer in lieu of any other requirements for said badge. (May 29, 1928, 45 Stat. 1004, ch. 908, § 20.)

§ 36-221. Information to be contained on—Record to be kept—Badges not transferable—Principal of schools to keep list—Revocation if detrimental to minor—Badges to expire annually.

Such badge shall bear a number, and every such badge on its reverse side shall be signed in the presence of the officer issuing the same by the minor in whose name it is issued and shall contain the minor's address and date of birth and such other information as the officer issuing the same shall deem necessary. A complete record of badges issued and refused, and of the facts relating thereto, including the name and address of the parent, guardian, or custodian, the height and weight of the minor, the day, year, and month of birth of the minor, the date of issuance and kind of evidence of age accepted, and school grade and name of school attended, shall be kept in the office of the director of the department of school attendance and work permits. No minor to whom such badge is issued shall give, lend, sell, or otherwise transfer it to any other person, or be engaged in any of the trades or occupations mentioned in this section without having conspicuously on his person such badge, and he shall exhibit the same upon demand to any police or attendance officer, or to any person charged with the duty of enforcing this chapter. Lists shall be sent weekly to each school during the school term, giving the

names and addresses of all minors to whom street trades badges have been issued and refused. The principal of each school shall keep a complete list of all minors in his school to whom badges, as herein required, have been issued, and whenever in the opinion of said principal the possession of any such permit and badge is detrimental to the school standing or well-being of any such minor, shall recommend to the officer issuing the same that the badge of such minor be revoked. All such badges shall expire annually on the 1st day of January. The color of the badge shall be changed each calendar year. (May 29, 1928, 45 Stat. 1004, ch. 908, § 21.)

§ 36-222. Penalties for violations of sections 36-217 to 36-224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.

Any minor who shall engage in any of the trades or occupations mentioned in section 36-217, in violation of any of the provisions of sections 36-217 to 36-224, shall for the first offense be warned by the director of the department of school attendance and work permits and the parent, guardian, or custodian of such minor shall be notified. For any subsequent violation, while under the care of said parent, guardian, or custodian, and with his or her knowledge, or consent, said minor may, in the discretion of the court, be deemed to be lacking in proper parental care and guardianship, and may on petition filed for that purpose, and in the discretion of the court, be committed to the Board of Public Welfare of the District of Columbia until twenty-one years of age or for a shorter period as the court may see fit, the said Board of Public Welfare being hereby expressly authorized and required to receive minors so committed. The court may, instead of immediate commitment, suspend the imposition or execution of judgment of commitment, or may, after partial hearing and instead of proceeding to judgment, suspend further proceedings without judgment, with the consent of the parent, guardian, or custodian of said minor, and in either event may assign a probation officer of the juvenile court to exercise probationary supervision over said minor, said probationary supervision to continue in force and the said minor to remain under the jurisdiction and control of the court as a ward of the court until said minor attains the age of seventeen years, or unless sooner discharged by order of the court or committed to said Board of Public Welfare, the court hereby being given power to withdraw said case from said probationary supervision at any time during said probation period, and after a hearing may commit said minor at once to the said board if, in the opinion of the court, the best interests and welfare of said minor shall so require. Upon the recommendation of the principal or chief executive officer of the school which such minor is attending or upon the complaint of any school attendance officer, or any officer authorized to enforce this chapter, the badge of any minor who violates any provision of this chapter, or who becomes delinquent, or who fails to comply with all the legal requirements concerning school attendance, may be revoked by the director of the department of school attendance and work permits for such period as the said officer

may require; and upon revocation said officer shall so notify the parent, guardian, or custodian having such minor in charge, and it shall thereupon become the duty of said parent, guardian, or custodian to surrender or require said minor to surrender said badge to the said officer. After notice to such minor and his parent, guardian, or custodian of revocation of such badge, he shall be deemed to be in the same status as a minor without a badge. The refusal of any such minor to surrender his badge upon such revocation shall be deemed a violation of this chapter. (May 29, 1928, 45 Stat. 1004, ch. 908, § 22.)

TRANSFER OF FUNCTION

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3-102.

CROSS REFERENCE

General provisions concerning Board of Public Welfare, see § 3-101 et seq.

§ 36-223. Persons selling merchandise to minor under sixteen years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties.

Any person who either for himself or as agent of any other person, or of any firm, corporation, or company, furnishes or sells or offers for sale to any minor under sixteen any article of any description to be used for the purpose of sale or distribution in any public place, shall first ascertain that said minor wears his own badge in plain sight as herein provided, and if said minor has no badge, no article shall be furnished or sold to him. Any person who fails to comply with the foregoing provision, or who furnishes or sells or offers for sale to any minor any article of any description, with the knowledge that he intends to sell or distribute such article in violation of any provision of this chapter, or after having received written notice from any officer charged with the enforcement of this chapter, that such minor is selling such article in violation of any provision of said chapter, or any person who procures any minor to violate any provision of this chapter, shall for a first offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than ten nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment. Whoever, having under his control or custody any minor, permits or consents to the violation by such minor of any of the provisions of sections 36-217 to 36-223, shall for a first offense be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment of not less than five nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not less than ten nor more than sixty days, or by both such fine and imprisonment. (May 29, 1928, 45 Stat. 1005, ch. 908, § 23.)

§ 36-224. Loitering around salesrooms of newspapers prohibited during school hours.

No boy under the age of sixteen years required by law to attend school shall be permitted by any newspaper publisher or printer or person having for sale newspapers or periodicals of any character, to loiter or remain around any salesroom, assembly room, circulation room, or office for the sale of newspapers, between the hours of the opening of school in the forenoon and the close of school in the afternoon, on days when school is in session. Any newspaper publisher, printer, circulation agent, or seller of newspapers shall, upon conviction of permitting newsboys to loiter or remain around any assembly room, circulation room, salesroom, or office where papers are distributed or sold during such hours, be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than ten days or more than thirty days. (May 29, 1928, 45 Stat. 1006, ch. 908, § 24.)

§ 36-225. Board of Education to appoint inspectors—Appointments, how made.

The Board of Education of the District of Columbia is hereby authorized, empowered, and directed to appoint such a number of inspectors, clerks, and other assistants as shall be necessary to carry out the provisions of this chapter: *Provided*, That at least two inspectors shall be so appointed. Such appointments shall be made from a list of applicants obtained from open competitive examinations conducted by the Boards of Examiners of the Board of Education designed to test the fitness of the applicant for the duties to be performed. (May 29, 1928, 45 Stat. 1006, ch. 908, § 25.)

§ 36-226. Separability of provisions.

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby. (May 29, 1928, 45 Stat. 1006, ch. 908, § 28.)

§ 36-227. Board of Education to supervise and have appellate jurisdiction over agents and employees.

The Board of Education shall exercise general supervision and appellate jurisdiction over the agents and employees of said board engaged in the execution of this chapter. (May 29, 1928, 45 Stat. 1006, ch. 908, § 29.)

§ 36-228. Juvenile court has jurisdiction.

The juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising under sections 36-201 to 36-227. (May 29, 1928, 45 Stat. 1006, ch. 908, § 26.)

Chapter 3.—EMPLOYMENT OF WOMEN

Sec.

- 36-301. Employment of females—Period of employment.
- 36-302. Hours of employment.
- 36-303. Hours of continuous labor restricted.
- 36-304. Notice to be posted—Allowance for meals.
- 36-305. Time book to be kept.
- 36-306. Inspectors—Appointment.
- 36-307. Inspectors authorized to enter buildings.

Sec.

- 36-308. Inspectors to enforce law—Reports.
- 36-309. Penalties.
- 36-310. Employers to furnish seats for female employees.
- 36-311. Penalty.

§ 36-301. Employment of females—Period of employment.

No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in the District of Columbia more than eight hours in any one day or more than six days or more than forty-eight hours in any one week: *Provided*, That the Minimum Wage and Industrial Safety Board of the District of Columbia, during the period ending June 30, 1946, or such earlier date as the Congress by concurrent resolution may determine, may issue to employers engaged in businesses or occupations specified in this section, upon satisfactory showing to the said Board that such action is essential to the war effort, a temporary permit, for such period of time and in such form as it may deem advisable, to employ females for more than eight hours in any one day, or more than forty-eight hours, but not to exceed fifty-four hours, in any one week: *Provided further*, That in cases where said Board has issued permits under this section the employer shall pay employees working under such permits an additional sum at the rate of time and one-half for the time they are employed in excess of the limitations under existing law. A true and correct copy of all permits issued pursuant to the authority granted herein shall be displayed by the employer in a prominent place, and in such case the employer shall not be required to post the notice required in section 36-304. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 1; June 1, 1943, 57 Stat. 93, ch. 109; Apr. 27, 1945, 59 Stat. 95, ch. 97.)

AMENDMENTS

1945—Act Apr. 27, 1945, substituted "June 30, 1946" for "June 30, 1945" in first proviso.

1943—Act June 1, 1943, added the two provisos relating to issuance of temporary permits extending hours of work, compensation for such extension and the last sentence providing for display of such permits.

CROSS REFERENCES

Fair Labor Standards Act, see U.S. Code, title 29, §§ 201-219.

Wages for women, see § 36-408 et seq.

§ 36-302. Hours of employment.

No female under eighteen years of age shall be employed or permitted to work in or in connection with any of the establishments or occupations named in section 36-301 before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening of any one day. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 2.)

NOTES TO DECISIONS

1. Government Printing Office employees

This act is not applicable to female employees in Government Printing Office (33 O. A. G. 355).

§ 36-303. Hours of continuous labor restricted.

No female shall be employed or permitted to work for more than six hours continuously at one time in any establishment or occupation named in section

36-301 in which three or more such females are employed without an interval of at least three-quarters of an hour; except that such female may be so employed for not more than six and one-half hours continuously at one time if such employment ends not later than half past one o'clock in the afternoon and if she is then dismissed for the remainder of the day. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 3.)

§ 36-304. Notice to be posted—Allowance for meals.

Every employer shall post and keep posted in a conspicuous place in every room in any establishment or occupation named in section 36-301 in which any females are employed a printed notice stating the number of hours such females are required or permitted to work on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. The printed form of such notice shall be furnished by the inspectors authorized by sections 36-301 to 36-309. The employment of any such female for a longer time in any day than that stated in the printed notice shall be deemed a violation of the provisions of this section. Where the nature of the business makes it impracticable to fix the recess allowed for meals at the same time for all females employed, the inspectors authorized to enforce sections 36-301 to 36-309 may issue a permit dispensing with the posting of the hours when the recess allowed for meals begins and ends, and requiring only the posting of the total number of hours which the females are required or permitted to work on each day of the week and the hours of beginning and stopping such work. Such permit shall be kept by such employer upon such premises and exhibited to all inspectors authorized to enforce sections 36-301 to 36-309. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 4.)

§ 36-305. Time book to be kept.

Every employer shall keep a time book or record for every female employed in any establishment or occupation named in section 36-301, stating the wages paid, the number of hours worked by her on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. Such time book or record shall be open at all reasonable hours to the inspection of the officials authorized to enforce sections 36-301 to 36-309. Any employer who fails to keep such record as required by this section, or makes any false statement therein, or refuses to exhibit such time book or record, or makes any false statement to an official authorized to enforce sections 36-301 to 36-309 in reply to any question put in carrying out the provisions of sections 36-301 to 36-309 shall be liable for a violation thereof. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 5.)

§ 36-306. Inspectors—Appointment.

The commissioners of the District of Columbia are hereby authorized to appoint three inspectors, two of whom shall be women, to carry out the purposes of sections 36-301 to 36-309. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 6.)

CODIFICATION

Provision for "compensation not exceeding \$1,200 each per annum" was omitted as governed by the Classification Act of 1949, classified to U.S. Code, title 5, ch. 21.

§ 36-307. Inspectors authorized to enter buildings.

The inspectors authorized by sections 36-301 to 36-309 may in the discharge of their duties enter any place, building, or room where any labor is being performed by females which is affected by the provisions of sections 36-301 to 36-309 whenever such inspectors may have reasonable cause to believe that any such labor is being performed therein. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 7.)

§ 36-308. Inspectors to enforce law—Reports.

The inspectors authorized by sections 36-301 to 36-309 shall visit and inspect the establishments and places of employment named in section 36-301 as often as practicable, during reasonable hours, and shall cause the provisions of sections 36-301 to 36-309 to be enforced therein and also the provisions of sections 36-310, 36-311. They shall make a daily report to the commissioners of the District of Columbia, and also report any cases of illegal employment contrary to the provisions of sections 36-301 to 36-309 to the corporation counsel of the District of Columbia. (Feb. 24, 1914, 38 Stat. 292, ch. 28, § 8.)

§ 36-309. Penalties.

Any person who violates or does not comply with any of the provisions of sections 36-301 to 36-309 shall upon conviction be punished for a first offense by a fine of not less than \$20 nor more than \$50; for a second offense, by a fine of not less than \$50 nor more than \$200; for a third offense, by a fine of not less than \$250. (Feb. 24, 1914, 38 Stat. 292, ch. 28, § 9.)

NOTES TO DECISIONS

Evidence 1
Imprisonment 2
Inspectors' failure to report 3

1. Evidence

In prosecution against employer for working employees in violation of this chapter, oral testimony of inspector for Minimum Wage and Industrial Safety Board as to contents of payroll record prepared by employer was inadmissible, where payroll record was the best and only source of knowledge of the violations charged, record was kept pursuant to § 36-305 and was quasi-public in character and open to government inspection and so could have been used by government without violating constitutional prohibition against self-incrimination, and the records were actually in court and immediately accessible to the prosecution. *Anderson v. District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

In prosecution against employer for failure to keep proper time records of hours worked by employees in violation of § 36-305, testimony of inspector for Minimum Wage and Industrial Safety Board, based on owner's admission and not on inspection by witness, as to total absence of such records, was admissible without regard to the parol evidence rule. *Id.*

2. Imprisonment

A defendant convicted for violation of § 36-305 could be sentenced to prison in event of default in payment of fines, notwithstanding that this section provided for fines only, in view of § 11-606 authorizing commitment of defendant in default of payment of fine imposed. *Anderson v. District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

3. Inspectors' failure to report

The failure of inspector who inspected records of employer to make daily reports to Commissioners of District

of Columbia, as required by § 36-308, did not preclude prosecution of employer for working employees in violation of this chapter and for failure to keep the time records of hours worked by employees as required by § 36-305. *Anderson v. District of Columbia* (D. C. Mun. App. 1946, 48 A. 2d 710).

§ 36-310. Employers to furnish seats for female employees.

All persons who employ females in stores, shops, offices, or manufactories as clerks, assistants, operatives, or helpers in any business, trade, or occupation carried on or operated by them in the District of Columbia, shall be required to procure and provide proper and suitable seats for all such females and shall permit the use of such seats, rests, or stools, as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such stools or seats when any such female employees are not actively employed in their work in such business or employment. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 1.)

§ 36-311. Penalty.

If any employer of female help in the District of Columbia, shall neglect or refuse to provide seats, as provided in sections 36-310 and 36-311, or shall make any rules, orders, or regulations in his shop, store, or other place of business, requiring females to remain standing when not necessarily employed in service or labor therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be liable to a fine therefor in a sum not to exceed twenty-five dollars, with costs, in the discretion of the court. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 2.)

Chapter 4.—MINIMUM WAGE LAW

SUBCHAPTER I.—MINIMUM WAGES

Sec.

- 36-401. Definitions.
- 36-402. Minimum Wage and Industrial Safety Board—Members—Quorum.
- 36-403. Officers—Compensation.
- 36-404. Authority to take testimony—Subpoenas.
- 36-405. Regulations.
- 36-406. Annual report.
- 36-407. Authority concerning wages of women and minors.
- 36-408. Standards of wages to be declared.
- 36-409. Conference on inadequate wages.
- 36-410. Report of findings and recommendations.
- 36-411. Action of Board—Public hearings.
- 36-412. Licenses for less than time-rate standard.
- 36-413. Determination of minimum wages for minors.
- 36-414. Separate inquiries.
- 36-415. Investigations.
- 36-416. Decisions of fact by board final—Appeals on questions of law.
- 36-417. Penalties for violations.
- 36-418. Penalties for discrimination by employer against employee who testifies.
- 36-419. Employers responsible for acts of agents.
- 36-420. Jurisdiction of municipal court.
- 36-421. Civil action to recover if less than minimum wage paid.
- 36-422. Short title—Purpose.

SUBCHAPTER II.—INDUSTRIAL SAFETY

- 36-431. Purpose of subchapter.
- 36-432. Definitions.
- 36-433. Additional duties of Board under this subchapter.
- 36-434. Rules and regulations—Public hearing—Publication—Effective date.

Sec.

- 36-435. Authority to take testimony—Subpoena.
- 36-436. Variations by employers from regulations.
- 36-437. Employment of Director of Industrial Safety—Compensation—Duties.
- 36-438. Employers' duties—Furnish safe place of employment—Furnish required information—Report employees' injury, death, or disease—Record of employees.
- 36-439. Authority to examine place of employment.
- 36-440. Office space and supplies for Board.
- 36-441. Annual report to Commissioners.
- 36-442. Penalties for violations of subchapter—Jurisdiction.

SUBCHAPTER I.—MINIMUM WAGES

§ 36-401. Definitions.

Where used in this subchapter—

The term "Board" means the Minimum Wage and Industrial Safety Board created by section 36-402;

The term "commissioners" means the commissioners of the District of Columbia;

The term "woman" includes only a woman of eighteen years of age or over;

The term "minor" means a person of either sex under the age of eighteen years;

The term "occupation" includes a business, industry, trade, or branch thereof, but shall not include domestic service. (Sept. 19, 1918, 40 Stat. 960, ch. 174, title I, § 1; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 1.)

CODIFICATION

This statute was held unconstitutional in the case of *Atkins v. Children's Hosp.* (261 U. S. 525, 67 L. Ed. 785, 43 Sup. Ct. 394, 24 A. L. R. 1238). In 1936 this case was overruled and a law of similar import, enacted by the State of Washington, was declared constitutional, the case of *Morehead v. New York ex rel. Tipaldo* (298 U. S. 587, 80 L. Ed. 1347, 56 Sup. Ct. 918, 103 A. L. R. 1445), being distinguished. *West Coast Hotel Co. v. Parrish* (300 U. S. 379, 81 L. Ed. 703, 57 Sup. Ct. 578, 108 A. L. R. 1330).

On the theory that the last-mentioned case revitalized the District of Columbia Minimum Wage Law, it is incorporated in this Code.

AMENDMENT

1941—Act Oct. 14, 1941, changed "Minimum Wage Board" to "Minimum Wage and Industrial Safety Board".

CROSS REFERENCE

Fair Labor Standards Act, see U.S. Code, title 29, §§ 201-219.

NOTES TO DECISIONS

Classification of occupations 1
Constitutionality 2

1. Classification of occupations

Order of the Minimum Wage Board of the District of Columbia covering certain named occupations as well as a "miscellaneous" category is invalid under Minimum Wage Law of the District of Columbia, prescribing an occupational basis for classification of workers. *District of Columbia v. Chambers et al.* (1953, 207 F. 2d 14, 92 U. S. App. D. C. 296).

The Minimum Wage Board of the District of Columbia may use its discretion in the classification of occupations under the Minimum Wage Law so long as there is a reasonable basis for such classification, but a lumping together of all unclassified or miscellaneous occupations as one occupation is not a reasonable classification. *Chambers v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 636).

2. Constitutionality

A Supreme Court decision that District of Columbia Minimum Wage Law is unconstitutional did not repeal or abolish such law, which became effective, without re-enactment by Congress, when effect of such decision was removed by Supreme Court's subsequent decision holding similar law of State of Washington constitutional and

expressly overruling previous decision. *Jawish v. Morlet* (D. C. Mun. App. 1952, 86 A. 2d 96).

§ 36-402. Minimum Wage and Industrial Safety Board—Members—Quorum.

There is hereby created a board to be known as the "Minimum Wage and Industrial Safety Board," to be composed of three members to be appointed by the commissioners of the District of Columbia. As far as practicable, the members shall be so chosen that one will be representative of employees, one representative of employers, and one representing the public.

The commissioners shall make their first appointments hereunder within thirty days after September 19, 1918, and shall designate one of the three members first appointed to hold office until January 1, 1919; one to hold office until January 1, 1920; and one to hold office until January 1, 1921. On or before the first day of January of each year, beginning with the year 1919, the commissioners shall appoint a member to succeed the member whose term expires on such first day of January, and such new appointee shall hold office for the term of three years from such first day of January. Each member shall hold office until his successor is appointed and has qualified; and any vacancy that may occur in the membership of the board shall be filled by appointment by the commissioners for the unexpired portion of the term.

A majority of the members shall constitute a quorum to transact business, and the act or decision of such a majority shall be deemed the act or decision of the board; and no vacancy shall impair the right of the remaining members to exercise all the powers of the board. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 2; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 1.)

AMENDMENT

1941—Act Oct. 14, 1941, changed "Minimum Wage Board" to "Minimum Wage and Industrial Safety Board".

TRANSFER OF FUNCTIONS

Reorganization Order No. 36 of the Board of Commissioners dated June 16, 1953 established under the direction and control of a Commissioner, a Minimum Wage and Industrial Safety Board headed by a chairman and consisting of three members appointed by the Board of Commissioners. All functions of the previously existing Minimum Wage and Industrial Safety Board including the duties, powers, and authorities of all officers and employees assigned thereto were transferred to the new Board, and all members of the previous Board were reappointed to the new Board. All positions, personnel, property, records and unexpended balances relating to functions and positions transferred were transferred to the new Board, and the previously existing Board was abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

§ 36-403. Officers—Compensation.

The first members appointed shall, within twenty days after their appointment, meet and organize the board by electing one of their number as chairman and by choosing a secretary, who shall not be a member of the board; and on or before the 10th day of January of each year thereafter the board shall elect a chairman and choose a secretary for the ensuing year. The chairman and the secretary shall each hold office until his successor is elected or chosen; but the board may at any time remove the secretary.

The secretary shall perform such duties as may be prescribed. The compensation of the secretary and all other employees of the board shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended. None of the members shall receive any salary as such. The board shall have power to employ agents and such other assistants as may be necessary for the proper performance of its duties: *Provided*, That until further authorization by Congress, the sum which it may expend, including the salary of the secretary, shall not exceed the sum of \$5,000. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 3; June 16, 1938, 52 Stat. 758, ch. 474; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

1938—Act June 16, 1938, deleted the words "and receive such salary, not in excess of \$2,500 per annum, as may be fixed by the Board," and substituted "the compensation of the Secretary and all other employees of the Board shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended."

§ 36-404. Authority to take testimony—Subpœnas.

At any public hearing held by the board any person interested in the matter being investigated may appear and testify. Any member of the board shall have power to administer oaths and the board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers and other evidence relative to any matters under investigation, at any such public hearing or at any session of any conference held as hereinafter provided. In case of disobedience to a subpoena the board may invoke the aid of the United States District Court for the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena the court may issue an order requiring appearance before the board, the production of documentary evidence, and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 4; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 36-405. Regulations.

The board is hereby authorized and empowered to make rules and regulations for the carrying into effect of this subchapter, including rules and regulations for the selection of members of the conferences hereinafter provided for and the mode of procedure thereof. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 5.)

CROSS REFERENCE

Rules and regulations by commissioners for protection of life, health, and property, generally, see § 1-226.

§ 36-406. Annual report.

The board shall, on or before the 1st day of January of the year 1919, and of each year thereafter, make a report to the commissioners of its work and the proceedings under this subchapter. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 6.)

§ 36-407. Authority concerning wages of women and minors.

The board shall have full power and authority: (1) To investigate and ascertain the wages of women and minors in the different occupations in which they are employed in the District of Columbia; (2) to examine, through any member or authorized representative, any book, pay roll or other record of any employer of women or minors that in any way appertains to or has a bearing upon the question of wages of any such women or minors; and (3) to require from such employer full and true statements of the wages paid to all women and minors in his employment.

Every employer shall keep a register of the names of the women and minors employed by him in any occupation in the District of Columbia, of the hours worked by each, and of all payments made to each, whether paid by the time or by the piece; and shall, on request, permit any member or authorized representative of the Board to examine such register.

To assist the Board in carrying out this chapter the Commissioners shall at all times give it any information or statistics in their possession under sections 36-301 to 36-309. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 8.)

CROSS REFERENCES

Employment of minors, other provisions concerning, see title 31, ch. 2, and chs. 1, 2 of this title.

Governmental projects, wages of employees employed on, see § 1-815.

Regulation of employment of women, other provisions, see § 36-301 et seq.

NOTES TO DECISIONS

1. Basis of orders

The Minimum Wage Law of the District of Columbia contemplates issuance of orders by the Minimum Wage Board on an occupational basis. *Chambers v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 636).

§ 36-408. Standards of wages to be declared.

The Board is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided, the following things: (a) Standards of minimum wages for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; and (b) standards of minimum wages for minors in any occupation within the District of Columbia, and what wages are unreasonably low for any such minor workers. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 9.)

NOTES TO DECISIONS

1. In general

A statute which authorizes a commission, after hearing representatives of employers and employees together with disinterested persons representing the public, to

establish such minimum standards of wages and conditions of labor for women and minors as it shall consider reasonable and not detrimental to health and morals and which shall be sufficient for the decent maintenance of women; and to grant special licenses for the employment of apprentices and women who are physically defective or crippled by age or otherwise at less than the prescribed minimum wage is not unconstitutional. *West Coast Hotel Co. v. Parrish* (1937, 57 S. Ct. 578, 300 U.S. 379, 81 L. Ed. 703, 108 A.L.R. 1330).

§ 36-409. Conference on inadequate wages.

If, after investigation, the Board is of opinion that any substantial number of women workers in any occupation are receiving wages inadequate to supply them with the necessary cost of living and maintain them in health and protect their morals, it may call and convene a conference for the purpose and with the powers of considering and inquiring into and reporting on the subject investigated by the Board and submitted by it to such conference. The conference shall be composed of not more than three representatives of the employers in such occupation, of an equal number of representatives of the employees in such occupation, of not more than three disinterested persons representing the public, and of one or more members of the Board. The Board shall name and appoint all the members of the conference and designate the chairman thereof. Two-thirds of the members of the conference shall constitute a quorum, and the decision or recommendation or report of the conference on any subject submitted shall require a vote of not less than a majority of all its members.

The Board shall present to the conference all the information and evidence in its possession or control relating to the subject of the inquiry by the conference, and shall cause to be brought before the conference any witnesses whose testimony the Board deems material. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 10.)

NOTES TO DECISIONS

1. In general

The Minimum Wage Law of the District of Columbia contemplates issuance of orders by the Minimum Wage Board on an occupational basis. *Chambers v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 636).

§ 36-410. Report of findings and recommendations.

After completing its consideration of and inquiry into the subject submitted to it by the Board, the conference shall make and transmit to the Board a report containing its findings and recommendations on such subject, including recommendations as to standards of minimum wages for women workers in the occupation under inquiry and as to what wages are inadequate to supply the necessary cost of living to women workers in such occupation and to maintain them in health and to protect their morals.

In its recommendations on a question of wages the conference (1) shall, where it appears that any substantial number of women workers in the occupation under inquiry are being paid by piece rates as distinguished from time rate, recommend minimum piece rates as well as minimum time rate and recommend such minimum piece rates as will, in its judgment, be adequate to supply the necessary cost of living to women workers in such occupation

of average ordinary ability and to maintain them in health and protect their morals; and (2) shall, when it appears proper or necessary, recommend suitable minimum wages for learners and apprentices in such occupation and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which wages shall be less than the regular minimum wages recommended for the regular women workers in such occupation. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 11.)

NOTES TO DECISIONS

1. In general

A statute which authorizes a commission, after hearing representatives of employers and employees together with disinterested persons representing the public, to establish such minimum standards of wages and conditions of labor for women and minors as it shall consider reasonable and not detrimental to health and morals and which shall be sufficient for the decent maintenance of women; and to grant special licenses for the employment of apprentices and women who are physically defective or crippled by age or otherwise at less than the prescribed minimum wage is not unconstitutional. *West Coast Hotel Co. v. Parrish* (1937, 57 S. Ct. 578, 300 U.S. 379, 81 L. Ed. 703, 108 A.L.R. 1330).

§ 36-411. Action of Board—Public hearings.

Upon receipt of any report from any conference, the Board shall consider and review the recommendations, and may approve or disapprove any or all of such recommendations, and may resubmit to the same conference, or a new conference, any subject covered by any recommendations so disapproved.

If the Board approves any recommendations contained in any report from any conference, it shall publish a notice, once a week, for four successive weeks in a newspaper of general circulation printed in the District of Columbia, that it will, on a date and at a place named in the notice, hold a public hearing at which all persons in favor of or opposed to such recommendations will be heard.

After such hearing the Board may, in its discretion, make and render such an order as may be proper or necessary to adopt such recommendations and carry them into effect, requiring all employers in the occupation affected thereby to observe and comply with such order. Such order shall become effective sixty days after it is made. After such order becomes effective, and while it is effective, it shall be unlawful for any employer to violate or disregard any of its terms or provisions, or to employ any woman worker in any occupation covered by such order at lower wages than are authorized or permitted therein.

The Board shall, as far as is practicable, mail a copy of such order to every employer affected thereby; and every employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers are employed. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 12.)

NOTES TO DECISIONS

1. Classification of occupations

Order of the Minimum Wage Board of the District of Columbia covering certain named occupations as well as a "miscellaneous" category is invalid under Minimum Wage Law of the District of Columbia, prescribing an occupational basis for classification of workers. *District*

of Columbia v. Chambers et al. (1953, 207 F. 2d 14, 92 U. S. App. D. C. 296).

Order of the Minimum Wage Board under the Minimum Wage Law of the District of Columbia placing in one class stenographers, bookkeepers, typists, clerks, cashiers, checkers, professional's assistants and attendants, laboratory mechanics and technicians, messengers, ushers, telegraph and telephone operators, and all similar workers is too broad in its coverage and is invalid. *Chambers v. District of Columbia* (D. C. Mun. App. 1952, 89 A. 2d 636).

§ 36-412. Licenses for less than time-rate standard.

For any occupation in which only a minimum time-rate wage has been established, the board may issue to a woman whose earning capacity has been impaired by age or otherwise, a special license authorizing her employment at such wage less than such minimum time-rate wage as shall be fixed by the Board and stated in the license. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 13.)

NOTES TO DECISIONS

1. In general

A statute which authorizes a commission, after hearing representatives of employers and employees together with disinterested persons representing the public, to establish such minimum standards of wages and conditions of labor for women and minors as it shall consider reasonable and not detrimental to health and morals and which shall be sufficient for the decent maintenance of women; and to grant special licenses for the employment of apprentices and women who are physically defective or crippled by age or otherwise at less than the prescribed minimum wage is not unconstitutional. *West Coast Hotel Co. v. Parrish* (1937, 57 S. Ct. 578, 300 U.S. 379, 81 L. Ed. 703, 108 A.L.R. 1330).

§ 36-413. Determination of minimum wages for minors.

The board may at any time inquire into wages of minors employed in any occupation in the District of Columbia, and determine suitable wages for them. When the board has made such determination it may make such an order as may be proper or necessary to carry such determination into effect. Such order shall become effective sixty days after it is made; and after such order becomes effective and while it is effective it shall be unlawful for any employer in such occupation to employ a minor at less wages than are specified or required in or by such order. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 14.)

CROSS REFERENCE

Employment of minors, other provisions concerning, see title 31, ch. 2, and chs. 1, 2 of this title.

§ 36-414. Separate inquiries.

Any conference may make a separate inquiry into and report on any branch of any occupation, and the board may make a separate order affecting any branch of any occupation. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 15.)

§ 36-415. Investigations.

The board shall from time to time investigate and ascertain whether or not employers in the District of Columbia are observing and complying with its orders, and shall report to the corporation counsel of the District of Columbia all violations of this chapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 16.)

§ 36-416. Decisions of fact by board final—Appeals on questions of law.

All questions of fact arising under the foregoing provisions of this subchapter shall, except as otherwise herein provided, be determined by the board, and there shall be no appeal from the decision of the board on any such question of fact; but there shall be a right of appeal from the board to the United States District Court for the District of Columbia from any ruling or holding on a question of law included or embodied in any decision or order of the board; and, on the same question of law, from such court to the United States Court of Appeals for the District of Columbia. In all such appeals the corporation counsel shall appear for and represent the board. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 17; June 7, 1934, 48 Stat. 926, ch. 426; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "court of appeals of the District of Columbia."

§ 36-417. Penalties for violations.

Whoever violates this subchapter, whether an employer or his agent, or the director, officer, or agent of any corporation, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment not less than ten days nor more than three months, or by both such fine and imprisonment. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 18.)

NOTES TO DECISIONS

1. Appeals

Where defendants were found guilty on 18 counts of information for violation of Minimum Wage Law, and fine of \$25 was imposed under each count, but fines under 14 counts were made concurrent with fines under other counts, so that result was that fines totaled \$100, action of Municipal Court would be deemed the entering of one judgment in excess of \$50, and therefore it was not necessary for defendants to comply with statute providing that reviews of judgments in criminal branch of Municipal Court, where penalty imposed is less than \$50, shall be by application for allowance of appeal within 3 days from date of judgment. *Chambers v. District of Columbia* (1952, 194 F. 2d 336, 90 U. S. App. D. C. 153).

§ 36-418. Penalties for discrimination by employer against employee who testifies.

Any employer and his agent, or the director, officer, or agent of any corporation who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on any conference or has testified or is about to testify, or because such employer believes that said employee may serve on any conference or may testify in any investigation or proceedings under or relative to this subchapter shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than

\$100. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 19.)

§ 36-419. Employers responsible for acts of agents.

Any act which, if done or omitted to be done by any agent or officer or director acting for such employer, would constitute a violation of this subchapter, shall also be held to be a violation by the employer and subject such employer to the liability provided for by this subchapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 20.)

§ 36-420. Jurisdiction of municipal court.

Prosecutions for violations of this subchapter shall be on information filed in the Municipal Court for the District of Columbia by the corporation counsel. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 21; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 36-421. Civil action to recover if less than minimum wage paid.

If any woman worker is paid by her employer less than the minimum wage to which she is entitled under or by virtue of an order of the board, she may recover in a civil action the full amount of such minimum wage, less any amount actually paid to her by the employer, together with such reasonable attorney's fees as may be allowed by the court; and any agreement for her to work for less than such minimum wage shall be no defense to such action. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 22.)

§ 36-422. Short title—Purpose.

This chapter shall be known as the "District of Columbia Minimum-Wage Law." The purposes of the subchapter are to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living; and the chapter in each of its provisions and in its entirety shall be interpreted to effectuate these purposes. (Sept. 19, 1918, 40 Stat. 964, ch. 174, title I, § 23.)

SUBCHAPTER II.—INDUSTRIAL SAFETY

§ 36-431. Purpose of subchapter.

The purpose of this subchapter is to foster, promote, and develop the safety of wage earners of the District of Columbia in relation to their working conditions. (Sept. 19, 1918, ch. 174, title II, § 1, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section 4 of act Oct. 14, 1941, provided that: "This Act [this subchapter] shall become effective upon its approval by the President [Oct. 14, 1941]."

APPROPRIATIONS

Section 13 of title II of act Sept. 19, 1918, as added by section 3 of act Oct. 14, 1941, provided that: "There is hereby authorized to be appropriated, out of the revenues for the District of Columbia, a sum not to exceed \$15,000 per annum, or so much thereof as may be necessary, for the proper administration of this title [this subchapter]."

SEPARABILITY OF PROVISIONS

Section 14 of title II of act Sept. 19, 1918, as added by section 3 of act Oct. 14, 1941, provided that: "If any provision of this title [this subchapter], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this title [this subchapter], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

NOTES TO DECISIONS

1. Persons protected

This chapter creating the Minimum Wage and Industrial Safety Board affects the relationship between employer and employee only, and safety regulations promulgated by Board pursuant to § 36-434 did not apply to plaintiff, a wall paper hanger who was not an employee of defendant operator of wall paper company, who was injured when a rod flew out of a wall paper trimming machine owned by defendant and being used by plaintiff in hanging wall paper purchased by plaintiff from defendant. *Kurtz v. Capital Wall Paper Co.* (D. C. Mun. App. 1948, 61 A. 2d 470).

§ 36-432. Definitions.

When used in this subchapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

(a) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative, or foreman, or other persons having control or custody of any industrial employment place of employment, or of any employee. It shall not include the District of Columbia or any instrumentality thereof, or the United States or any instrumentality thereof.

(b) "Board" means the Minimum Wage and Industrial Safety Board.

(c) "Safe" and "safety" as applied to an employment, a device, or a place of employment, including facilities of sanitation and hygiene, mean such freedom from danger to life or health of employees as circumstances reasonably permit, and shall not be given restrictive interpretation so as to exclude any mitigation or prevention of a specific danger.

(d) "Place of employment" means any place where industrial employment is carried on: *Provided, however,* That such term shall not include the premises of any Federal or District of Columbia establishment, except to include any and all work of whatever nature being performed by an independent contractor for the United States Government or any instrumentality thereof or the District of Columbia or any instrumentality thereof.

(Sept. 19, 1918, ch. 174, title II, § 2, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

§ 36-433. Additional duties of Board under this subchapter.

The Board, in addition to its duties defined in subchapter I shall administer the provisions of this subchapter and shall have power to make such inspections and investigations as it may deem necessary; collect and compile statistical information; require employers to keep their places of employment reasonably safe; require employers to keep such records

as it may deem advisable and to furnish the Board with complete, detailed reports relative to all accidents; determine and fix reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment; promulgate general rules and regulations based upon such standards and fix the minimum safety requirements which shall be complied with by employers within the purview of this subchapter. (Sept. 19, 1918, ch. 174, title II, § 3, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

NOTES TO DECISIONS

In general 1
Coverage of regulation 2
Validity of regulations 3

1. In general

Congress has power to impose on employer in District of Columbia duty to ascertain at his peril whether his equipment, used by employees, complies with set minimum safety standards. *Davis v. District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

2. Coverage of regulation

A regulation of District of Columbia Industrial Safety Board that general slope of cross grain in side rails of portable ladders should not exceed one inch in fifteen inches was directed to employers using ladders in district rather than ladder manufacturers or retailers who might be located in any part of nation. *Davis v. District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

3. Validity of regulations

A regulation of District of Columbia Industrial Safety Board that general slope of cross grain in wood side rails of portable ladders built to minimum dimensions should not exceed one inch in fifteen inches was not unreasonable, either in general or as applied to employer using or causing his employees to use a ladder having greater slope of grain. *Davis v. District of Columbia* (D.C. Mun. App. 1948, 59 A. 2d 208).

Unreasonableness of requirement in regulation of District of Columbia Industrial Safety Board as to ladders that wood used in side rails thereof be dried to not more than specified moisture content did not render entire regulation, including provision as to maximum general slope of cross grain in such rails, unreasonable. *Id.*

§ 36-434. Rules and regulations—Public hearing—Publication—Effective date.

Before any rules or regulations of the Board shall become effective a public hearing shall be held by the Board for the purpose of investigating reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment, and any person interested in the matter being investigated may appear and testify. If, after investigation, the Board is of the opinion that minimum standards of safety requirements are necessary to protect or safeguard the lives or health of employees covered by this subchapter, it may adopt and promulgate such rules and regulations as it may deem advisable, which shall become effective thirty days after publication of notice at least once in a newspaper of general circulation in the District of Columbia that they have been adopted and copies are available to the public at the office of the Board. (Sept. 19, 1918, ch. 174, title II, § 4, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 4, and amended June 14, 1944, 58 Stat. 279, ch. 258.)

AMENDMENT

1944—Act June 14, 1944, amended section by deleting "they have been published at least once in two of the daily newspapers of general circulation in the District of Columbia.", and inserting in lieu thereof "publication of notice * * * office of the Board."

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

NOTES TO DECISIONS

1. Violation of safety regulations

Evidence sustained conviction for violations of certain safety regulations in connection with construction of a storm water sewer, based on defendant's failure to adequately shore a trench more than 15 feet in depth and 10 feet in length, in violation of safety standards. *East River Construction Corp. v. Dist. of Columbia* (D.C. Mun. App. 1960, 160 A. 2d 389).

§ 36-435. Authority to take testimony—Subpoena.

Any member of the Board shall have power to administer oaths and the Board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any session or any conference held by the Board. In case of disobedience to a subpoena the Board may invoke the United States District Court for the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In the case of contumacy or refusal to obey a subpoena, the court may issue an order requiring appearance before the Board, the production of documentary evidence and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, ch. 174, title II, § 5, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

§ 36-436. Variations by employers from regulations.

The Board may, upon written application of any employer affected by such rule or regulation, permit variations from any provisions thereof if it shall find that the application of such provision would result in unnecessary hardship or practical difficulty: *Provided, however,* That the Board shall keep a properly indexed record of all variations permitted from any rule or regulation which shall be open to public inspection. (Sept. 19, 1918, ch. 174, title II, § 6, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

§ 36-437. Employment of Director of Industrial Safety—Compensation—Duties.

The Board is hereby authorized to employ a Director of Industrial Safety, who shall not be a member of the Board and whose compensation shall be fixed in accordance with the Classification Act of 1949, as amended. The Director shall perform such duties as may be prescribed by the Board in administering the provisions of this subchapter. (Sept. 19, 1918, ch. 174, title II, § 7, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENT

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

§ 36-438. Employers' duties—Furnish safe place of employment—Furnish required information—Report employees' injury, death, or disease—Record of employees.

(a) Every employer shall furnish a place of employment which shall be reasonably safe for employees, shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably safe and adequate to render such employment and place of employment reasonably safe.

(b) Every employer shall furnish to the Board any information which the Board is authorized to require and shall make true and specific answers to all questions.

(c) Every employer shall submit to the Board within ten days from the date of any injury or death, or from the date that the employer has knowledge of any disease or infection resulting from any injury, a duplicate copy of the report provided for in section 930 of title 33, U.S. Code, as made applicable to the District of Columbia by sections 36-501 and 36-502.

(d) Every employer shall keep an accurate record of every person employed by him so as to be able in case of accident immediately to give an accurate record relative to same. (Sept. 19, 1918, ch. 174, title II, § 8, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

§ 36-439. Authority to examine place of employment.

(a)¹ The Board, or any officer or employee acting under its authority, shall have the authority, at any reasonable time, to enter any place where an employment covered by this subchapter is being carried on, and to examine any structure, tool, appliance, machinery, or process used in or connected with such employment. No employer or other persons shall refuse to admit any member of the Board or its authorized representative to any such place

¹ So in original. There is no subsec. (b).

or to permit any such examination. (Sept. 19, 1918, ch. 174, title II, § 9, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

§ 36-440. Office space and supplies for Board.

The Commissioners of the District of Columbia shall furnish the Board with such office space, furniture and equipment, stationery, books, books of reference, and other supplies as are necessary for the discharge of its duties under this subchapter. (Sept. 19, 1918, ch. 174, title II, § 10, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

§ 36-441. Annual report to Commissioners.

The Board shall annually, on or before the 1st day of July, file with the Commissioners of the District of Columbia a report covering its activities under this subchapter. (Sept. 19, 1918, ch. 174, title II, § 11, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3.)

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

§ 36-442. Penalties for violations of subchapter—Jurisdiction.

Whoever violates any of the provisions of this subchapter, or any rules or regulations promulgated hereunder, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not more than \$300, or by imprisonment of not exceeding ninety days. Prosecutions for violations of this subchapter shall be in the name of the District of Columbia on information filed in the Municipal Court for the District of Columbia by the corporation counsel or one of his assistants. (Sept. 19, 1918, ch. 174, title II, § 12, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

EFFECTIVE DATE

Section effective Oct. 14, 1941, see section 4 of act Oct. 14, 1941, set out as a note under section 36-431.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

NOTES TO DECISIONS

Burden of proof 1
Witnesses 2

1. Burden of proof

The burden is on employer, charged with violation of District of Columbia Industrial Safety Board's regulation, with its general authority, as to slope of cross grain in wood side rails of ladders, to demonstrate clearly that regulation is beyond board's delegated authority or so unreasonable as to be void. *Davis v. District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

2. Witnesses

One who had been an inspector for industrial safety board of District of Columbia for over five years, had previously been employed as carpenter, iron worker and rigger for large construction company for over thirty years, and was member of carpenters' and iron workers' unions, was

qualified to testify as expert that side rail of ladder showed cross grain of one inch in five inches in violation of board's regulation that slope of cross grain should not exceed one inch in fifteen inches. *Davis v. District of Columbia* (D. C. Mun. App. 1948, 59 A. 2d 208).

Chapter 5.—WORKMEN'S COMPENSATION

Sec.

36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

36-502. Exceptions.

§ 36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person. (May 17, 1928, 45 Stat. 600, ch. 612, § 1.)

EFFECTIVE DATE

Section 3 of act May 17, 1928, provided that: "This Act [adding this section and section 36-502] shall take effect July 1, 1928."

CROSS REFERENCE

Actions for wrongful death, generally see § 16-1201 et seq.

NOTES TO DECISIONS

Abatement 1
Accidental injury 2
Action of law 3
Aggravation of illness 4
Application of statute 5
Assumption of risk 6
Award 7
Causal relationship 8
Change in physical condition 9
Commissioner's finding of fact 10
Conflict of laws 11
Constitutionality 12
Contributory negligence 13
Death in the course of employment 14
Dependency 15
Disability, definition of 16
Elections of remedies 17
Employees' duties controlling 18
Employers' liability 19
Employment
 Outside state 20
 Relationship 21
Evidence 22
Exclusiveness of remedy 23
Federal jurisdiction 24
Finality of award 25
General contractor as "third person" 26
Impaired annual earning capacity 27
Injuries
 In course of employment 28
 Outside scope of employment 29
Injury, definition of 30
Insurance coverage 31
Jurisdiction 32
Legality of employment 33
Liability for
 Medical service 34
 Recurring injury 35
Limitation of action 36
Loss of
 Consortium 37
 Services 38
Partial dependency 39
Place of injury 40
Power of commission 41
Presumptions 42
Prior recovery 43
Progression of disease 44
Purpose 45
Questions of law 46
Recurrence of disability 47
Remand 48
Res judicata 49
Review 50
Right of action 51
Rights of employer 52

Sickness and disease 53
 Subrogation 54
 Subsequent injury 55
 Sufficiency of notice 56
 Summary judgment 57
 Sunstroke 58
 Third party, injury by 59
 Usual course of business 60
 Widow 61

1. Abatement

Where all matured installments had been paid at the date of compensation claimant's death without dependents the unmatured portion of the award abated. *Turner v. Christian Heurich Brewing Co.* (1948, 169 F. 2d 681, 83 U.S. App. D.C. 333).

2. Accidental injury

The evidence, particularly the testimony of the physician, justified the deputy commissioner in ruling that the paralysis was the natural result of the accidental injury. *Massachusetts Bonding & Ins. Co. v. Hoage* (1934, 69 F. 2d 575, 63 App. D. C. 89).

"Accidental injury" includes any injury which is unexpected or not designed, and just as much includes injury sustained by an employee subject to physical infirmities as injury to one who is strong and robust. *Commercial Casualty Ins. Co. v. Hoage* (1935, 75 F. 2d 677, 64 App. D. C. 158).

3. Action at law

An employee who elects to bring action at law against employer who failed to secure payment of compensation as required by section 932 of title 33, U. S. Code as authorized by section 905 of such title has affirmative duty of showing negligence equally as great as in any other tort action. *Garcia v. De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

4. Aggravation of illness

In suit by widow to set aside denial of benefits for death of husband who had been awarded compensation as having been totally and permanently disabled while on job by unexpected overexertion which materially aggravated preexisting aneurysm of abdominal aorta, evidence established that exertion materially aggravated diseased aortic condition, and that disabling effect of injury continued until death, and aggravation of pre-existing aneurysm of abdominal aorta, caused by unexpected overexertion, constituted "accidental injury" within meaning of Longshoremen's and Harbor Workers' Compensation Act. *Friend v. Britton* (1955, 220 F. 2d 820, 95 U. S. App. D. C. 139, certiorari denied 76 S. Ct. 72, 350 U. S. 836, 100 L. Ed. 745).

Where deceased's conduct demonstrates a sudden change in a pre-existing illness, the question arises whether that illness had been aggravated by the employment; and where upon a truck driver's return from a long and arduous trip he suddenly became obsessed with idea that he was being pursued by mob, with result that he was confined in jail, and was thereafter shot by police officer whom truck driver had violently attacked, wherein there was evidence of pre-existing nervous disorder, evidence was sufficient to warrant conclusion that death arose out of and in the course of employment. *Robinson v. Bradshaw* (1953, 206 F. 2d 435, 92 U. S. App. D. C. 216, certiorari denied 74 S. Ct. 226, 346 U. S. 899, 98 L. Ed. 399).

If an illness which itself is unrelated to the employment is nevertheless aggravated thereby and death is result, then the death is the result of an injury within the meaning of the Longshoremen's and Harbor Workers' Compensation Act, which is the compensation statute applicable in District of Columbia. *Id.*

5. Application of statute

Longshoremen's and Harbor Workers' Compensation Act is to be construed with view to its beneficent purposes, and doubts, including the factual, are to be resolved in favor of the employee or his dependent family. *Friend v. Britton* (1955, 220 F. 2d 820, 95 U. S. App. D. C. 139, certiorari denied 76 S. Ct. 72, 350 U. S. 836, 100 L. Ed. 745).

Longshoremen's and Harbor Workers' Compensation Act is remedial in character and is to be liberally construed, with doubts being resolved in favor of the employee or his dependent family. *Robinson v. Bradshaw.*

(1953, 206 F. 2d 435, 92 U. S. App. D. C. 216, certiorari denied 74 S. Ct. 226, 346 U. S. 899, 98 L. Ed. 399).

Death benefits under amendatory provision of Longshoremen's and Harbor Workers' Compensation Act which increased benefits payable and which stipulated that increase should be applicable only to injuries or death occurring on or after effective date of amendment, were payable for death of employee which occurred after effective date but which resulted from injury which happened prior to effective date. *Travelers Ins. Co. v. Toner et al.* (1951, 190 F. 2d 30, 89 U. S. App. D. C. 77, certiorari denied 72 S. Ct. 48, 342 U.S. 826, 96 L. Ed. 624).

To bring the case within the terms of the Employers' Liability Act, the defendant must have been at the time of the injury engaged as a common carrier in interstate commerce or commerce solely within the District, and the plaintiff-employee must have been employed by a carrier in such commerce or in work so closely related to it as to be practically a part of it. *Poff v. Washington Terminal Co.* (1934, 69 F. 2d 572, 63 App. D. C. 86).

There is no substantial reason for denying the District the right to enforce its own law in its own courts, and that in the circumstances the full faith and credit clause does not require that the statutes of Alabama be given effect. *United States Casualty Co. v. Hoage* (1935, 77 F. 2d 542, 64 App. D. C. 284).

An intent to bar compensation claims before they arise cannot fairly be imputed to Congress. *Potomac Elec. Power Co. v. Cardillo* (1940, 107 F. 2d 962, 71 App. D. C. 163).

Under the United States Employees' Compensation Act an injured employee of the United States has his sole remedy. *Posey v. Tennessee Valley Authority* (C.C.A. 5, 1938, 93 F. 2d 726).

Where salesman's office was in District of Columbia, though his selling contacts were largely outside and his time was nearly equally divided between the two, this section affording him protection for injuries while traveling outside the district in connection with his employment was valid and within power of Congress. *B. F. Goodrich Co. v. Britton* (1944, 139 F. 2d 362, 78 U. S. App. D. C. 221).

Whether employer was at time of injury engaged in business in District of Columbia and whether deceased was an employee within District in carrying on of the business, and when injured was performing services in connection with the employment, were important considerations in determining whether this section was applicable. *Id.*

Generally, employer must compensate workman for consequences of an accident although his previous defects cooperated in producing them, and a statute creating exceptions to that general principle should be narrowly construed. *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 325 U. S. 857, 89 L. Ed. 1977).

A workmen's compensation statute must be liberally construed and applied in favor of the workman. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (1960, 186 F. Supp. 938).

New York authorities interpreting New York Compensation Act, McKinney's Workmen's Compensation Law § 1 et seq., are particularly important in construing section 901 et seq. of title 33, U. S. Code, since former Act served as model for latter, which was made applicable to District of Columbia by this section. *Garcia v. De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

Where appellant was injured while working in appellee's car barn, he could not recover under § 44-401 of the Code since this section has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of this section. *Keffer v. Capital Transit Co.* (1950, 183 F. 2d 808, 87 U. S. App. D. C. 13).

Workmen's compensation acts are remedial statutes and must be liberally construed in favor of injured employees or deceased employees' dependent families. *Liberty Mutual Insurance Co. et al. v. Donovan et al.* (1954, 124 F. Supp. 320).

Congress did not, by enactment of wrongful death statute and compensation act applicable to District of Columbia, intend to create two separate and independent

causes of action for wrongful death, and there was no intention to allow a widow of an injured employee to recover from the employer under both acts. *Ciarrocchi v. James Kane Co. et al.* (1954, 116 F. Supp. 848).

Where subcontractor and its employee, who were both residents of the District of Columbia, entered into a contract of employment in the District of Columbia, and employee was injured in Virginia because of alleged negligence of general contractor, and employee and subcontractor's insurer, which had paid workmen's compensation to employee, sought recovery in Virginia from general contractor, on ground that general contractor negligently caused employee's injuries, courts in Virginia, including federal tribunals, could treat the District of Columbia Compensation Law with its privilege of suing the general contractor as a constituent of employee's contract of employment. *Liberty Mutual Ins. Co. v. Goode Const. Co.* (1951, 97 F. Supp. 316).

Where subcontractor and its employee, who were both residents of the District of Columbia, entered into a contract of employment in the District of Columbia, and employee was injured in Virginia because of alleged negligence of general contractor, employee and subcontractor's insurer which had paid workmen's compensation to employee, were entitled to maintain action in federal district court in Virginia against general contractor, on ground that general contractor negligently caused employee's injuries, though such action was not maintainable under Virginia compensation law. *Id.*

6. Assumption of risk

A ride by employee on running board of dump truck was not so obviously dangerous or risky a method of traveling a few hundred feet that employee assumed risk of injury. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

7. Award

Wage-earning capacity of the employee was diminished by reason of the injuries sustained by him in the course of and arising out of his employment. *Hartford Acc. & Indem. Co. v. Hoage* (1936, 85 F. 2d 420, 66 App. D. C. 163).

Medical and similar benefits which the employer is required to furnish are not to be counted in applying the \$7,500 limit of "total compensation" payable for death or injury, and it follows that compensation acts are to be "construed liberally in furtherance of the purpose for which they were enacted." *Cardillo v. Liberty Mut. Ins. Co.* (1939, 101 F. 2d 254, 69 App. D. C. 330).

When employee had hernia which caused disability, at first apparently temporary but later becoming permanent, this change is sufficient to support the modification of an award. *New Amsterdam Casualty Co. v. Cardillo* (1940, 108 F. 2d 492, 71 App. D. C. 172).

Where employee fell in course of his work and fractured right kneecap, but previous accidents, none of them connected with any employment, had fractured same kneecap and had led to amputation of left leg and left arm, and the fracture caused by the fall, combined with the previous fracture and amputations, caused permanent total disability, the employee was properly awarded compensation based on permanent total disability and on his earning capacity at time of the fall. *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 325 U. S. 857, 89 L. Ed. 1977).

8. Causal relationship

Fact that workman's death from coronary thrombosis occurred shortly after attack of chest pains was evidence of causal relationship between attack and death, as was strenuous nature of work prior to fatal attack. *Vendemia v. Cristaldi et al.* (1955, 221 F. 2d 103, 95 U. S. App. D. C. 230).

For purposes of compensation under Longshoremen's and Harbor Workers' Compensation Act, to hasten death is to cause it. *Id.*

9. Change in physical condition

There was, within the meaning of this section, a change in the injured person's physical condition in relation to the injury, since the condition, which was temporary at one time, had become permanent. *New Amsterdam Casualty Co. v. Cardillo* (1940, 108 F. 2d 492, 71 App. D. C. 172).

10. Commissioner's finding of fact

When evidence sustained the deputy commissioner's finding of suicide as opposed to accident, the court should not have disturbed an order denying compensation. *Del Vecchio v. Bowers* (1935, 56 S. Ct. 190, 296 U. S. 280, 80 L. Ed. 229).

Deputy commissioner, in a proceeding under Longshoremen's and Harbor Workers' Compensation Act, need not disclose his reasoning processes in reaching a conclusion, but court should have, to extent possible, deputy commissioner's views so as to be able to follow and appraise his application of law to the evidence. *Vendemia v. Cristaldi et al.* (1955, 221 F. 2d 103, 95 U. S. App. D. C. 230).

In proceeding under the Longshoremen's and Harbor Workers' Compensation Act, neither the District Court nor the Court of Appeals is a trier of facts. *United States Fidelity & Guaranty Co. v. Britton* (1951, 188 F. 2d 674, 88 U. S. App. D. C. 293).

The deputy commissioner's findings of fact, if supported by evidence, are conclusive. *Employers Liability Assur. Corp. v. Hoage* (1934, 69 F. 2d 227, 63 App. D. C. 53). See, also, *Malone v. Hoage* (1935, 73 F. 2d 855, 64 App. D. C. 38); *Maryland Casualty Co. v. Cardillo* (1940, 107 F. 2d 959, 71 App. D. C. 160); *London Guarantee & Accident Co. v. Britton* (1944, 138 F. 2d 932, 78 U. S. App. D. C. 195).

Cases in which an order of the Commissioner may be set aside as "not in accordance with law" are only those in which it appears that there is an error of law, or in which the order of the Commissioner is not supported by substantial evidence, as well, of course, in those in which it is arbitrary and unreasonable. *Whitfield v. Hoage* (1934, 71 F. 2d 690, 63 App. D. C. 237). See, also, *Groom v. Cardillo* (1941, 119 F. 2d 697, 73 App. D. C. 358).

As the question is solely the fact of employment, and, as this fact is an essential condition precedent to the right to make the claim, the proceeding in the court below was entirely proper, and Supreme Court will not overrule lower court unless findings are clearly wrong. *Metropolitan Casualty Ins. Co. v. Hoage* (1934, 72 F. 2d 175, 63 App. D. C. 307).

Deputy commissioner was justified in concluding that the death of the deceased arose at least in substantial part from his employment. *London Guarantee & Acc. Co. v. Hoage* (1934, 72 F. 2d 191, 63 App. D. C. 323).

Conclusion reached by deputy commissioner upon the facts found by him was contrary to law, and the claim of appellant should have been sustained when he was an employee at the time of the accident, at his place of duty, and engaged in his employment. *Scott v. Hoage* (1934, 73 F. 2d 114, 63 App. D. C. 391).

Chain of causation, beginning with the inhalation of the gas and ending in his death, as found by the deputy commissioner, is satisfactorily shown by the evidence. *National Casualty v. Hoage* (1936, 73 F. 2d 850, 64 App. D. C. 33).

Findings of the deputy commissioner upon the facts in compensation case are final and conclusive when supported by competent evidence. The act does not authorize the court to reweigh the evidence when more than one inference can be drawn for the purpose of arriving at a different conclusion from the deputy commissioner. *Fulton v. Hoage* (1935, 77 F. 2d 110, 64 App. D. C. 232).

Testimony supports the deputy commissioner's finding that the employee was "mentally incompetent" from the time of his injury to the time when his committee was appointed. *Hoage v. Terminal Refrigerating & Warehousing Co.* (1935, 78 F. 2d 1009, 65 App. D. C. 5).

Deputy commissioner, when passing upon the extent of injured person's vision, should not have excluded from consideration the assistance which he could receive from the use of glasses. *Washington Terminal Co. v. Hoage* (1935, 79 F. 2d 158, 65 App. D. C. 33).

Deputy commissioner is authorized to award compensation using as the basis for his average annual earnings such sum as shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury, having regard to "the previous earnings of the injured employee and of other employees of the same or most similar class." *Hartford Acc. & Indem. Co. v. Hoage* (1936, 85 F. 2d 411, 66 App. D. C. 154).

Deputy commissioner and the District Court were within their discretion in finding, in effect, that declarations concerning the injury were corroborated. *Associated General Contractors v. Cardillo* (1939, 106 F. 2d 327, 70 App. D. C. 303).

In workmen's compensation case, findings of a deputy commissioner, if supported by substantial evidence, are conclusive on court regardless of whether findings result in the grant or denial of a claim to compensation. *Carson v. Cardillo* (1943, 132 F. 2d 604, 77 U. S. App. D. C. 82).

In proceeding under this chapter, deputy commissioner's finding of fact is subject to review and reversal by a court only in a case in which the findings are not supported by substantial evidence. *Gudmundson v. Cardillo* (1942, 126 F. 2d 521, 75 U. S. App. D. C. 230).

Where district court determined that evidence did not support deputy commissioner's finding that at time of employee's death widow was living apart for justifiable cause, failure of district court to remand case to deputy commissioner for possible finding either that widow was dependent for support on employee or that she was living with him was not error where evidence would not have supported either finding. *Weeks v. Behrend* (1943, 135 F. 2d 258, 77 U. S. App. D. C. 341).

In proceeding under this chapter, Deputy Commissioner's findings as to jurisdiction are entitled to great weight and will be rejected only where there is apparent error. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Finding of Deputy Commissioner that injuries sustained by stenographer, who was struck by taxicab while on way to lunch, did not arise out of and in course of employment, was supported by evidence and was not inconsistent with law. *Wetzel v. Britton* (1948, 170 F. 2d 285, 83 U. S. App. D. C. 327).

In proceeding to obtain workmen's compensation for death of manager-cook, of lunch counter at drugstore, who was shot by customer whom manager-cook had ejected from drugstore, evidence sustained deputy commissioner's conclusion that deceased's death came within coverage of this section. *National Union Fire Ins. Co. v. Britton, Deputy Commissioner etc.* (1960, 187 F. Supp. 359).

Evidence sustained deputy commissioner's findings that musicians who were individually paid by proprietor of restaurant were employees of proprietor, notwithstanding facts that proprietor made no deductions from their compensation for social security and income taxes and no premiums for workmen's compensation were paid with regard to them. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (1960, 186 F. Supp. 938).

Evidence sustained deputy commissioner's findings that musicians who were paid \$10 wages a night, five days a week and who received tips had average wage of \$65 per week.

Evidence sustained deputy commissioner's finding that decedent's mother was dependent upon him. *Id.*

11. Conflict of laws

Maryland Workmen's Compensation Act, relieving principal contractor of common law liability to employees of his subcontractors if he has workmen's compensation insurance for their benefit, would be a bar to District of Columbia tort action brought against principal contractor by electrician employed in District of Columbia by subcontractor but injured while working on principal employer's project in Maryland. *Jonathan Woodner Co. v. Mather* (1954, 210 F. 2d 868, 93 U. S. App. D. C. 234, certiorari denied 75 S. Ct. 39, 348 U. S. 824, 99 L. Ed. 650).

State of employment can give workmen's compensation even though injury occurred in another jurisdiction which would provide workmen's compensation, on basis said to be exclusive; and state in which injury occurred can provide workmen's compensation even though state where contract of employment was made would also provide workmen's compensation, on a purportedly exclusive basis. *Id.*

12. Constitutionality

This section does not violate constitutional provision for jury trial. *Roulette v. Rothstein Dental Laboratories*, (1933, 63 F. 2d 150, 61 App. D. C. 373, certiorari denied 53 S. Ct. 657, 289 U. S. 736, 77 L. Ed. 1484).

This chapter, which makes factual decision of deputy commissioner final, does not violate the "due process of law" provision of U. S. Const. Amend. 5. *Gudmundson v. Cardillo* (1942, 126 F. 2d 521, 75 U. S. App. D. C. 230).

This chapter, construed as applying to case where there is some substantial connection between the District and the particular employee-employer relationship regardless of place of work or injury, fully satisfies any constitutional question of due process or full faith and credit. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

The provision in Longshoremen's Compensation Act that employer's liability for benefits under the act is exclusive and in place of all other liability of employer to employee and anyone else entitled to recover damages from employer does not cover damages from employer on account of such injuries does not deny due process to electric company barred by such provision from recovering contribution in third party action from gas company for injuries received by employee, to whom compensation had been paid, when gas company's crane came in contact with electric company's overhead high voltage power line. *Coates v. Potomac Electric Power Co.* (1951, 95 F. Supp. 779).

13. Contributory negligence

Contributory negligence of employee is no defense under section 904 (b) of title 33, U. S. Code, and this section. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

14. Death in the course of employment

Findings of deputy commissioner, in proceeding under Longshoremen's and Harbor Workers' Compensation Act, as to whether death of an employee arose out of and in the course of his employment, are to be accepted unless they are unsupported by substantial evidence on the record considered as a whole. *Robinson v. Bradshaw* (1953, 206 F. 2d 435, 92 U. S. App. D. C. 216, certiorari denied 74 S. Ct. 226, 346 U. S. 899, 98 L. Ed. 399).

In determining whether death arose out of employment, when store manager was accidentally killed by gunshot wound, evidence that his possession of pistol was reasonably necessary for performance of his duties was admissible. *Del Vecchio v. Bowers* (1934, 67 F. 2d 751, 62 App. D. C. 327).

Butcher's death which was caused by the violent wrench suffered by him when handling the calf permitting the escape of colon bacilli causing pus, and finally involving the lower lobe of the left lung resulting in pneumonia, was accidental. *Employer's Liability Assur. Corp. v. Hoage* (1937, 91 F. 2d 318, 67 App. D. C. 245).

This section creates a right of action against employer on account of death of employee arising out of and in course of employment, but it does not create a cause of action for wrongful death against any other person. *Webster v. Clodfelter* (1942, 130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280).

Heat stroke causing death of parking lot attendant was compensable as "arising out of and in course of employment." *Davison v. Cardillo* (1944, 143 F. 2d 154, 79 U. S. App. D. C. 121).

Where lease, occupancy permit, and insurance against fire and theft were all in name of operator of parking lot alone, both before and after making of "partnership agreement" with deceased parking lot attendant which contained no provision for distribution of profits, deceased was not a "partner," but an "employee," and his death was compensable. *Id.*

Where salesman was fatally injured in automobile accident while on way back to his office in District of Columbia from a business trip in Pennsylvania, the salesman's death was compensable since it "arose out of employment." *B. F. Goodrich Co. v. Britton* (1944, 139 F. 2d 362, 78 U. S. App. D. C. 221).

Where contract between employer and union required employer to furnish transportation for work outside District of Columbia and employer performed its contractual obligation by paying travel costs and allowing employees to select transportation method, Deputy Commissioner's finding that fatal injury, received by employee while driving his automobile homeward after terminating day's work, "arose out of and in course of employment", was justified even though employee was not being paid wages at time of accident. *Cardillo v. Liberty Mut. Ins.*

co. (1947, 67 S. Ct. 801, 330 U.S. 469, 91 L. Ed. 1028).

"Course of employment" within section 902 (2) of title 33, U.S. Code, may include incidents of social character, the correct criterion being involvement of the incident in the employment. *Hurley v. Lowe* (1948, 168 F. 2d 553, 83 U. S. App. D. C. 123, certiorari denied 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

"Course of employment" on a specified errand or business trip, ordered by an employer, to a place different from the regular place of employment, includes all the ordinary incidents of the errand, such as the eating of meals in ordinary places at ordinary times which the employer would normally contemplate as occurring in the course of errand. *Id.*

Where attorney employed by law firm in District of Columbia was sent by firm on business trip to another city and during course of dinner with his father and mother at restaurant in that city sustained an injury from which he died, conclusion of deputy commissioner that dinner was of a social character and that therefore injury was not sustained in "course of employment" was not "forbidden by law" or without any reasonable legal basis, and hence could not be disturbed by reviewing court, though contrary to court's opinion. *Id.*

In proceeding to recover compensation for deaths of musicians who were performing in a restaurant and who were shot and killed by persons who had been ejected as intoxicated and disorderly patrons but who had returned with firearms, in view of showing that musicians had completed their performance and had been paid off before the occurrence but that they had sat around the restaurant for their own personal purposes instead of immediately leaving, there was no substantial evidence justifying finding that they were murdered in course of their employment. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner, etc.* (1960, 186 F. Supp. 938).

Where musicians engaged to perform in restaurant had completed their performance for the evening and had been immediately paid but they remained at the restaurant for their own personal purposes for about a period of a half hour before persons who had been ejected during the evening as disorderly patrons returned and shot them to death, at the time they were shot, they were not on premises in course of their employment and were not in employment status under this section, and their deaths were not compensable thereunder. *Id.*

15. Dependency

For dependency within Longshoremen's and Harbor Workers' Compensation Act, there must be a legal or a voluntarily created status where the contributions are made for the purpose and have the result of maintaining or helping to maintain the dependent in his customary standard of living. *United States Fidelity & Guaranty Trust Co. v. Britton* (1951, 188 F. 2d 674, 88 U. S. App. D. C. 293).

The term "justifiable cause," in Longshoremen's Compensation Act, section 902 (16) of title 33, U. S. Code, defining widow, is used in its legal sense and ordinarily a wife who lives apart from her husband does so for what is called "justifiable cause" only when she does so because of her husband's matrimonial misconduct. *Weeks v. Behrend* (1943, 135 F. 2d 258, 77 U. S. App. D. C. 341).

Where employee and wife lived apart by mutual consent, so that employee would be eligible for relief, wife made no objection to employee's leaving and no attempt to rejoin him, and employee made no regular contributions to wife's support, the wife was not entitled to compensation under this chapter for death of employee on theory that she was living apart for "justifiable cause." *Id.*

Where employee and wife lived apart by mutual consent, employee made no regular contributions to wife's support, and wife testified in effect that she earned a modest living by running a rooming house which she and her brother owned, while her husband was on relief, evidence would not sustain award of compensation under this chapter on theory that the wife was "dependent for support" on the employee or that she was "living with" the employee. *Id.*

Partial dependency will sustain an award of compensation under the Longshoremen's Compensation Act, 33

section 901 et seq. of title 33, U. S. Code, but occasional contributions will not sustain a finding of partial dependency unless they are necessary and relied on. *Id.*

Compensation benefits rest solely upon statutory authority and the rights of beneficiaries are dependent upon and limited by the terms of section 901 et seq. of title 33, U. S. Code, the purpose of which is to protect a disabled employee and his dependents. *Turner v. Christian Heurich Brewing Co.* (1948, 169 F. 2d 681, 83 U.S. App. D. C. 333).

16. Disability, definition of

In construing statutory provision that if an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer should provide compensation only for disability caused by the subsequent injury, the relevant parts of the statutory definitions of "disability" and "injury" must be read in the place of the defined word "disability", so that the statutory phrase "combined with a previous disability" becomes "combined with a previous incapacity because of accidental injury arising out of and in course of employment". *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 325 U. S. 857, 89 L. Ed. 1977).

17. Election of remedies

Where widow had accepted award of benefits under Workmen's Compensation Act, all rights to damages had been superseded by provisions of act, and she could not maintain action against employer for loss of consortium for death of husband. *Brown v. Curtin & Johnson, Inc.* (1955, 221 F. 2d 106, 95 U. S. App. D. C. 234).

Under this chapter, which entitles injured employee to receive from his employer any excess over reimbursement which employer recovers from third party wrongdoer, injured employee's acceptance of compensation operates as an absolute transfer to the employer of substantive rights of injured employee against the wrongdoer and strips the employee of any further right until the employer recovers an amount in excess of his expenditures and only then a new right arises against the employer for the excess. *Moore v. Heckinger* (1942, 127 F. 2d 746, 75 U. S. App. D. C. 391).

Workmen's Compensation Act applicable to District of Columbia, providing in part that liability of an employer under act shall be exclusive and in place of all other liability, would have precluded employee from maintaining action for heart injury suffered while moving a piano in the course of his employment by defendant, if the injury had not resulted in death and thus his widow and children, who had accepted benefits of Compensation Act, could not maintain action under wrongful death statute making right of action dependent on whether decedent would have been able to maintain action for injury if death had not ensued. *O'Neil v. Shelton Bros. Trucking Co.* (1954, 116 F. Supp. 654).

An injured employee's mere acceptance of compensation payments from his employer without an award under Longshoremen's Compensation Act does not preclude him from thereafter electing to sue a third-party tort-feasor for damages. *Jordan v. District of Columbia* (1954, 116 F. Supp. 559).

In action against District of Columbia for personal injuries, defense that plaintiff waived right to recover damages from District by receiving compensation payments from his employer without an award under Longshoremen's Compensation Act was legally insufficient, where plaintiff filed notice of election to recover damages from District, instead of receiving compensation under act. *Id.*

The alternative remedy against an employer who fails to secure payment of compensation as required by section 901 et seq. of title 33, U. S. Code, provided by section 905 of title 33, U. S. Code, authorizing an election to claim compensation or to maintain action in law or in admiralty for damages on account of injury or death of employee is elective. *Garcia v. De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

Standard workmen's compensation and employers' liability policy obligating insurer to pay promptly any person entitled to payment under the compensation law,

and providing that all provisions of the law covered should remain part of policy, secured compensation to minor injured in course of employment while allegedly employed contrary to Child Labor Law, § 36-201 et seq., for any claim properly cognizable under the law, so that minor's remedy for workmen's compensation was exclusive, and minor could not maintain a common-law suit against employer for injuries, notwithstanding provision of policy obligating insurer to indemnify employer against loss by reason of liability imposed on him by law on account of injuries of employees "legally employed". *Mellen v. Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, affirmed 171 F. 2d 127).

18. Employees' duties controlling

Where main duty of deckhand employed on a stripper dredge was to coal up dredge from scow, and coal was used to fire engine which operated scoop shovel, deckhand was not a "member of a crew," and hence his claim for injuries was covered by the Longshoremen's Compensation Act, section 901 et seq. of title 33, U. S. Code, as made applicable to a District of Columbia employer and not by the Merchant Marine Act, section 688 of title 46, U. S. Code. *Beddoo v. Smoot Sand & Gravel Corporation* (1942, 128 F. 2d 608, 76 U. S. App. D. C. 39).

19. Employers' liability

An employer is responsible in the particulars and to the extent specified by the Workmen's Compensation Act for all legitimate consequences flowing from a compensable injury, but the liability so imposed measures an employee's entitlement. *Lindsay et al. v. George Washington University* (1960, 279 F. 2d 819, 108 U.S. App. D.C. 44).

The liability of an employer who is insured under the Workmen's Compensation Act is limited to the amount of damages prescribed. *Brown v. Curtin & Johnson Inc.* (1954, 117 F. Supp. 830, affirmed 221 F. 2d 106, 95 U. S. App. D. C. 234).

The liability of the employer under the Workmen's Compensation Act is exclusive. *Id.*

20. Employment outside state

In compensation proceeding under this chapter, evidence that offer of employment was made by employer's foreman in District of Columbia, that workman was not hired until he was put to work in Maryland, and that injury occurred in Maryland sustained deputy commissioner's finding that the employment relationship was created in Maryland and not in the District of Columbia and that the deputy commissioner did not have jurisdiction to make an award. *Gudmundson v. Cardillo* (1942, 126 F. 2d 521, 75 U. S. App. D. C. 230).

21. Employment relationship

In workmen's compensation proceeding, evidence supported commissioner's findings that defendants were claimant's "employers" within meaning of Longshoremen's and Harbor Workers' Compensation Act. *Harris v. Deputy Commissioner etc., et al.* (1955, 218 F. 2d 45, 95 U. S. App. D. C. 32).

Under this chapter, right to compensation depends on existence of relation of master and servant at time of injury. *Liberty Mut. Ins. Co. v. Cardillo* (1946, 154 F. 2d 529, 81 U.S. App. D.C. 72, reversed on other grounds 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Liability under this chapter is based, not on any act or omission of employer, but upon existence of relationship which employee bears to employment because of and in course of which he has been injured. *Id.*

While employee must have a reasonable time within which to leave employer's premises after his duties are finished for the day, if, for his own purposes, he tarries for some time after working hours, he is no longer in employment status under this section and any injuries sustained during that period are not compensable. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (1960, 186 F. Supp. 938).

22. Evidence

Where an employee within the provisions of this act is found dead and the evidence on the issue of accident or suicide is evenly balanced, the presumption created by section 20 (d) of the Longshoremen's and Harbor Workers' Compensation Act that the death was not suicidal, has not the quality of affirmative evidence, and the pre-

sumption may be invoked only where there is an entire lack of competent evidence. *Del Vecchio v. Bowers* (1935, 56 S. Ct. 190, 296 U.S. 280, 80 L. Ed. 229).

Evidence sustained award of Deputy Commissioner to claimant under the District of Columbia Workmen's Compensation Act, incorporating by reference the Longshoremen's and Harbor Workers' Compensation Act, on ground that claimant sustained permanent partial disability as result of injury sustained in course of employment. *Gilbane Building Company v. Britton* (1959, 264 F. 2d 574, 105 U. S. App. D. C. 101).

In proceeding under the Longshoremen's and Harbor Workers' Compensation Act, the evidence sustained finding of Deputy Commissioner that employee's mother, sister and brother were dependents within meaning of Act. *United States Fidelity & Guaranty Trust Co. v. Britton* (1951, 188 F. 2d 674, 88 U. S. App. D. C. 293).

Evidence showed quite clearly that the possession of the pistol was reasonably necessary in the duty which deceased owed to protect his employer's property and his own life. *Del Vecchio v. Bowers* (1933, 67 F. 2d 751, 62 App. D. C. 327).

To justify an award there must have been some substantial connection between the alleged accident and the employment. *Hoage v. Liberty Mut. Ins. Co.* (1935, 78 F. 2d 874, 64 App. D. C. 395).

The weight of the evidence is for the deputy commissioner and not for the courts under the Compensation Act. *Potomac Elec. Power Co. v. Cardillo* (1940, 107 F. 2d 962, 71 App. D. C. 163).

Where employee sustained toe injury in October which was followed by protracted infection, debility, and lowered resistance, and carbuncle appeared in June following, in workmen's compensation proceeding, fact that expert opinion regarding the links before the carbuncle was not unanimous might have detracted from its weight as evidence, but it did not destroy its substantiality. *Great American Indemnity Co. v. Cardillo* (1943, 135 F. 2d 241, 77 U. S. App. D. C. 306).

Where employee sustained toe injury in October which was followed by protracted infection, debility, and lowered resistance, and carbuncle appeared in June following, and causal relation between carbuncle, subsequent hip injury, osteomyelitis, and osteoporosis, which caused temporary total disability, was admitted, evidence that causal relation existed between the toe injury and the temporary total disability supported an award of compensation. *Id.*

In workmen's compensation proceeding presenting question whether this section was applicable to injuries sustained in Virginia, evidence sustained finding that employer, which had main office in New York, was engaged in construction work under three separate contracts, two located in the District and one in Virginia, that employer had an office in the District, that injured workmen's contract of employment was made in the District, and that no separate contract of employment was made when he was transferred from one job to another. *Travelers Ins. Co. v. Cardillo* (1944, 141 F. 2d 364, 78 U.S. App. D.C. 394).

Evidence supported finding that claimant, who was injured when brushed from running board of truck, had observed his fellow workers riding on the running board of truck. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

Appellant's contention that the act was not applicable since the employer had not obtained insurance covering his injury as required by the act, is clearly contrary to the evidence presented. *Mellen v. Hirsch* (1949, 171 F. 2d 127).

In proceeding on claim for compensation under provisions of Longshoremen's and Harbor Workers' Compensation Act, deputy commissioner of bureau of employees' compensation improperly admitted into evidence police record of claimant disclosing not only prior criminal convictions but also prior convictions of crimes not within the meaning of statute regarding the admission of evidence to affect credibility of a witness who has been convicted of a crime and arrests which did not result in convictions. *Colter v. C. Einbinder, Deputy Commissioner, etc.* (1960, 184 F. Supp. 523).

Conclusions of deputy commissioner that employee's tuberculosis was contracted during employment and out of the employment because of aggravated risk resulting

from employee's being sent by employer to work in Japan, which has a comparatively high incidence rate of tuberculosis, were reasonably supported by evidence. *Travelers Insurance Co. v. Donovan* (1955, 125 F. Supp. 261, affirmed 221 F. 2d 886, 95 U. S. App. D. C. 331).

A finding of Deputy Commissioner of District of Columbia Bureau of Employees' Compensation that death of night watchman as result of coronary occlusion arose out of his employment within Longshoremen's Compensation Act, applicable as District's workmen's compensation law, was supported by substantial evidence, whether such occlusion occurred immediately before or after deceased slipped and fell down stairway in course of his employment. *Liberty Mutual Insurance Co. et. al. v. Donovan et al.* (1954, 124 F. Supp. 320).

In action to review award of compensation under Longshoremen's Compensation Act, applicable as District of Columbia workmen's compensation law, for employee's death, District Court may not substitute its own judgment for finding of Deputy Commissioner of District Bureau of Employees' Compensation, supported by substantial evidence, that death arose out of decedent's employment. *Id.*

In prosecution of employer for failing to secure payment of compensation as required under the Workmen's Compensation Act, employer's payroll books, which had been legally obtained from former employees of employer, were properly admitted in evidence as one link in chain of evidence to prove that employer was an employer during period alleged in information, however incriminating books might be. *Tyree v. United States* (D.C. Mun. App. 1959, 155 A. 2d 914).

23. Exclusiveness of remedy

Exclusive remedy provision of the Workmen's Compensation Act barred a suit by an employee, against his employer, for damages for alleged malpractice at employer's hospital in treatment of a compensable injury, and fortuity that employer operated the hospital where the professional services complained of were rendered was immaterial. *Lindsay et al. v. George Washington University* (1960, 279 F. 2d 819, 108 U.S. App. D.C. 44).

The compensation provided by officers' mess for injuries to civilian employees of the mess was employee's exclusive remedy against the United States and he could not recover under Tort Claims Act though private insurance carrier was compensation insurer of the mess. *Aubrey v. United States* (1959, 254 F. 2d 768 103 U. S. App. D. C. 65).

In District of Columbia, Longshoremen's and Harbor Workers' Compensation Act is the exclusive remedy for injuries occurring in course of employment. *Reeves v. Hot Shoppes, Inc., and C. Kittredge* (1960, 184 F. Supp. 436).

Defense that injury in District of Columbia occurred in course of employment is not an affirmative defense which may be treated or waived, but goes to jurisdiction of court. *Id.*

Where gas company employee recovered longshoremen's compensation for injuries, electric company sued by employee for injuries received when gas company's crane came in contact with electric company's overhead high voltage power line was barred from recovering contribution from gas company in third party action by provision in Longshoremen's Compensation Act that employer's liability for benefits under the Act is exclusive and in place of all other liability of employer to employee and to anyone else entitled to recover damages from employer on account of such injuries. *Coates v. Potomac Electric Power Co.* (1951, 95 F. Supp. 779).

24. Federal jurisdiction

Where Longshoremen's and Harbor Workers' Compensation Act had been made applicable in District of Columbia as a workmen's compensation law, suit by employer's insurer as statutory assignee under Act against third party tort-feasors would involve a federal question under Longshoremen's and Harbor Workers' Compensation Act and Act was a law of United States within meaning of statute authorizing federal jurisdiction if cause of action arises under federal statute. *City Stores Company v. Shull* (1958, 161 F. Supp. 459).

25. Finality of award

Trial court's action in dismissing defendant's suit to set aside supplementary order, declaring amount in default in workmen's compensation proceeding, and in entering judgment for amount in default was not error, where defendants were notified of application for such supplementary order and failed to respond thereto. *Harris v. Deputy Commissioner et. al.* (1955, 218 F. 2d 45, 95 U. S. App. D. C. 32).

26. General contractor as "third person"

Since the District of Columbia Compensation Law is an adaptation of the Longshoremen's and Harbor Workers' Compensation Act, it will by analogy be interpreted to render a general contractor suable as a "third person" by an employee of a subcontractor. *Liberty Mutual Ins. Co. v. Goode Const. Co.* (1951, 97 F. Supp. 316).

27. Impaired annual earning capacity

In determining impaired annual earning capacity of an injured employee under the Longshoremen's and Harbor Workers' Compensation Act as made applicable to the District of Columbia, "general earnings" are not restricted to employments or types of employment but rather extend to individual earnings. *Liberty Mutual Insurance Co. v. Britton, Deputy Commissioner et al.* (1956, 233 F. 2d 699, 98 U.S. App. D.C. 208, certiorari denied 77 S. Ct. 214, 352 U.S. 918, 1 L. Ed. 2d 122).

In workmen's compensation proceedings for injuries sustained by employee when he fell some 45 feet during installation of an elevator, evidence sustained finding of employee's impaired earning capacity. *Id.*

In awarding workmen's compensation based on impaired capacity to earn, previous earnings from a job other than the one in which the injury was sustained were properly considered along with previous earnings of the injured employee in the employment in which he was working at the time of the injury, even though the job at which employee was injured was full year-round employment. *Id.*

28. Injuries in the course of employment

Evidence held sufficient to show that warehouse manager was injured in the course of his employment, when injury occurred while he was on his way to the warehouse on Sunday. *Voehl v. Indemnity Ins. Co.* (1933, 53 S. Ct. 380, 288 U. S. 162, 77 L. Ed. 676).

Where coworker on third floor level was handing down to employee on ground planks weighing some 90 pounds each and employee collapsed while on the job, and it was found that he had suffered a paralysis of his right side due to occlusion of a cerebral vessel and that his "strenuous work" as found by deputy commissioner had accelerated a severe pre-existing, but symptom-free, diastolic hypertension, and also diagnosed was a sclerosis of the cerebral arteries, findings of district court that employee's injury arose out of and in course of his employment did not lack substantial support in the evidence. *General Accident Fire & Life Assurance Corp. et al. v. Donovan, Deputy Commissioner, etc.* (1958, 251 F. 2d 915, 102 U.S. App. D.C. 204, reconsideration denied 251 F. 2d 961, 102 U.S. App. D.C. 207).

Garage employee proved by sufficient evidence to be employee and entitled to compensation for injury. *Lumbermens Mut. Casualty Co. v. Hoage* (1932, 58 F. 2d 1072, 61 App. D. C. 171).

In a claim for compensation on ground of relationship of employer and employee, evidence warranted finding that relation was that of partnership. *Georgia Casualty Co. v. Hoage* (1932, 59 F. 2d 870, 61 App. D. C. 195).

Newspaper solicitor, when in the course of his employment has to pass along the public streets and thereby sustains an accident by reason of the risks incident to the streets, the accident "arises out of" as well as "in the course of" his employment. *New Amsterdam Casualty Co. v. Hoage* (1933, 62 F. 2d 468, 61 App. D. C. 306).

An injury "arises out of" the employment within the meaning of the Compensation Act when it occurs in the course of the employment and as the result of a risk involved in or incidental to the employment or to the conditions under which it is required to be performed, and the mere fact that the injury is contemporaneous or co-incident with the employment is not a sufficient basis for an award. *Speaks v. Hoage* (1935, 78 F. 2d 208, 64 App. D. C. 324).

Injury suffered by an insurance agent, on the way home, when superior ordered him home, was compensatable as occurring in and arising out of the course of employment. *Proctor v. Hoage* (1936, 81 F. 2d 555, 65 App. D. C. 153).

Although there were instructions by superior that employee should not touch anything alive, it was not sufficient to prevent action as one "arising out of and in the course of employment," when employee was electrocuted while repairing cylinder on street car. *Capital Transit Co. v. Hoage* (1936, 84 F. 2d 235, 65 App. D.C. 382).

When a chef was stabbed by a crazed stranger, the injuries "arose out of and in the course of his employment." *Hartford Acc. & Indem. Co. v. Hoage* (1936, 85 F. 2d 417, 66 App. D.C. 160).

Evidence that claim adjuster handled more than 250 cases a month, being a great many in excess of adjuster's monthly capacity, and as a result suffered a severe spasm of angina pectoris which in turn resulted in coronary thrombosis, it was an accidental injury which is any injury unexpected or not designed. *Hoage v. Royal Indem. Co.* (1937, 90 F. 2d 387, 67 App. D. C. 142).

An unexpected attack upon a cook in a restaurant who was killed by a bus boy during altercation regarding boy's work "arose out of the employment." *Maryland Casualty Co. v. Cardillo* (1938, 99 F. 2d 432, 69 App. D. C. 199).

Injury which the employee received was a direct result of the position in which he was placed by the order of his superior and it therefore arose out of his employment. *Williams v. American Employers Ins. Co.* (1940, 107 F. 2d 953, 71 App. D. C. 153).

Injuries sustained by employee while driving automobile owned and kept by employer for employer's personal use, such driving being under the exclusive supervision and control of employer, were injuries arising out of and in the course of employment. *Id.*

Injury sustained by driver-employee while returning from lunch arose out of and in the course of employment. *Cardillo v. Hartford Acc. & Indem. Co.* (1940, 109 F. 2d 674, 71 App. D. C. 330).

Where one employed in a produce warehouse was engaged in loading a truck, and a checker, his superior, addressed him repeatedly as "Shorty" which the loader resented and called his superior a vile name, for which the superior assaulted him, inflicting injuries, the employee is entitled to compensation, the injury having arisen out of, and in course of, his employment. *Hartford Acc. & Indem. Co. v. Cardillo* (1940, 112 F. 2d 11, 71 App. D.C. 330).

To justify an award under the Longshoremen's Compensation Act, section 901 et seq. of title 33, U. S. Code, there must be a direct causal connection between the employment and the injury, whether it is the result of accident or disease. *Groom v. Cardillo* (1941, 119 F. 2d 697, 73 App. D. C. 358).

An injury "arises out of employment" within Longshoremen's Compensation Act, section 901 et seq. of title 33, U. S. Code, if it is caused by the environment, whether inanimate, animal, or human, to which the employment exposes the employee, and it does not matter whether he is struck by a machine, a mule or a man so long at least as he does not provoke the attack, and an assault by a stranger or a fellow employee clearly "arises out of the employment" where the employment provides the motive for the assault. *Penker Const. Co. v. Cardillo* (1941, 118 F. 2d 14, 73 App. D. C. 168).

Where employer arranged to furnish employee transportation to and from work in employer's truck which regularly passed employee's home in lieu of a requested increase in salary and employee was struck by another vehicle while crossing road to where employer's approaching truck would stop, employee's injuries "arose out of and in course of employment" since the risks attendant on employee's crossing the road were incident to transportation in the truck and were assumed for the mutual convenience of the parties. *Ward v. Cardillo* (1943, 135 F. 2d 260, 77 U. S. App. D. C. 343).

The general rule that injuries sustained by employee when going to or returning from regular place of work are not deemed to "arise out of and in course of employment" is subject to exceptions, one of which is where the employer contracts to and does furnish transportation to and from work. *Id.*

An injury arises "out of employment" when it occurs in the course of employment and as a result of risk involved in or incidental to the employment or to conditions under which it is required to be performed. *Ackerman v. Cardillo* (1944, 140 F. 2d 348, 78 U. S. App. D. C. 310).

Where employee was an ice technician working at public skating rink and stadium, his duties required that he be on job during the night, and for his and his employer's convenience he slept in small room underneath stadium seats and while in room was assaulted and injured, and where explanations of the injury which were consistent with liability were just as plausible as those which would avoid liability, court would not reverse finding that injury arose out of employment. *Travelers Ins. Co. v. Cardillo* (1944, 140 F. 2d 10, 78 U. S. App. D. C. 255).

Where injuries occurred while employee was on premises in connection with his employment, presumption existed that injuries arose out of his employment, unless contrary was shown. *Id.*

Where store manager sent employee to get lunch for all three employees to save time on exceptionally busy day, and employee was struck by automobile while carrying out manager's direction, the employee's fatal injury arose "out of and in course of employment." *London Guarantee & Accident Co. v. Britton* (1944, 138 F. 2d 932, 78 U. S. App. D. C. 195).

Where employee stepped on running board of dump truck, intending to hitch a ride on way to exit from employer's premises after work but employee was brushed from running board by a support post and was injured, evidence supported finding that injury arose out of and in course of employment. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

Generally, injuries sustained by employees when going to or returning from their regular place of work do not "arise out of and in course of employment", but exception exists where employer requires employees to travel on highways, where employer contracts to and does furnish transportation to and from work, where employee is subject to emergency calls, or where employee uses highway to do something incidental to his employment, with knowledge and approval of employer. *Liberty Mut. Ins. Co. v. Cardillo* (1946, 154 F. 2d 529, 81 U.S. App. D.C. 72, reversed on other grounds 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Under this chapter, the presence or absence of control by employer over acts and movements of employee during transportation to or from work is a factor to be considered in determining whether injury during transportation arose out of and in course of employment, but is not decisive. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 610).

Injury sustained while an employee is going to or from lunch does not as a positive rule of law, without reference to particular facts, arise out of and in course of employment within section 902 (2) of title 33, U. S. Code. *Wetzel v. Britton* (1948, 170 F. 2d 285, 83 U.S. App. D. C. 327).

Where, in course of performance of his duties, or in protection of employer's property, employee uses excessive force as result of bad judgment or recklessness, such circumstance does not deprive employee of benefits of this section. *National Union Fire Ins. Co. v. Britton, Deputy Commissioner etc.* (1960, 187 F. Supp. 359).

Where employee is injured solely as result of act which employee commits with a willful intention to injure or kill another, no workmen's compensation is payable. *Id.*

Generally, an injury sustained by an employee while traveling to and from work is not within scope of workmen's compensation law, but, in District of Columbia, where employer has agreed to, and does furnish, employee with transportation, transportation becomes incident of contract of employment, and any injuries to employee while traveling are within course of employment and within scope of compensation law. *Shreve v. Hot Shoppes, Inc.* (1960, 184 F. Supp. 436).

Where employer had agreed to transport employee home, injury sustained by employee while being driven by person to whom employer had delegated this duty was not, as a matter of law, outside the District of Columbia Workmen's Compensation Law. *Id.*

An employee's injury, occurring on employer's premises during employee's working hours, is presumed to have

arisen out of his employment within Longshoremen's Compensation Act applicable as District of Columbia workmen's compensation law, unless contrary is shown. *Liberty Mutual Insurance Co. v. Donovan* (1954, 124 F. Supp. 320).

While presumption that employee's injury, occurring on employer's premises, arose out of employment within Longshoremen's Compensation Act, applicable as District of Columbia workmen's compensation law, is not evidence, it shifts burden of going forward with evidence to overcome presumption. *Id.*

29. Injuries outside scope of employment

A finding of Deputy Commissioner that employee's disability because of Parkinson's disease was not caused by automobile collision while he was driving to work was supported by substantial evidence, so that Deputy Commissioner properly denied employee's claim for compensation under Longshoremen's Compensation Act. *Richardson v. Britton* (1951, 192 F. 2d 423, 89 U. S. App. D. C. 391, certiorari denied 72 S. Ct. 676, 343 U.S. 920, 96 L. Ed. 1334).

Deputy commissioner was right in holding that the injury sustained did not occur in the course of the deceased's employment, when he was not at the time of the occurrence performing any service which he was required to do by virtue of his employment as financial secretary of the lodge. *Morgan v. Hoage* (1934, 72 F. 2d 727, 63 App. D. C. 355).

When employee went on roof of building during lunch hour for a rest and fresh air, but fell into a ventilator shaft the injury did not arise "out of the employment." *Monahan v. Hoage* (1937, 90 F. 2d 419, 87 App. D.C. 174).

Injuries sustained by an employee in a personal difficulty with another employee of the same employer, having no relation to the employment itself and in which there is no causal connection between the injury and the employment, are not compensable. *Fazio v. Cardillo* (1940, 109 F. 2d 835, 71 App. D. C. 264).

The mere fact that an injury is contemporaneous or coincident with the employment is not a sufficient basis for an award under the Longshoremen's Compensation Act, section 901 et seq. of title 33, U. S. Code. *Groom v. Cardillo* (1941, 119 F. 2d 697, 73 App. D. C. 358).

In workmen's compensation proceeding, evidence sustained finding that following removal of last load of freight from railroad box car claimant lifted fellow worker off floor, that in ensuing struggle both fell and that claimant's resulting injury was not sustained in course of employment. *Ackerman v. Cardillo* (1944, 140 F. 2d 348, 78 U. S. App. D. C. 310).

Where following removal of freight from railroad box car claimant lifted coworker from floor and in ensuing struggle both fell to floor with resulting injury to claimant and claimant during same morning and against remonstrances of intended victim had indulged in similar prank, the injury did not "arise out of and in course of employment." *Id.*

30. Injury, definition of

Any attack of an occupational disease, whether an initial one or one following a symptom-free period, if it arises naturally out of the employment, is an "injury" within definition of term in Longshoremen's Compensation Act. *Cadwallader v. Sholl* (1952, 196 F. 2d 14, 89 U.S. App. D.C. 285, certiorari denied 72 S. Ct. 1061, 343 U. S. 966, 96 L. Ed. 1363).

Under provision of section 902 (2) of title 33, U. S. Code, that injury means accidental injury or death arising out of and in course of employment, "injury" comprises alternative events, and it is not necessary that both "accidental injury" and "death" occur in order that "injury" occur. *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U. S. App. D. C. 309, certiorari denied 65 S. Ct. 1185, 325 U. S. 857, 89 L. Ed. 1977).

31. Insurance coverage

Bridge constructor's employee's electrocution, as result of crane's coming into contact with power line after lifting beam from assured's truck but prior to placing beam in position which it was eventually to occupy in new structure, occurred during the "unloading" of assured's truck, for purposes of "loading and unloading"

clause of automobile liability policy. *Indemnity Insurance Company of N. A. v. Old Dominion Hoisting Service* (1958, 251 F. 2d 382, 102 U. S. App. D. C. 141).

32. Jurisdiction

Under this chapter, Deputy Commissioner had jurisdiction to entertain a claim by widow of an employee who had been a resident of District, who had been employed by a District employer, and who had been subject to work assignments in the District, although employee was assigned to work outside District at time fatal injury was received. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

In proceeding under District of Columbia Workmen's Compensation Act, Deputy Commissioner's findings as to jurisdiction are entitled to great weight and will be rejected only where there is apparent error. *United States Fidelity and Guaranty Co. v. Donovan* (1954, 221 F. 2d 515, 94 U. S. App. D. C. 377).

To give Deputy Commissioner jurisdiction to award compensation, employee killed or injured need not have been working at time within the District of Columbia, and he would be within the intent and design of the statute when employer's office, the place of hiring, the employee's residence and other factors provide substantial connection between the district and the particular employee-employer relationship. *Id.*

The District Court had jurisdiction of action by administrator for balance due on compensation award to plaintiff's decedent although amount owing at time of decedent's death was less than \$3,000. *Turner v. Christian Hewrich Brewing Co.* (1948, 169 F. 2d 681).

33. Legality of employment

The Longshoremen's and Harbor Workers' Act, section 901 et seq. of title 33, U. S. Code, made applicable in the District of Columbia as a workmen's compensation act, is applicable to illegally employed employees, as well as to legally employed employees. *Mellen v. Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, affirmed 171 F. 2d 127).

34. Liability for medical service

The employer is liable for all legitimate consequences following an accident, including unskillfulness or error of judgment of the physician furnished as required, and the employee is entitled to recover under the schedule of compensation for the extent of his disability, based on the ultimate result of the accident, regardless of the fact that the disability has been aggravated and increased by the employer's selected physician, and this remedy is exclusive. *Fernandez v. Gantz* (1953, 113 F. Supp. 763).

Where award of compensation was based upon the ultimate result of the accident, including results of malpractice of physician furnished by employer, employer and its insurance carrier were not answerable in damages beyond the award of compensation, when it was not alleged that there had been negligence in selection of the physician. *Id.*

Where physician called defendant's manager and asked if it was all right for him to treat an employee and manager said it was all right if patient would retain him, it constituted sufficient authorization rendering defendant liable for medical services rendered. *Skolnick v. Swagart* (D. C. Mun. App. 1949, 66 A. 2d 523).

35. Liability for recurring injury

Where claimant contracted tuberculosis while serving as a visiting nurse during period of policy issued by prior compensation carrier, and disability occurred again 12 years later during term of policy issued by subsequent carrier, liability would be imposed upon the carrier which was on the risk at time of occurrence of injury bearing the requisite causal relationship to the disability giving rise to the claim. *American Casualty Co. v. Britton, Deputy Commissioner, etc.* (1956, 227 F. 2d 16, 97 U.S. App. D.C. 1).

36. Limitation of action

When injured employee elected to sue a third person and obtained judgment against tort-feasor, which was reversed, the employee then tried to proceed without paying costs and not being successful tried in forma pauperis, and then discontinued action, it was held that the employee was not entitled to compensation for the statute of limitations had run and employee failed to pursue the

third-party remedy to final judgment. *Chapman v. Hoage* (1935, 78 F. 2d 233, 64 App. D. C. 349).

Provisions relating to the time within which the claimant shall present and prosecute his claim are essential parts of the procedure, and the court accordingly cannot revive a claim when barred by the limitations contained in the act. *Shugard v. Hoage* (1937, 89 F. 2d 796, 67 App. D. C. 52).

Where a statute gives a right unknown to the common law, and limits the time within which an action shall be brought to assert it, the limitation defines and controls the right. *Young v. Hoage* (1937, 90 F. 2d 395, 67 App. D. C. 150).

Statute of limitations applicable to this case and action must be brought by the personal representative within one year from the date of the death, or the employer must have vested in him within one year from the date of the death of the employee the right of the personal representative to bring such action. *Chapman v. Griffith-Consumers Co.* (1940, 107 F. 2d 263, 71 App. D. C. 64).

The limitation does not begin to run until the claim to compensation arises, the term "injury" being equivalent to "compensatable injury." *Potomac Elec. Power Co. v. Cardillo* (1940, 107 F. 2d 962, 71 App. D. C. 163).

Where defendant caused death of employee of another under such circumstances that, if death had not ensued, the employee would have been entitled to maintain action against defendant or to recover compensation under this section, death action instituted under section 1201 of title 16, U. S. Code, within one year after appointment of guardian for employee's infant son but more than one year after death was barred by limitation of section 1202 of title 16, U. S. Code, notwithstanding employees' compensation act provision that one year limitation on right to compensation for death should not be applicable to infants until appointment of guardian. *Webster v. Clodfelter* (1942, 130 F. 2d 434, 76 U. S. App. D. C. 171, 143 A. L. R. 280, certiorari denied 63 S. Ct. 261, 317 U. S. 689, 87 L. Ed. 552).

This section does not alter the period of limitations in section 1202 of title 16, U. S. Code. *Id.*

Where action for wrongful death was not filed within one year after the death as provided by section 913 of title 33, U. S. Code, action was barred notwithstanding that decedent if he had lived would have been entitled to compensation from his employer or his employer's insurance carrier and action was brought within one year after appointment of guardian for decedent's infant son, which was timely under Longshoremen's Compensation Act, since cause of action against third persons was not affected by the compensation act. *Id.*

Where decedent's employer and employer's insurer to their own use and use of widow and use of executor of estate of decedent brought action for wrongful death of employee against third party tort-feasors and second amended complaint indicated that sole plaintiff was employer, allowance of reinstatement of employer's insurer as plaintiff in third amended complaint would not assert a new cause of action, but merely reassert a cause of action, the jurisdictional basis of which was the same, in part, alleged to have existed in original, amended, and second amended complaints and cause of action would not be barred by Statute of Limitations. *City Stores Company v. Shull* (1958, 161 F. Supp. 459).

37. Loss of consortium

Payment of compensation under Longshoremen's and Harbor Workers' Compensation Act barred claim of employee's wife against employer for loss of consortium. *Thomas v. Central Linen Co.* (1959, 263 F. 2d 495, 105 U. S. App. D. C. 49).

Wife of injured employee was barred by the Workmen's Compensation Act from maintaining an action against his employer for loss of consortium as result of injuries sustained by employee while working for employer, on ground that employer was negligent. *Smither and Company v. Coles* (1957, 242 F. 2d 220, 100 U. S. App. D. C. 68, certiorari denied 77 S. Ct. 1299, 354 U. S. 914, 1 L. Ed. 2d 1129).

38. Loss of services

Where plaintiff's husband elected to file suit against third-part tort-feasor thereby electing not to receive workmen's compensation and a settlement was reached in which the wife joined, wife was not entitled to re-

cover against the husband's employer for loss of services resulting from the injury to the husband occurring in the course of his employment. *Hilton v. Fifteen Hundred Mass. Ave. Inc.* (1958, 261 F. 2d 377, 104 U. S. App. D. C. 259).

39. Partial dependency

A partial dependency falls within the statute as well as a complete or total dependency. *Harris v. Hoage* (1933, 66 F. 2d 801, 62 App. D. C. 275).

40. Place of injury

As respects liability of employer carrying on any employment in the District of Columbia to injured employee under this section, it was immaterial that injury occurred in Maryland. *Moyer v. Cardillo* (1941, 119 F. 2d 785, 73 App. D. C. 261).

Where employer, with main office in New York, maintained office and store yard in District of Columbia, workman's contract of employment was made in the District, employer was engaged in construction work under three contracts, two located in District and one in Virginia, and injured workman's contract of employment was made in the District but he was transferred from one job to another, injury sustained in Virginia was to an employee of an employer carrying on employment in the District so that this section was applicable even though the work was being performed on a federal job on land owned by the United States. *Travelers Ins. Co. v. Cardillo* (1944, 141 F. 2d 364, 78 U. S. App. D. C. 394).

Where resident of District of Columbia was employed by construction company which had its principal office in the District and at time of injury and prior thereto was engaged in construction work in the District and in immediate vicinity, the employer was carrying on employment in the District and this section was applicable even though work being done at time of injury was on a federal job on property owned by the United States in Maryland. *Travelers Ins. Co. v. Cardillo* (1944, 141 F. 2d 362, 78 U. S. App. D. C. 392).

Even though the Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of title 33, U. S. Code, was adopted as the Compensation Law of the District of Columbia, section 903 (a) of said Act excluding jurisdiction of injuries compensable under state law, has no place in this section, which expressly extends its provisions to cases of injury or death, irrespective of the place where either occurred. *Id.*

Where salesman's office was in District of Columbia, though his selling contacts were largely outside and his time was nearly equally divided between the two, and he was fatally injured while traveling in Pennsylvania in connection with his employment, this section was applicable. *B. F. Goodrich Co. v. Britton* (1944, 139 F. 2d 362, 78 U. S. App. D. C. 221).

41. Power of commission

The Federal Government may confer upon administrative agencies, such as Deputy Commissioner United States Employees' Compensation Commission, created to aid in performance of governmental functions the determination of questions of fact, including existence of master and servant relation, the test being whether the delegation concerns the exercise of judicial power in enforcing constitutional limitations. *Gudmundson v. Cardillo* (1942, 126 F. 2d 521, 75 U. S. App. D. C. 230).

42. Presumptions

Under the circumstances, evidence that tuberculosis rate in Japan was five times that in District of Columbia supported award of compensation to employee who was assigned to work in Japan and who there contracted the disease, in absence of substantial evidence to rebut statutory presumption that disability arose from employment. *Travelers Insurance Co. v. Donovan, Deputy Commissioner etc.* (1955, 221 F. 2d 886, 95 U. S. App. D. C. 331).

Where employee was on his employer's premises and was on his way to an exit within a reasonable time after quitting work, presumption existed that he was in course of his employment and that injury sustained at that time and place arose out of his employment. *Smoot Sand & Gravel Corp. v. Britton* (1946, 152 F. 2d 17, 80 U. S. App. D. C. 260).

Provision of section 901 et seq. of title 33, U. S. Code, that in proceeding thereunder jurisdiction is to be pre-

sumed in absence of substantial evidence to contrary applies with equal force to proceedings under this chapter. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

43. Prior recovery

Under full faith and credit clause of federal constitution, Maryland award of workmen's compensation benefits for death of employee engaged in extrahazardous employment of plumbing, being a determination of all rights against employer and insurer growing out of employee's fatal injury, barred recovery of additional benefits allowable under District of Columbia Workmen's Compensation Act. *Gasch et al. v. Britton* (1953, 202 F. 2d 356, 92 U.S. App. D.C. 64).

44. Progression of disease

Where subsequent recurrence of tuberculosis in claimant was result of natural progression of the disease unaffected by any intervening work-connected cause, compensation carrier which had granted coverage at time of claimant's original, compensable disability from tuberculosis, not subsequent carrier granting coverage at time of subsequent disability, would be liable for the subsequent disability. *American Casualty Co. v. Britton, Deputy Commissioner, etc.* (1956, 227 F. 2d 16, 97 U. S. App. D. C. 1).

45. Purpose.

A prime purpose of this chapter is to provide residents of the District with a practical and expeditious remedy for their industrial accidents and to place on District of Columbia employers a limited and determinate liability. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

The purpose of the Workmen's Compensation Act is to provide not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinative. *Smither and Company, Inc. v. Coles* (1957, 242 F. 2d 220, 100 U. S. App. D. C. 68, certiorari denied 77 S. Ct. 1299, 354 U. S. 914, 1 L. Ed. 2d 1129).

The purpose of the Workmen's Compensation Act is to substitute fixed payments for personal injuries sustained or death caused in the course of employment for the common-law cause of action for damages. *Brown v. Curtin & Johnson Inc.* (1953, 117 F. Supp. 830, affirmed 221 F. 2d 106, 95 U. S. App. D. C. 234).

46. Questions of law

Meaning of "course of employment" within section 902 (2) of title 33, U. S. Code, apart from any particular set of facts, is a question of law. *Hurley v. Lowe* (1948, 168 F. 2d 553, 83 U. S. App. D. C. 123, certiorari denied 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

Where baker's contact with flour caused dermatitis and between first attack and its recurrence there was an interval during which she did not appear to have dermatitis, whether the recurrence was an injury within provision of Longshoremen's Compensation Act requiring claim to be filed within one year after injury or one year after last payment made without an award was question of law for court to decide, in absence of any specific elements that might differentiate baker's recurrence of dermatitis from other recurrences of occupational diseases. *Cadwallader v. Sholl et al.* (1952, 196 F. 2d 14, 89 U. S. App. D. C. 285, certiorari denied 72 S. Ct. 1061, 343 U. S. 966, 96 L. Ed. 1363).

47. Recurrence of disability

Where baker's contact with flour caused dermatitis which disabled her from July, 1944 to October, 1946, during which period employer paid her compensation without claim or award, and in December, 1946 she suffered a recurrence which wholly disabled her from January, 1947, and between first attack and its recurrence there was an interval during which she did not appear to have dermatitis, compensation claim filed in November, 1947 within one year after disease recurred was timely under Longshoremen's Compensation Act providing that right to compensation is barred unless a claim therefor is filed within one year after injury or one year after last payment made without award, whether baker resumed work during interval and thereby brought about recurrence or whether baker did not resume work in which case the second attack was a consequence of the previous work

that had caused the previous attack. *Cadwallader v. Sholl et al.* (1952, 196 F. 2d 14, 89 U. S. App. D. C. 285, certiorari denied 72 S. Ct. 1061, 343 U. S. 966, 96 L. Ed. 1363).

Longshoremen's Act provision, barring right to compensation for disability unless claim therefor was filed within one year after injury, barred claim for compensation for recurrence of disability where claim was filed more than one year after injury responsibility for disability, even though such claim was filed within one year from date when disability recurred. *Henriot v. General Accident Fire and Life Assurance Corp.* (D. C. Mun. App. 1957, 134 A. 2d 374).

48. Remand

Where question whether Deputy Commissioner had jurisdiction over claim under this chapter was considered and determined by Deputy Commissioner, who was in turn sustained by District Court, and facts pertinent to that issue were not seriously disputed and matter had been fully briefed and argued before Supreme Court, even though Court of Appeals had not determined that issue, a remand for determination thereof was not required, but Supreme Court could consider the jurisdictional issue. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

49. Res judicata

Where minor's contention, made in common-law action in the District of Columbia, that minor had right to sue at law rather than make a claim for workmen's compensation because employed contrary to Child Labor Law, section 36-201 et seq., of District of Columbia, was definitely adjudicated against minor, contention was not open to further controversy in subsequent action in federal court in Maryland. *Mellen v. Hirsch* (D. C. Md. 1948, 8 F. R. D. 250, affirmed 171 F. 2d 127).

Decision of court in District of Columbia that minor had no cause of action in a suit at common-law against employer for injuries because compensation law, section 905 of title 33, U. S. Code, provided exclusive remedy, and that such law was not rendered inapplicable because of employer's alleged violation of the Child Labor Law, section 36-201 et seq. was not ineffective as to minor in subsequent common-law suit against employer in Maryland, on ground that the suit in the District of Columbia was dismissed for lack of jurisdiction. *Id.*

50. Review

A deputy employees' compensation commissioner's determination sustained by District Court, fixing injured employee's wage-earning capacity, on which award of compensation for permanent partial disability was based, at smaller sum per week than wages actually received by him before and after injury, pursuant to finding that his post-injury wages did not reasonably represent his wage-earning capacity, will not be disturbed by Court of Appeals. *Liberty Mutual Insurance Co. et ano. v. Britton et al.* (1957, 243 F. 2d 659, 100 U. S. App. D. C. 236).

On appeal from summary judgment for defendants in suit by widow to set aside denial of benefits for death of husband under Longshoremen's and Harbor Workers' Compensation Act, reviewing court's task was to ascertain whether Deputy Commissioner's findings were supported by substantial evidence on record considered as a whole, and reviewing court would not sustain administrative findings merely because they were substantiated by some isolated evidence. *Friend, surviving widow v. Britton, Commissioner et al.* (1955, 220 F. 2d 820, 95 U. S. App. D. C. 139, certiorari denied 76 S. Ct. 72, 350 U. S. 836, 100 L. Ed. 745).

In action to review Deputy Commissioner's order denying claim for compensation under Longshoremen's Compensation Act pursuant to finding that plaintiff's disability was not caused by accident, question is whether such finding is supported by substantial evidence on record considered as whole. *Richardson v. Britton et al.* (1951, 192 F. 2d 423, 89 U. S. App. D. C. 391, certiorari denied 72 S. Ct. 676, 343 U. S. 920, 96 L. Ed. 1334).

Where employer arranged to furnish employee transportation to and from place of work in employer's truck which regularly passed employee's home, and employee was struck by another vehicle while crossing road to where employer's approaching truck would stop, and deputy commissioner concluded that injury did not arise out of and

in course of employment, principle that deputy commissioner's findings when supported by substantial evidence are not subject to review was inapplicable since the question presented was a "question of law" not a "question of fact." *Ward v. Cardillo* (1943, 135 F. 2d 260, 77 U. S. App. D. C. 343).

In workmen's compensation case, function of United States Court of Appeals for the District of Columbia is limited to determining whether the finding of the deputy commissioner is supported by substantial evidence. *Great American Indemnity Co. v. Cardillo* (1943, 135 F. 2d 241, 77 U. S. App. D. C. 306).

In workmen's compensation case, the United States Court of Appeals for District of Columbia cannot sit as reappraisers of the evidence. *Id.*

In proceeding under this chapter, even if inference made by Deputy Commissioner involves application of broad statutory term or phrase to specific set of facts and is considered more legal than factual in nature, reviewing court's function is exhausted when it becomes evident that Deputy Commissioner's choice has substantial roots in evidence and is not forbidden by law. *Cardillo v. Liberty Mut. Ins. Co.* (1947, 67 S. Ct. 801, 330 U. S. 469, 91 L. Ed. 1028).

Court reviewing compensation order must review to determine, not whether principles of law applied by deputy commissioner are correct, but merely whether they are forbidden by law, or without any reasonable legal basis, or are invalidated by some formal principle of law. *Hurley v. Lowe* (1948, 168 F. 2d 553, 83 U. S. App. D. C. 123, certiorari denied 68 S. Ct. 1338, 334 U. S. 828, 92 L. Ed. 1756).

Reviewing court is limited to determining whether Deputy Commissioner's conclusion in compensation case is forbidden by law or without any reasonable basis. *Wetzel v. Britton* (1948, 170 F. 2d 285, 83 U. S. App. D. C. 327).

Fact that evidence was taken and certified in disregard of technical rules of procedure does not invalidate it or render it any the less entitled to consideration on an appeal when no request was made for a trial de novo. *Georgia Casualty Co. v. Hoage* (1932, 59 F. 2d 870, 61 App. D. C. 195).

Scope of judicial review in workmen's compensation cases is strictly limited and statutory action to set aside award of compensation does not contemplate a trial de novo but merely a judicial review of administrative action on the administrative record, and the only questions which court may consider are, first, whether award is contrary to law and second, where administrative findings of fact are supported by substantial evidence. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (1960, 186 F. Supp. 938).

The substantial evidence necessary to sustain administrative findings when workmen's compensation award is challenged in statutory action is more than a scintilla of evidence but the court may not consider the weight of the evidence and is limited to determining merely whether there is substantial evidence in record sustaining findings of fact and the fact that countervailing evidence may have more probative value will not warrant overruling findings. *Id.*

In statutory action to set aside award of workmen's compensation, the court may not set aside inferences drawn by administrator from evidence that he chooses to believe if such inferences are reasonably possible and have a rational basis. *Id.*

Where employer, who was convicted of failing to secure payment of compensation as required by Workmen's Compensation Act, contended on appeal that trial court erred in admitting in evidence two payroll books, on ground that they had been obtained and seized illegally from persons other than the employer, and record was not clear whether employer made a motion to suppress books, and record was only a partial stenographic transcript without supporting statement of proceedings and evidence, Municipal Court of Appeals for the District of Columbia was required to hold, because of sketchy record, that the government did not obtain books as result of illegal search or seizure. *Tyree v. United States* (D. C. Mun. App. 1959, 155 A. 2d 914).

51. Right of action

Record clearly shows that the agent of the insurance carrier was a privy to all the proceedings leading to the bringing of the damage suit and its settlement, and it would also be inequitable to permit the employer and carrier to change their position to the prejudice of the claimant who had acquiesced in their position. *Metro-politan Casualty Ins. Co. v. Hoage* (1937, 89 F. 2d 798, 67 App. D. C. 54).

Since claimant was an independent contractor, he is not entitled to claim under the Compensation Act as an employee. *Cardillo v. Mockabee* (1939, 102 F. 2d 620, 70 App. D. C. 16).

Widow, who was receiving compensation under Workmen's Compensation Act for husband's death as a result of defendant employer's claimed negligence, was not entitled to recover as against employer for loss of consortium. *Brown v. Curtin & Johnson Inc.* (1953, 117 F. Supp. 830, affirmed 221 F. 2d 106, 95 U. S. App. D. C. 234).

Under section 933 of title 33, U. S. Code, providing that acceptance of compensation under an award shall operate as an assignment to employer of all rights of injured employee to recover damages against third person causing injury, the right to maintain an action against a third person causing injury is in the employee if he does not elect to receive compensation and is in the employer if employee elects to receive compensation, and an employee cannot follow both courses. *Moore v. Hechinger* (1941, 39 F. Supp. 427, affirmed 127 F. 2d 746, 75 U. S. App. D. C. 391).

Regardless of whether employer secures payment of compensation either by taking out insurance or providing for paying such compensation directly, employer remains liable, and employee is entitled to institute proceedings for an award before deputy commissioner and then before United States District Court for collection of the award. *Garcia v. De Leon* (D. C. Mun. App. 1948, 59 A. 2d 637).

52. Rights of employer

When a person asserts a claim under the workmen's compensation law, the employer or his insurance carrier should be afforded a prompt opportunity to examine the claimant at the earliest possible time, especially when conditions of the heart are involved. *Good Impressions, Inc., et ano. v. Britton* (1958, 169 F. Supp. 866).

Under Longshoremen's and Harbor Workers' Compensation Act which provided that insurance carrier shall be subrogated to all rights of employer, fact that premium paid by decedent's employer for policy year in which injury and death occurred was materially increased by reason of a compensation claim paid by employer's insurer and fact that future premiums would be based upon experience rating of employer for prior years and would also be increased did not entitle employer to bring wrongful death action as sole plaintiff. *City Stores Company v. Shull* (1958, 161 F. Supp. 459).

Under Longshoremen's and Harbor Workers' Compensation Act which provided that the insurance carrier shall be subrogated to all rights of the employer, as between carrier and employer, carrier was, as statutory assignee, the sole recipient of all right of the person entitled to compensation to recover damages against one liable in damages other than the employer. *Id.*

53. Sickness and disease

Findings of fact by deputy commissioner that injury to hip of employee was not proximate cause of pulmonary tuberculosis must be accepted as conclusive if supported by evidence. *Powell v. Hoage* (1932, 57 F. 2d 766, 61 App. D. C. 99).

Death from "injuries in the course of employment" is proved by evidence of an epileptic seizure of employee while using hot water hose, which inflicted burns. *Georgetown College v. Stone* (1932, 59 F. 2d 875, 61 App. D. C. 200).

Employee not entitled to compensation because contracting tuberculosis while working in a restaurant. *Ayers v. Hoage* (1933, 63 F. 2d 364, 61 App. D. C. 388).

When there is evidence of a positive nature, and wholly uncontradicted, which definitely and conclusively traces the cause of death and places it wholly at the door of a fatal disease from which the employee was suffering and wholly away from any relation to the work, then, in such a case, the inference must yield to the actual and deputy

commissioner's determination must be set aside. *Liberty Mut. Ins. Co. v. Hoage* (1933, 65 F. 2d 822, 62 App. D.C. 189).

From an examination of the testimony, and the presumption of verity which the law accords the findings of fact by the deputy commissioner, the appellant has failed to establish a claim within the Compensation Act, as pneumonia causing death of taxicab driver was not occupational disease. *Anderson v. Hoage* (1934, 70 F. 2d 773, 63 App. D.C. 169).

Where employee, on day of death, was engaged in carrying hod up one flight of stairs, and in course of his work he complained of being ill, collapsed, and was taken to hospital where he died because of coronary occlusion, evidence sustained deputy commissioner's denial of compensation on ground that employee did not sustain an injury "arising out of and in course of employment." *Carson v. Cardillo* (1943, 132 F. 2d 604, 77 U.S. App. D.C. 82).

Evidence that pre-existing spinal arthritis was aggravated by back injury sustained by employee in 1930 and that after similar injury in 1935 employee became totally disabled from carrying out any type of gainful occupation justified an award of compensation on ground of "total disability" resulting from 1935 injury. *Great Atlantic & Pacific Tea Co. v. Cardillo* (1942, 127 F. 2d 334, 75 U.S. App. D. C. 342).

That an employee is diseased does not bar his right to recover compensation for an accidental injury.

54. Subrogation

In case there is more than one dependent and one only elects to accept workmen's compensation and the other dependent or dependents elect to bring an action under the wrongful death statute, then the employer is not entitled to sue as a subrogee but the action must be brought by the personal representative of the decedent, the employee having the right to demand that such action be brought and that he share in the recovery. *Doleman v. Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

An employer or an insurance carrier who has paid compensation to the only beneficiary or beneficiaries entitled to receive the same and who has a right of subrogation may bring the subrogation action against the third person who caused the death of the employee, and the action need not be brought by the personal representative of the decedent. *Aetna Life Ins. Co. v. Moses* (1931, 53 S. Ct. 231, 287 U.S. 530, 77 L. Ed. 477).

55. Subsequent injury

Provision of section 908(f) of title 33, U.S. Code, that if an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for disability caused by the subsequent injury, deals with accidental injury and does not deal with death. *National Homeopathic Hospital Ass'n of Dist. of Col. v. Britton* (1945, 147 F. 2d 561, 79 U.S. App. D.C. 309, certiorari denied 65 S. Ct. 1185, 325 U.S. 857, 89 L. Ed. 1977).

56. Sufficiency of notice

Where only alleged notice given employer of heart attack allegedly sustained by claimant in the course of his employment was a telephone call by claimant's wife to employer on the following day, in which she informed employer that claimant had been ill the night before and that the doctor said he had a heart attack, and that he was in the hospital, and no further notice was given until approximately one year later, employer was deprived of timely notice of the claim asserted, and such failure to give timely notice barred claimant's right to compensation. *Good Impressions, Inc., et ano. v. Britton* (1958, 169 F. Supp. 866).

57. Summary judgment

Where injured employee had received hospital treatment and compensation under Longshoremen's and Harbor Workers' Compensation Act, and brought action against employer to recover damages apart from compensation statute, but set forth no cause of action against employer in which there was any genuine issue of material fact bearing upon claim for damages other than amounts due under compensation statute, summary judgment was properly entered for employer. *Thomas v. Central Linen Co.* (1959, 263 F. 2d 495, 105 U. S. App. D. C. 49).

58. Sunstroke

Death of laborer from sunstroke while working in sunny street was compensable. *Fidelity & Casualty Co. v. Burris* (1932, 59 F. 2d 1042, 61 App. D.C. 228).

Heat prostration is compensable as accidental injury if suffered while delivering groceries. *Aetna Life Ins. Co. v. Hoage* (1933, 63 F. 2d 818, 62 App. D.C. 6).

59. Third party, injury by

Where injured employee has accepted compensation under this chapter so that right to recover damages from third party wrongdoer has been transferred to employer, employer's insurer or the employer may bring action in his own name to his own use and to the use of the injured employee. *Moore v. Hechinger* (1942, 127 F. 2d 746, 75 U.S. App. D.C. 391).

Under this chapter, where an injury is sustained through the wrongful act of a third party, the employee must elect between compensation from his employer and suit against the wrongdoer and he cannot have both. *Id.*

60. Usual course of business

Words "usual course" refer to normal operations constituting the regular business of the employer. *Hoage v. Hartford Acc. & Indem. Co.* (1935, 77 F. 2d 381, 64 App. D.C. 258).

61. Widow

To be entitled to workmen's compensation award as widow, woman must have continued to live as deserted wife of employee who has deserted her, and there must be bond in reality between husband and wife in their relation to one another, essential ingredient in her claim being her real status factually, not existing legal formalities of relationship. *Liberty Mutual Ins. Co. et al. v. Donovan* (1955, 218 F. 2d 860, 95 U. S. App. D. C. 49).

A woman must be a "widow" as defined by the Longshoremen's Compensation Act, section 902(16) of title 33, U.S. Code, in order to be entitled to compensation as a "surviving wife" during "widowhood." *Weeks v. Behrend* (1943, 135 F. 2d 258, 77 U.S. App. D.C. 341).

§ 36-502. Exceptions.

This chapter shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (3) an employee subject to the provisions of chapter 15 of title 5, U.S. Code; and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer; and (5) any secretary, stenographer, or other person performing any services in the office of any Member of Congress or under the direction, employment, or at the request of any Member of Congress, within the scope of the duties performed by secretaries, stenographers, or such employees of Members of Congress. (May 17, 1928, 45 Stat. 600, ch. 612, § 2; June 15, 1938, 52 Stat. 689, ch. 392.)

AMENDMENT

1938—Act June 15, 1938, added clause (5) to include persons performing services for members of Congress.

EFFECTIVE DATE

Section effective July 1, 1928, see section 3 of act May 27, 1928, set out as a note under section 36-501.

CROSS REFERENCE

See U.S. Code, title 33, ch. 18.

NOTES TO DECISIONS

Application of statute 1
Casual employment 2
Employees' duties controlling 3
Second injury 4

1. Application of statute

Where appellant was injured while working in appellee's car barn, he could not recover under § 44-401 of the Code since § 36-501 has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of § 36-501. *Keffer v. Capital Transit Co.* (1950, 183 F. 2d 808, 87 U.S. App. D.C. 13).

2. Casual employment

Death of ornamental ironworker resulting from accident while repairing door in grillwork was while engaged in "casual employment," and not in usual course of employer's business. *Hoage v. Hartford Acc. & Indem. Co.* (1935, 77 F. 2d 381, 64 App. D.C. 258, certiorari denied 56 S. Ct. 128, 296 U.S. 609, 80 L. Ed. 432).

Statutory provision excepting from workmen's compensation coverage those engaged in casual employment not in usual course of trade, business, occupation or profession of employer could not be invoked to exclude coverage for musicians temporarily employed by restaurant proprietor since music was furnished in restaurant in usual course of business. *Great American Indemnity Co. et al. v. Britton, Deputy Commissioner etc.* (1960, 186 F. Supp. 938).

3. Employees' duties controlling

Where main duty of deckhand employed on a stripper dredge was to coal up dredge from scow, and coal was used to fire engine which operated scoop shovel, deckhand was not a "member of a crew", and hence his claim for injuries was covered by the Longshoremen's Compensation Act, section 901 et seq. of title 33, U.S. Code, as made applicable to a District of Columbia employer and not by the Merchant Marine Act, section 688 of title 46, U.S. Code. *Beddoo v. Smoot Sand & Gravel Corporation* (1942, 128 F. 2d 608, 76 U.S. App. D.C. 38).

4. Second injury

Where deputy commissioner originally awarded compensation for temporary total disability, stipulated intermediate order finding temporary partial disability was made subject to deputy's right of review when claimant's condition might change, and compensation was paid after a second injury within less than one year of claim based on total disability, even if original award was suspended during reemployment of claimant, and claimant became only partially disabled, that classification did not prejudice claimant's rights to recover for total disability resulting from second injury. *Great Atlantic & Pacific Tea Co. v. Cardillo* (1942, 127 F. 2d 334, 75 U.S. App. D.C. 342).

Chapter 6.—PAYMENT AND COLLECTION OF WAGES

Sec.

36-601. Definitions.

36-602. When wages must be paid—Exceptions.

36-603. Payment of wages upon discharge or resignation of employee and upon suspension of work—Liability of employer for failure to pay wages in accordance with this section.

36-604. Unconditional payment of wages conceded to be due.

36-605. Provisions of law may not be waived.

36-606. Enforcement, records and subpoenas.

36-607. Penalties.

36-608. Employees' remedies.

36-609. Commissioners may delegate functions.

36-610. Separability of provisions.

§ 36-601. Definitions.

Whenever used in this chapter, (a) "employer" includes every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, association, or corporation, employing any person in the District of Columbia: *Provided, That* the word "employer" shall not include the Government of the United States, the government of the District of Columbia, or any agency of either of said govern-

ments, or any employer subject to the Railway Labor Act.

(b) "Employee" shall include any person suffered or permitted to work by an employer except any person employed in a bona fide executive, administrative, or professional capacity (as such terms are defined and delimited by regulations promulgated by the Commissioners of the District of Columbia).

(c) "Wages" mean monetary compensation after lawful deductions, owed by an employer for labor or services rendered, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

(d) "Commissioners" means the Commissioners of the District of Columbia or their designated agent or agents.

(e) "Working day" means any day exclusive of Saturdays, Sundays, or legal holidays. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 1.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in text, is classified to U.S. Code, title 45, § 151 et seq.

EFFECTIVE DATE

Section 11 of act Aug. 3, 1956, provided that: "This Act [this chapter] shall take effect sixty days after its approval [Aug. 3, 1956]."

§ 36-602. When wages must be paid—Exceptions.

Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer: *Provided, however, That* an interval of not more than ten working days may elapse between the end of the pay period covered and the regular payday designated by the employer, except where a different period is specified in a collective agreement between an employer and a bona fide labor organization: *Provided further, That* where, by contract or custom, an employer has paid wages at least once each calendar month, he may lawfully continue to do so. Wages shall be paid on designated paydays in lawful money of the United States, or checks on banks payable upon demand by the bank upon which drawn. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 2.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

§ 36-603. Payment of wages upon discharge or resignation of employee and upon suspension of work—Liability of employer for failure to pay wages in accordance with this section.

Unless otherwise specified in a collective agreement between an employer and a bona fide union representing his employees—

(a) Whenever an employer discharges an employee, the employer shall pay the employee's wages earned not later than the working day following such discharge: *Provided, however, That* in the instance of an employee who is responsible for monies belonging to the employer, the employer shall be allowed a period of four days from the date of discharge or resignation for the determination of the accuracy of the employee's accounts, at the end of which time all wages earned by the employee shall be paid.

(b) Whenever an employee (not having a written contract of employment for a period in excess of thirty days) quits or resigns, the employer shall pay the employee's wages due upon the next regular pay-day or within seven days from the date of quitting or resigning, whichever is earlier.

(c) When work of an employee is suspended as a result of a labor dispute, the employer shall pay to such employee not later than the next regular pay-day, designated under section 36-602, wages earned at the time of suspension.

(d) If an employer fails to pay an employee wages earned as required under subsections (a), (b), and (c) of this section, such employer shall pay, or be additionally liable to, the employee, as liquidated damages, 10 per centum of the unpaid wages for each working day during which such failure shall continue after the day upon which payment is hereunder required; or an amount equal to the unpaid wages, whichever is smaller: *Provided, however,* That for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 3.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

§ 36-604. Unconditional payment of wages conceded to be due.

In case of a bona fide dispute concerning the amount of wages due, the employer shall give written notice to the employee of the amount of wages which he concedes to be due, and shall pay such amount, without condition, within the time required by sections 36-602 and 36-604: *Provided, however,* That acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of his claim. Payment in accordance with this section shall constitute payment for the purposes of complying with sections 36-602 and 36-604, only if there exists a bona fide dispute concerning the amount of wages due. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 4.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

§ 36-605. Provisions of law may not be waived.

Except as herein provided, no provision of this chapter shall in any way be contravened or set aside by private agreement. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 5.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

§ 36-606. Enforcement, records and subpoenas.

The Commissioners shall enforce and administer the provisions of this chapter and may hold hearings and otherwise investigate any violations of this chapter and institute actions for penalties provided hereunder. Any and all prosecutions of violations

of this chapter shall be conducted in the name of the District of Columbia and by the Corporation Counsel or his assistants.

(b) The Commissioners shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in any proceedings before them.

(c) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Municipal Court for the District of Columbia or any judge thereof, on application by the Commissioners, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 6.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

§ 36-607. Penalties.

Any employer who, having the ability to pay, willfully violates any provisions of section 36-602 or section 36-604 or who fails to comply with any other provisions of this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be punished by a fine of not more than \$300, or by imprisonment of not more than thirty days, or in the discretion of the court, by both such fine and imprisonment; and for any subsequent offense shall be punished by a fine of not more than \$1,000 or more than ninety days, or in the discretion of the court, by both such fine and imprisonment. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 7.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

§ 36-608. Employees' remedies.

(a) Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated. Any employee, or his representative, shall have the power to settle and adjust his claim for unpaid wages. Whenever the Commissioners determine that wages have not been paid, as herein provided and that such unpaid wages constitute an enforceable claim, the Commissioners may, upon the request of the employee, take an assignment in trust for the assigning employee of such wages, and of any claim for liquidated damages, without being bound by any of the technical rules respecting the validity of any such assignments, may bring any appropriate legal action necessary to collect such claim and may join in one proceeding or action such claims against the

same employer as the Commissioners deem appropriate. Upon any such assignment the Commissioners shall have power to settle and adjust any such claim or claims on such terms as they may deem just.

(b) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. Such attorney's fees in the case of actions brought under this subsection by the Commissioners shall be deposited in the Treasury of the United States to the credit of the District of Columbia. The Commissioners shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this chapter. (Aug 3, 1956, 70 Stat. 978, ch. 924, § 8.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

§ 36-609. Commissioners may delegate functions.

The Commissioners are authorized to delegate to any agency of the government of the District of Columbia any function, power, or duty vested in or imposed upon them by this chapter. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 9.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

§ 36-610. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby. (Aug. 3, 1956, 70 Stat. 979, ch. 924, § 10.)

EFFECTIVE DATE

Section effective 60 days after Aug. 3, 1956, see section 11 of act Aug. 3, 1956, set out as a note under section 36-601.

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TITLE 37.—LIBRARIES

Chap.	Sec.	
1. Public Libraries.....	37-101	

Chapter 1.—PUBLIC LIBRARIES

Sec.	
37-101.	Public library established—Authority of Commissioners—Acceptance of gifts.
37-102.	Branch libraries.
37-103.	Persons entitled to use of library—Deposit of fees.
37-104.	Board of trustees—Appointment and tenure.
37-105.	Duties—Librarian and employees—Annual report
37-106.	Submission of estimates.
37-107.	Takoma Park branch—Hours of opening.
37-108.	Appropriation for expenditures.
37-109.	Transfer of miscellaneous books to District public library.
37-110.	Advancement of funds for purchase of books, pamphlets, and periodicals.
37-111.	Depository of Government publications.

§ 37-101. Public library established—Authority of Commissioners—Acceptance of gifts.

A free public library is hereby established and shall be maintained in the District of Columbia, which shall be the property of the said District and a supplement of the public educational system of said District. Said library shall consist of a central library and such number of branch libraries so located and so supported as to furnish books and other printed matter and information service convenient to the homes and offices of all residents of the said District. All actions relating to such library, or for the recovery of any penalties lawfully established in relation thereto, shall be brought in the name of the District of Columbia, and the commissioners of the said District are authorized on behalf of said District to accept and take title to all gifts, bequests, and devises for the purpose of aiding in the maintenance or endowment of said library; and the commissioners of said District are further authorized to receive, as component parts of said library, collections of books and other publications that may be transferred to them. (June 3, 1896, 29 Stat. 244, ch. 315, § 1; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 1.)

AMENDMENT

1926—Act Apr. 1, 1926, specified that the library consist of a central library and branches, located and supported to furnish printed matter and information service convenient to homes and offices.

§ 37-102. Branch libraries.

In order to make the said library an effective supplement of the public educational system of the said District and to furnish the system of branch libraries provided for in section 37-101, the board of library trustees, hereinafter provided, is authorized to enter into agreements with the Board of Education of the said District for the establishment and maintenance of branch libraries in suitable rooms in such public-school buildings of the said District as will supplement the central library and branch libraries in sep-

arate buildings. The board of library trustees, hereinafter provided, is authorized within the limits of appropriations first made therefor, to rent suitable buildings or parts of buildings for use as branch libraries and distributing stations. (June 3, 1896, 29 Stat. 244, ch. 315, § 2; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 2.)

AMENDMENT

1926—Act Apr. 1, 1926, amended section generally to authorize establishment of branch libraries in public schools and elsewhere. Prior to amendment, section related to the library privileges of District residents, and is now covered by § 37-103.

§ 37-103. Persons entitled to use of library—Deposit of fees.

All persons who are permanent or temporary residents of the District of Columbia shall be entitled to the privileges of said library, including the use of the books contained therein, as a lending or circulating library, subject to such rules and regulations as may be lawfully established in relation thereto. Persons living outside of the said District, but having regular business or employment or attending school in the said District, shall for the purpose of sections 37-101 to 37-106 be deemed temporary residents. Other persons residing in counties of Maryland and Virginia adjacent to the said District may gain the privilege of withdrawing books from the said library by the payment of fees fixed by the board of library trustees hereinafter provided. All fees shall be paid weekly to the collector of taxes of the District of Columbia for deposit in the Treasury of the United States to the credit of said District of Columbia. (June 3, 1896, 29 Stat. 244, ch. 315, § 3, formerly § 2; renumbered and amended Apr. 1, 1926, 44 Stat. 229, ch. 98, § 3.)

AMENDMENT

1926—Act Apr. 1, 1926, amended section generally to entitle residents of the District to the privileges of the library, extend these privileges to non-residents attending school in the District, and permit non-residents of adjacent counties to withdraw books upon the payment of fees. Prior to amendment, section related to board of library trustees, and is now covered by section 37-104.

§ 37-104. Board of trustees—Appointment and tenure.

The said library shall be in charge of a board of library trustees, who shall purchase the books, magazines, and newspapers and procure the necessary appendages for such library. The said board of trustees shall be composed of nine members, each of whom shall be a taxpayer in the District of Columbia, and shall serve without compensation. They shall be appointed by the commissioners of the District of Columbia and shall hold office for six years. Any vacancy occurring in said board shall be filled by the District commissioners. Said board shall have power to provide such regulations for its organization and government as it may deem necessary.

(June 3, 1896, 29 Stat. 244, ch. 315, § 4, formerly § 3; renumbered and amended Apr. 1, 1926, 44 Stat. 229, ch. 98, § 4.)

AMENDMENT

1926—Act Apr. 1, 1926, amended section generally to establish a board of trustees, and specify its general powers, composition, appointment, and tenure. Prior to amendment, section related to the powers and duties of the said trustees, including the appointment of librarians and the making of the annual report, and is now covered by § 37-105.

§ 37-105. Duties—Librarian and employees—Annual report.

The said board shall have power to provide for the proper care and preservation of said library, to prescribe rules for taking and returning books, to fix, assess, and collect fines and penalties for the loss or injury to books, and for the retention of books beyond the period fixed by library regulations, and to establish all other needful rules and regulations for the management of the library as the said board shall deem proper. All fines and penalties so collected shall after June 30, 1927, be paid weekly to the collector of taxes of the District of Columbia for deposit in the treasury of the United States to the credit of said District of Columbia. The said board of trustees shall appoint a librarian to have the care and superintendence of said library, who shall be responsible to the board of trustees for the impartial enforcement of all rules and regulations lawfully established in relation to said library. The said librarian shall appoint such assistants as the board shall deem necessary to the proper conduct of the library. The said board of library trustees shall make an annual report to the commissioners of the District of Columbia relative to the management of the said library. (June 3, 1896, 29 Stat. 244, ch. 315, § 5, formerly § 4; renumbered and amended Apr. 1, 1926, 44 Stat. 230, ch. 98, § 5.)

AMENDMENT

1926—Act Apr. 1, 1926, amended section generally to detail powers and duties of the board of trustees, provide for disposition of fines and penalties, the appointment of librarians, and the making of an annual report. Prior to amendment, the section provided for the location of the library, specifying that any municipal building thereafter erected, should provide room for a library.

CROSS REFERENCES

Monthly advancement to purchase books and periodicals, see § 37-110.

Penalty for stealing or injuring books, see § 22-3106.

§ 37-106. Submission of estimates.

Said commissioners of the said District are authorized to include in their annual estimates for appropriations such sums as they may deem necessary for the proper maintenance of said library, including

branches, for the purchase of land for sites for library buildings, and for the erection and enlargement of necessary library buildings. (June 3, 1896, ch. 315, § 6, as added Apr. 1, 1926, 44 Stat. 230, ch. 98, § 6.)

§ 37-107. Takoma Park branch—Hours of opening.

The Takoma Park branch shall be kept open at least seven hours per day on the same week days as the free Public Library shall be open to the public. (Mar. 4, 1913, 37 Stat. 943, ch. 150, § 1.)

§ 37-108. Appropriation for expenditures.

The appropriation for the expenses of the Takoma Park branch of the Public Library shall not exceed in any one year the sum of ten per centum of the total costs of such branch library building. (Apr. 4, 1910, 36 Stat. 290, ch. 141.)

§ 37-109. Transfer of miscellaneous books to District public library.

Any books of a miscellaneous character no longer required for the use of any executive department, or bureau, or commission of the government, and not deemed an advisable addition to the Library of Congress, shall, if appropriate to the uses of the free public library of the District of Columbia, be turned over to that library for general use as a part thereof. (Feb. 25, 1903, 32 Stat. 865, ch. 755, § 1.)

CODIFICATION

Section is also classified to U.S. Code, title 5, § 110.

LIBRARIAN OF CONGRESS

The Librarian of Congress may from time to time transfer to other governmental libraries within the District of Columbia, including the Public Library, books and material in the possession of the Library of Congress in his judgment no longer necessary to its uses, but in the judgment of the custodians of such other collections likely to be useful to them, and may dispose of or destroy such material as has become useless. (Mar. 4, 1909, 35 Stat. 858, ch. 297.)

§ 37-110. Advancement of funds for purchase of books, pamphlets, and periodicals.

CODIFICATION

Section, act June 12, 1940, 54 Stat. 313, ch. 331, § 1, which authorized advances to the librarian for purchase of books, pamphlets, and periodicals, is omitted as superseded by section 1-263.

§ 37-111. Depository of Government publications.

The Public Library of the District of Columbia is hereby constituted a designated depository of governmental publications, and the Superintendent of Documents shall supply to such library one copy of each such publication, in the same form as supplied to other designated depositories. (Sept. 28, 1943, 57 Stat. 568, ch. 243.)

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TITLE 38.—LIENS

Chap.	Sec.	
1. Mechanics, Materialmen, and Contractors..	38-101	
2. Garage Keepers and Liverymen.....	38-201	
3. Hospitals.....	38-301	

Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

Sec.	
38-101.	Mechanic's lien.
38-102.	Notice.
38-103.	Subcontractor.
38-104.	Conditions.
38-105.	Notice to owner.
38-106.	Owner's duty.
38-107.	Subcontractor entitled to know terms of contract.
38-108.	Advance payments.
38-109.	Priority of lien.
38-110.	How lien enforced.
38-111.	Decree of sale.
38-112.	Subcontractor preferred to contractor.
38-113.	Distribution.
38-114.	Several buildings.
38-115.	When suit to be commenced.
38-116.	Extent of ground bound by lien.
38-117.	Entry of satisfaction.
38-118.	Payment into court and release.
38-119.	Undertaking to discharge liens before suit.
38-120.	Decree against sureties.
38-121.	No action by subcontractor against owner.
38-122.	Judgment for deficiency upon a sale.
38-123.	Wharves and lots.
38-124.	Artisans' lien.
38-125.	Enforcement by sale.
38-126.	Enforcement by bill in equity.

§ 38-101. Mechanic's lien.

Every building erected, improved, added to, or repaired by the owner or his agent, and the lot of ground on which the same is erected, being all the ground used or intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of such owner, whether owner in fee or of a less estate, or lessee for a term of years, or vendee in possession under a contract of sale, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them, or, in the absence of an express contract, for the reasonable value of the work and materials furnished for and about the erection, construction, improvement, or repair of or addition to such building, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached: *Provided*, That the person claiming the lien shall file the notice herein prescribed. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1237.)

CROSS REFERENCES

Artisan's lien, see § 38-124 et seq.
 Hotel or boarding house-keeper's lien, see § 34-103.
 Landlord lien, see §§ 45-915, 45-916.
 Lien on goods under Uniform Sales Act, see §§ 28-1401 to 28-1411.

Lien on lands for funds donated by the United States to purchase such lands for charitable or reformatory purposes upon abandonment of purpose, see § 32-1003.
 Motor Vehicle Lien Law, see §§ 40-701 to 40-715.
 Warehouseman's lien, see § 28-1921 et seq.

NOTES TO DECISIONS

In general	1
Contract of	2
Lessee	2
Owner	3
Pleading	4
Status of parties	5
Statutory construction	6
Substantial performance	7
Waiver	8

1. In general

The provision of the code with respect to mechanic's liens is "fundamentally the same as in the former statute." *Lipscomb v. Hough* (1923, 286 F. 775, 52 App. D. C. 313).

2. Contract of lessee

Lessee was agent of lessor, in ordering improvements, so as to charge interest of lessor in land. *McLean v. Nolan* (44 App. D. C. 1).

"Nor does a covenant in the lease, vesting in the lessor title in the buildings, and improvements erected on the premises at the termination of the lease, create the relation of principal and agent between the lessor and lessee." *Lipscomb v. Hough* (1923, 286 F. 775, 52 App. D. C. 313). See, also, *Albaugh v. Litho-Marble Decorating Co.* (14 App. D. C. 113); *Langley v. D'Audigne* (31 App. D. C. 409).

"A builder contracting with the lessee of premises to furnish labor and material thereon, with notice that he is dealing with the lessee and not the owner, is estopped to complain of ignorance of the terms of the lease, where as here, it was a matter of public record." *Lipscomb v. Hough* (1923, 286 F. 775, 52 App. D. C. 313).

3. Contract of owner

"In the latter case, the statutes relative to mechanics' liens * * * are reviewed at length with the conclusion that a lien upon the premises can only be imposed where the building is erected or repaired at the instance of the owner or his agent. If the work is done and materials furnished at the instance of a lessee, or tenant for life, or years, or a person having an equitable interest therein, the lien can only extend to the interest of the lessee, tenant, or equitable owner." *Lipscomb v. Hough* (1923, 286 F. 775, 52 App. D. C. 313).

4. Pleading

Under this section providing that a mechanic's lien may be placed on property not only for work done but also for materials furnished, complaint for removal of lien alleging that contractor did no work on one of 2 lots was insufficient where it failed to allege that no materials were furnished for improvement of such lot. *Clarke v. Huff* (1948, 165 F. 2d 247, 83 U. S. App. D. C. 38).

5. Status of parties

The status of the parties at the time of the contract determines the question of the right to a lien. *Deming v. Wardman Constr. Co.* (1930, 39 F. 2d 504, 59 App. D. C. 254).

6. Statutory construction

A mechanic's lien is purely a creature of statute. "The performance of the work, or the furnishing of the materials, gives merely a right to acquire a lien. The statute prescribes the steps necessary to perfect it. These requirements relate to the remedy rather than the right." "In determining whether a right to a lien exists, the statute should be strictly construed against one claiming such right, * * * but * * * where the right to a lien clearly appears, and the sole question to be determined is

whether the claimant has proceeded properly to acquire and establish his lien, the statute should be liberally construed in his favor." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.* (35 App. D. C. 1). See, also, *James B. Lambie Co. v. Bigelow* (34 App. D.C. 49); *Columbia Brick Co. v. District of Columbia* (1 App. D. C. 351); *Alfred Richards Brick Co. v. Atkinson* (16 App. D. C. 462); *Alfred Richards Brick Co. v. Trott* (23 App. D.C. 284).

In determining whether a right to a lien exists, the statute should be strictly construed; but where the right to a lien is clear and the question is whether the claimant has proceeded properly, the statute should be liberally construed in his favor. *Deming v. Wardman Constr. Co.* (1930, 39 F. 2d 504, 59 App. D.C. 254).

7. Substantial performance

In a proceeding to foreclose a mechanic's lien, a contractor who intentionally fails to perform the contract according to its terms, and refuses to remedy the defect, is not entitled to the benefit of the doctrine of substantial performance. *Turner v. Henning* (1920, 262 F. 637, 49 App. D. C. 183).

8. Waiver

Taking of security generally operates as waiver of right to mechanic's lien, but a mere agreement to take such security, not carried into effect, does not operate as a waiver. *McMurray v. Brown* (1875, 91 U. S. 257, 1 Otto 257, 23 L. Ed. 321).

§ 38-102. Notice.

Any such contractor wishing to avail himself of the provision aforesaid, whether his claim be due or not, shall file in the office of the clerk of the United States District Court for the District of Columbia during the construction or within three months after the completion of such building, improvement, repairs, or addition, or the placing therein or in connection therewith of any engine, machinery, or other thing so as to become a fixture, a notice of his intention to hold a lien on the property hereby declared liable to such lien for the amount due or to become due to him, specifically setting forth the amount claimed, the name of the party against whose interest a lien is claimed, and a description of the property to be charged, and the said clerk shall file said notice and record the same in a book to be kept for the purpose. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1238; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

- Completion 1
- Distinct and separate notices 2
- "Elevator" defined 3
- Interest in property 4
- Naming wrong person 5
- Purpose 6
- Requisites 7
- Time for filing 8

1. Completion

Question of completion or noncompletion should be determined by what the common intelligence and the common usage regard as completion, always, of course, with reference to the provisions of the building contract. At the same time no amount of work is too small, the completion of which is required to prevent the consummation of a fraud. *Riggs Fire Ins. Co. v. Shedd* (16 App. D. C. 150).

The abandonment of the work by the original contractor is deemed in law to be a completion of it for the purpose of filing mechanics' liens by subcontractors and materialmen. *Harper v. Galliher & Huguely* (1929, 29 F. 2d 452, 58 App. D. C. 252, certiorari denied 49 S. Ct. 185, 278 U. S. 657, 73 L. Ed. 565).

2. Distinct and separate notices

Two or more distinct and separate notices of lien may be comprised in one single instrument of writing; and two or more notices of lien may be enforced in one and the same proceeding in equity where the parties may be the same. Dicta in *Alfred Richards Brick Co. v. Trott* (23 App. D. C. 284).

3. "Elevator" defined

Electric passenger elevator is both an engine and machine; and whether its motive power be electricity, water or steam, can make no difference in the contemplation of the statute, subjecting building to a lien under Mechanics' Lien Law. *Lefler v. Forsberg* (1 App. D. C. 36).

4. Interest in property

All persons concerned or interested in the estate are to be at least constructively notified of the interest in the property and the name against which the lien is claimed. *Chamberlain Metal Weather Strip Co. v. Karrick* (1932, 53 F. 2d 928, 60 App. D.C. 316).

5. Naming wrong person

Notice of mechanic's lien naming wrong person as owner is invalid. *Chamberlain Metal Weather Strip Co. v. Karrick* (1932, 53 F. 2d 928, 60 App. D.C. 316).

6. Purpose

The purpose of mechanic's lien laws is to protect by the property those who contribute to its value by labor or materials, and it is only by compliance with statutory requirements that this can be accomplished. *Chamberlain Metal Weather Strip Co. v. Karrick* (1932, 53 F. 2d 928, 60 App. D.C. 316).

7. Requisites

"It is apparent that, under the statute, three essential averments are necessary to constitute a valid notice. These are, first, the amount claimed; second, the name of the party against whose interest the lien is claimed; and, third, a description of the property to be charged." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.* (35 App. D. C. 1).

8. Time for filing

A mechanic's lien, if filed by an original contractor, must be filed either during the construction of the improvement or within three months after its completion. *Harper v. Galliher & Huguely* (1929, 29 F. 2d 452, 58 App. D.C. 252, certiorari denied 49 S. Ct. 185, 278 U.S. 657, 73 L. Ed. 565).

§ 38-103. Subcontractor.

Any person directly employed by the original contractor, whether as subcontractor, material man, or laborer, to furnish work or materials for the completion of the work contracted for as aforesaid, shall be entitled to a similar lien to that of the original contractor upon his filing a similar notice with the clerk of the United States District Court for the District of Columbia to that above mentioned, subject, however, to the conditions set forth in sections 38-104 to 38-122. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1239; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

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NOTES TO DECISIONS

In general 1
 Knowledge of terms 2
 Materialmen as contractors 3
 Payment into court of sum equal to lien 4
 Sub-subcontractor 5
 Waiver 6

1. In general

Prior to code, see *Leitch v. Emergency Hosp.* (6 App. D. C. 247). See, also, *Herrell v. Donovan* (7 App. D. C. 322); *Sommerville v. Williams* (12 App. D. C. 520); *Riggs Fire Ins. Co. v. Shedd* (16 App. D. C. 150).

2. Knowledge of terms

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute * * *. In the absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter v. Hazen-Latimer Co.* (42 App. D. C. 469).

3. Materialmen as contractors

Materialmen held to be contractors under § 1237 (§ 38-101), and not subcontractors under this section. *McLean v. Nolan* (44 App. D. C. 1).

4. Payment into court of sum equal to lien

"The evident purpose of sections 1254 and 1255 (§§ 38-118, 38-119) is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that amount. Where, admittedly an amount is due the principal contractor, and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor; the issue being restricted to the contractor and subcontractor. If the owner does not take advantage of these provisions of the code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit." *Woodward v. Union Trust Co.* (1920, 262 F. 627, 49 App. D. C. 173).

5. Sub-subcontractor

Under this section, a subcontractor but not a sub-subcontractor has right to file a mechanic's lien. *Battista v. Horton, Myers & Raymond* (1942, 128 F. 2d 29, 76 U.S. App. D. C. 1).

Where general contractors and subcontractor had entered into written agreements with owners not to permit or suffer any mechanic's liens to be filed against property but contract between subcontractor and sub-subcontractor did not specifically impose that condition on the sub-subcontractor, it was entitled under its contract to retain all its legal rights until payment or a valid tender of payment. *Id.*

6. Waiver

Subcontractors who waive their remedy under the mechanic's lien statute at the instance of the owner, who refuses to pay the contractor until such releases are executed, cannot, in the absence of fraud, have the release set aside and the lien reinstated, when it appears that the amount paid the contractor was insufficient to pay the subcontractors in full. *Stevens v. Gordon* (48 App. D. C. 604).

§ 38-104. Conditions.

All such liens in favor of parties so employed by the contractor shall be subject to the terms and conditions of the original contract except such as shall relate to the waiver of liens and shall be limited to the amount to become due to the original contractor and be satisfied, in whole or in part, out of said amount only; and if said original contractor, by reason of any breach of the contract on his part, shall be entitled to recover less than the amount agreed upon in his contract, the liens of said parties so employed by him shall be enforceable only for said reduced amount, and if said original contractor shall be entitled to recover nothing said liens shall not be en-

forceable at all. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1240.)

§ 38-105. Notice to owner.

The said subcontractor or other person employed by the contractor as aforesaid, besides filing a notice with the clerk of the United States District Court for the District of Columbia as aforesaid, shall serve the same upon the owner of the property upon which the lien is claimed, by leaving a copy thereof with said owner or his agent, if said owner or agent be a resident of the District, or if neither can be found, by posting the same on the premises; and on his failure to do so, or until he shall do so, the said owner may make payments to his contractor according to the terms of his contract, and to the extent of such payments the lien of the principal contractor shall be discharged and the amount for which the property shall be chargeable in favor of the parties so employed by him reduced. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1241; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

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1. In general

Harper v. Galliher & Huguely (1929, 29 F. 2d 452, 58 App. D. C. 252, certiorari denied 49 S. Ct. 185, 278 U.S. 657, 73 L. Ed. 565).

§ 38-106. Owner's duty.

After notice shall be filed by said party employed under the original contractor and a copy thereof served upon the owner or his agents as aforesaid, the owner shall be bound to retain out of any subsequent payments becoming due to the contractor a sufficient amount to satisfy any indebtedness due from said contractor to the said subcontractor, or other person so employed by him, secured by lien as aforesaid, otherwise the said party shall be entitled to enforce his lien to the extent of the amount so accruing to the principal contractor. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1242.)

NOTES TO DECISIONS

Contractor paid in full 1
 Limitation of rights 2
 Subcontractor's
 Knowledge of terms 3
 Rights 4

1. Contractor paid in full

Where the owner pays the contractor in full, without notice of subcontractor's right, the subcontractor has no lien upon moneys subsequently accruing to contractor's surety who completes the work under the power reserved to it in the bond. *Winter v. Hazen-Latimer Co.* (42 App. D. C. 469).

2. Limitation of rights

"The statute limits the right of a subcontractor to a lien upon money due the contractor from the owner at the time notice is given the owner." *Winter v. Hazen-Latimer Co.* (42 App. D. C. 469).

3. Subcontractor's knowledge of terms

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute * * *. In the

absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter v. Hazen-Lattimer Co.* (42 App. D.C. 469).

4. Subcontractor's rights

Subcontractor's rights are "dependent on the contract between the owner and the builder and on the state of the accounts between them; and * * * the subcontractors were bound by all the terms and conditions of that contract." But the subcontractor is equally entitled to the benefits of the contract as far as it inures to his advantage. *Riggs Fire Ins. Co. v. Shedd* (16 App. D. C. 150).

§ 38-107. Subcontractor entitled to know terms of contract.

Any subcontractor or other person employed by the contractor as aforesaid shall be entitled to demand of the owner or his authorized agent a statement of the terms under which the work contracted for is being done and the amount due or to become due to the contractor executing the same, and if the owner or his agent shall fail or refuse to give the said information, or wilfully state falsely the terms of the contract or the amounts due or unpaid thereunder, the said property shall be liable to the lien of the said party demanding said information, in the same manner as if no payments had been made to the contractor before notice served on the owner as aforesaid. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1243.)

NOTES TO DECISIONS

1. Subcontractor's knowledge of terms

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute * * *. In the absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter v. Hazen-Lattimer Co.* (42 App. D. C. 469).

§ 38-108. Advance payments.

If the owner, for the purpose of avoiding the provisions hereof, and defeating the lien of the subcontractor or other person employed by the contractor, as aforesaid, shall make payments to the contractor in advance of the time agreed upon therefor in the contract, and the amount still due or to become due to the contractor shall be insufficient to satisfy the liens of the subcontractors or others so employed by the contractor, the property shall remain subject to said liens in the same manner as if such payments had not been made. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1244.)

NOTES TO DECISIONS

Bad faith 1
Evidence 2
Extent of lien 3
Rights and remedies of subcontractors 4

1. Bad faith

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, District Court's ruling that actual bad faith on owners' part need not be shown was erroneous. *Merrill v. B. R. Acker Co.* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

Where owner has made advances to general contractor in order to speed up the work, prior to filing of notice of liens by subcontractors, bad faith cannot be presumed from mere fact of advance payments, and something more is necessary to support such an inference, in order to establish owner's liability to subcontractors under this section. *Id.*

2. Evidence

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors,

evidence did not disclose purpose by owner to defeat subcontractors' liens. *Merrill v. B. R. Acker Co.* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

3. Extent of lien

Where owners had, in good faith, made advance payments to general contractor and at time notice of lien was first filed by one of the subcontractors only a few dollars remained due from owners to general contractor, the subcontractors were not entitled to mechanic's liens in excess of amount remaining due when notice of lien was filed and served. *Merrill v. B. R. Acker Co.* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

4. Rights and remedies of subcontractors

Subcontractors have ample opportunity to protect themselves against advance payments by owner to general contractor under §§ 38-103, 38-105, 38-107 entitling subcontractors to require owner to disclose terms of general contract and state of account between himself and general contractor and to secure liens by filing them and giving notice to owner. *Merrill v. B. R. Acker Co.* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

Subcontractor's rights are "dependent on the contract between the owner and the builder and on the state of the accounts between them; and * * * the subcontractors were bound by all the terms and conditions of that contract." But the subcontractor is equally entitled to the benefits of the contract as far as it inures to his advantage. *Riggs Fire Ins. Co. v. Shedd* (16 App. D.C. 150).

§ 38-109. Priority of lien.

The lien hereby given shall be preferred to all judgments, mortgages, deeds of trusts, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building, as well as to conveyances executed, but not recorded, before that time, to which recording is necessary, as to third persons; except that nothing herein shall affect the priority of a mortgage or deed of trust given to secure the purchase money for the land, if the same be recorded within ten days from the date of the acknowledgment thereof. When a mortgage or deed of trust of real estate securing advances thereafter to be made for the purpose of erecting buildings and improvements thereon is given, or when an owner of lands contracts with a builder for the sale of lots and the erection of buildings thereon, and agrees to advance moneys toward the erection of such buildings, the lien hereinbefore authorized shall have priority to all advances made after the filing of said notices of lien, and the lien shall attach to the right, title, and interest of the owner in said building and land to the extent of all advances which shall have become due after the filing of such notice of such lien, and shall also attach to and be a lien on the right, title, and interest of the person so agreeing to purchase said land at the time of the filing of said notices of lien. When a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building or land on which it stands, the lien created by this act shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owners. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1245.)

NOTES TO DECISIONS

1. When lien attaches

Mechanic's lien attaches at commencement of work and sale thereafter does not affect validity. *Deland v. Wagner* (1933, 64 F. 2d 552, 62 App. D.C. 54).

The mechanic's lien attached upon the property at the time of the commencement of the work upon the building, but was subordinate to two deeds of trust previously executed. *Id.*

§ 38-110. How lien enforced.

The proceeding to enforce the lien hereby given shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the clerk, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the premises be sold and the proceeds of sale applied to the satisfaction of the lien. If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens, as aforesaid. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctly stated in separate paragraphs; and if several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1246.)

CROSS REFERENCE

Joinder of parties, see § 13-401.

FEDERAL RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2, U.S. Code, title 28, Appendix.

NOTES TO DECISIONS

In general 1
Arbitration 2
Bill in equity 3
Burden of proof 4
Continuance 5
Evidence 6
Filing 7
Reinsurance agreements 8
Subcontractor entitled to lien 9

1. In general

If claim filed under law as it existed prior to act of Congress of 2d of July, 1884, it should have been made out against the former owner of the property with whom contract was made and not against subsequent purchaser. *Lefler v. Forsberg* (1 App. D. C. 36).

To enforce mechanics' liens although a personal judgment can only be enforced against party who incurred debt, still a personal decree by subcontractors against the owner of the property as well as original contractor is proper, especially where record shows an unexpended balance in owner's hands more than enough to pay claims of subcontractors. *Emack v. Rushenberger* (8 App. D. C. 249).

It has never been the practice for persons holding or claiming mechanics' liens, who have been made defendants, to take affirmative action as a prerequisite for their participation in the fund to be realized by the suit. *Emack v. Campbell* (14 App. D. C. 186).

Notices of lien should specifically set forth the amount claimed and not the items that go to make up that amount. *Id.*

2. Arbitration

Where proceeding was commenced by bill in equity, and, when case was reached for trial, continuance was granted for cause shown that arbitration proceedings were in progress, and parties knew that court's judgment was suspended pending award of arbitrators, the arbitration agreement achieved status of a "stipulation" and would be enforced as a rule of court. *John W. Johnson, Inc. v. 2500 Wisconsin Ave., Inc.* (1956, 231 F. 2d 761, 98 U. S. App. D. C. 8).

3. Bill in equity

A bill in equity is proper proceeding to enforce mechanics' lien against trustees under deed of trust. *Roth v. Eisinger Mill & Lbr. Co.* (1934, 70 F. 2d 294, 63 App. D. C. 128).

4. Burden of proof

Burden is on plaintiffs to show by clear proof, when the buildings were commenced, the nature and character of the work and materials furnished and the time when the buildings were completed; and the failure to establish these facts, to a reasonable intent, will cause the plaintiffs to fail in their claim to a lien. *Brown v. Waring* (1 App. D. C. 378).

5. Continuance

The Court of Appeals would take judicial notice of practice of the District Court that no case can be continued by the assignment commissioner but that continuance can be only upon order of assignment judge for cause shown. *John W. Johnson, Inc. v. 2500 Wisconsin Ave., Inc.* (1956, 231 F. 2d 761, 98 U. S. App. D. C. 8).

6. Evidence

There is no doubt of the right of the mortgagees and others acquiring an interest in the property against which the lien is sought to be enforced, to require and insist upon strict proof of everything that is essential to maintain the lien. *Brown v. Waring* (1 App. D. C. 378).

7. Filing

This section provides means for the enforcement of such liens only when filed within the limitations of the statutes. *Harper v. Galliher Huguley* (1929, 29 F. 2d 452, 58 App. D. C. 252, certiorari denied 49 S. Ct. 185, 278 U. S. 657, 73 L. Ed. 565).

Sworn answer of defendant made it necessary for complainant to prove all allegations of bill which includes filing of notice of lien in the manner and within time presented by statute. *Landvoight v. Melovich* (1 App. D. C. 498).

8. Reinsurance agreements

Reinsurers are liable to materialmen upon the first reinsurance agreements. *Bruckner-Mitchell v. Sun Indem. Co.* (1936, 82 F. 2d 434, 65 App. D. C. 178).

Fact that payment, under the reinsurance agreements, is to be made to the District of Columbia is not conclusive that only such a default under the bond as would affect the District in its own right, as distinguished from such a default as affects materialmen, is intended to be covered by the reinsurance agreements. *Id.*

9. Subcontractor entitled to lien

Under § 1239 (§ 38-103) a subcontractor is entitled to a mechanic's lien, which must be enforced by a bill in equity. *Woodward v. Union Trust Co.* (1920, 262 F. 627, 49 App. D. C. 173).

§ 38-111. Decree of sale.

If the right of the complainant, or of any of the parties to the suit, to the lien herein provided for shall be established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1247.)

§ 38-112. Subcontractor preferred to contractor.

If the original contractor and the persons contracting or employed under him shall both have filed notices of liens, as aforesaid, the latter shall first be satisfied out of the proceeds of sale before the original contractor, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to him. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1248.)

§ 38-113. Distribution.

If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, as aforesaid, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments; but,

subject to this provision, if the proceeds of sale, after paying thereout the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor the said proceeds shall be distributed ratably among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1249.)

§ 38-114. Several buildings.

In case of labor done or materials furnished for the erection or repair of two or more buildings joined together and owned by the same person or persons, it shall not be necessary to determine the amount of work done or materials furnished for each separate building, but only the aggregate amount upon all the buildings so joined, and the decree may be for the sale of all the buildings and the land on which they are erected as one building, or they may be sold separately if it shall seem best to the court. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1250.)

NOTES TO DECISIONS

In general 1
Row of buildings 3
Separate notices 2

1. In general

A single mechanic's lien should cover no more than a single building, except in a case where there are two or more buildings joined together and owned by a single person. *Alfred Richards Brick Co. v. Trott* (23 App. D.C. 284).

2. Separate notices

Where each lienor filed separate notices of lien, each in the full amount due, against each of the two lots, trustees under deed of trust were not prejudiced by release of the lien on one lot. *Roth v. Eisinger Mill & Lbr. Co.* (1934, 70 F. 2d 294, 63 App. D.C. 128).

3. Row of buildings

Where the contract to erect a row of buildings related to the row as an entirety and not to the particular buildings separately, the whole row was a building in the meaning of the mechanic's lien statute, from having been thus united by the parties in one contract, as one general piece of work, and the lien could be claimed on the whole row of buildings. *Phillips v. Gilbert* (1879, 101 U.S. 721, 11 Otto 721, 25 L. Ed. 833).

§ 38-115. When suit to be commenced.

Any person, entitled to a lien, as aforesaid, may commence his suit to enforce the same at any time within a year from and after the filing of the notice aforesaid or within six months from the completion of the building or repairs aforesaid, on his failure to do which the said lien shall cease to exist, unless his said claim be not due at the expiration of said periods, in which case the action must be commenced within three months after the said claim shall have become due. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1251.)

§ 38-116. Extent of ground bound by lien.

If there be any contest as to the dimensions of the ground claimed to be subjected to the lien aforesaid, the court shall determine the same upon the evidence and describe the same in the decree of sale. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1252.)

§ 38-117. Entry of satisfaction.

Whenever any person having a lien by virtue hereof shall have received satisfaction of his claim and

cost, he shall, on the demand, and at the cost of the person interested, enter said claim satisfied, in the clerk's office aforesaid, and on his failure or refusal so to do he shall forfeit fifty dollars to the party aggrieved, and all damages that the latter may have sustained by reason of such failure or refusal. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1253.)

§ 38-118. Payment into court and release.

In any suit to enforce a lien hereunder, the owner of the building and premises to which such lien may have attached, as aforesaid, may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct, or he may file a written undertaking, with two or more sureties, to be approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs, which judgment shall be rendered against all the persons so undertaking. On the payment of said money into court, or the approval of such undertaking, the property shall be released from such lien, and any money so paid in shall be subject to the final decree of the court. No such undertaking shall be approved by the court until the complainant shall have had at least two days' notice of the defendant's intention to apply to the court therefor, which notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath, if required, that they are worth, over and above all debts and liabilities, double the amount of said lien. The complainant may appear and object to such approval. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1254.)

CROSS REFERENCE

Payment into court, see § 16-1401.

NOTES TO DECISIONS

Bond filed 1
Notice not required 2
Payment into court of sum equal to lien 3

1. Bond filed

Where bond is filed by purchaser of realty, for release of mechanic's lien, the suit to foreclose the lien is properly dismissed. *Maiaico v. Fletcher* (1930, 39 F. 2d 295, 59 App. D.C. 250).

Upon the filing and approval of the undertaking of the owner and his surety, the property was released from the operation of the mechanics' lien. *Deland v. Wagner* (1933, 64 F. 2d 552, 62 App. D.C. 54).

2. Notice not required

"It will be observed that no notice is required under section 1254 (this section), where a money payment is made by the owner; the theory evidently being that cash speaks for itself, and that no one possibly could be prejudiced by the substitution of cash for the obligation of the owner to pay the amount due under the contract. It was for this reason that section 1255 (§ 38-119) makes no mention of a cash payment." *Woodward v. Union Trust Co.* (1920, 262 F. 627, 49 App. D.C. 173).

3. Payment into court of sum equal to lien

"The evident purpose of sections 1254 and 1255 (this section and § 38-119) is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that amount. Where admittedly an amount is due the principal contractor, and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor; the issue being restricted to the contractor and subcontractor. If the

owner does not take advantage of these provisions of the code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit." *Woodward v. Union Trust Co.* (1920, 262 F. 627, 49 App. D.C. 173).

§ 38-119. Undertaking to discharge liens before suit.

Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1255.)

NOTES TO DECISIONS

1. Exclusive remedy

Where this section prescribed a specific method for removal of mechanic's liens from records by paying into court amount claimed plus interest and costs or by filing a bond, a direct action to remove the lien could not be maintained, notwithstanding plaintiff's contention that he was without funds either to pay amounts into court or to secure a bond and that delay incident to ordinary procedure would cause him irreparable damage, particularly where owner admitted that he had deposited sufficient money to cover lien with a title insurance company. *Clarke v. Huff* (1948, 165 F. 2d 247, 83 U.S. App. D.C. 38).

§ 38-120. Decree against sureties.

If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1256.)

CROSS REFERENCE

Joinder of parties, see § 13-401.

NOTES TO DECISIONS

1. Owner and surety; decree against

Where owner and his surety had filed an undertaking and had thereby released the mechanics' lien, the decree was properly rendered against said owner and surety. *Deland v. Wagner* (1933, 64 F. 2d 552, 62 App. D.C. 54).

§ 38-121. No action by subcontractor against owner.

No subcontractor, materialman, or workman employed under the original contractor shall be entitled to a personal judgment or decree against the owner of the premises for the amount due to him from said original contractor, except upon a special promise of such owner, in writing, for a sufficient consideration, to be answerable for the same. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1257.)

NOTES TO DECISIONS

In general 1
Liability to subcontractor 3
Personal obligation 2

1. In general

This section is applicable although the owner's contract with the contractor and the latter's contract with the subcontractor were to be performed in Maryland. *Mathews v. Libbey* (42 App. D. C. 272).

2. Personal obligation

Subcontractor is not entitled to personal judgment against owner of premises for money due him from general contractor, but a personal, new and direct promise by owner to pay for work, though not in writing, is enforceable and not violative of statute of frauds, provided such promise is supported by sufficient consideration, and such agreement is construed to be promise by owner to pay his own debt and not antecedent debt of contractor. *Arthur Snowden Co., Inc. v. Meehan* (D. C. Mun. App. 1956, 118 A. 2d 687).

In subcontractor's action against owner of premises for reasonable value of work performed on houses, evidence would not sustain subcontractor's contention that owner had, after contractor's default on original contract, requested subcontractor to continue work and orally promised to pay him reasonable value thereof. *Id.*

Where principal contract did not cover additional work which owner, through general contractor requested plumbing subcontractor to perform for owner, subcontractor's claim against owner was based on owner's personal promise to pay owner's own debt and not debt of another, and authorizing subcontractor to recover amount owed by original contractor from owner who specially promises in writing for consideration to be answerable for such amount was inapplicable to subcontractor's claim against owner, and such claim was not within statute of frauds, § 12-302, requiring special promise to answer for debt of another person to be in writing. *Jones v. Guice* (D. C. Mun. App. 1948, 57 A. 2d 190).

3. Liability to subcontractor

Where electrical contractor who initially undertook job at instance of general contractor could have quit the job because of general contractor's default, and he only agreed to continue in consideration of homeowner's personal new and direct agreement to pay for the work, homeowner was not relieved of obligation to pay, though his promise was merely verbal. *Thomas v. Ehrmantraut* (D. C. Mun. App. 1955, 111 A. 2d 623).

A promise need not be in writing when it is an original or separate agreement to pay and not the mere assumption of another's debt. *Id.*

§ 38-122. Judgment for deficiency upon a sale.

In any suit brought to enforce a lien by virtue of the provisions aforesaid, if the proceeds of the property affected thereby shall be insufficient to satisfy such lien, a personal judgment for the deficiency may be given in favor of the lien or against the owner of the premises or the original contractor, as the case may be, whichever contracted with him for the labor or materials furnished by him, provided such person be a party to the suit and shall have been personally served with process therein. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1258.)

NOTES TO DECISIONS

1. Former owners liable

Where property was sold under a deed of trust, it was properly held that a personal judgment for the deficiency should be rendered against the former owners who contracted for the repairs. *Davidson v. E. F. Brooks Co.* (46 App. D.C. 457, certiorari denied 38 S. Ct. 63, 245 U.S. 665, 62 L. Ed. 538). See, also, *Emack v. Rushenberger* (8 App. D.C. 249); *McCarthy v. Holtman* (19 App. D.C. 150).

§ 38-123. Wharves and lots.

Any person who shall furnish materials or labor in filling up any lot or in constructing any wharf thereon, or dredging the channel of the river in front of any wharf, under any contract with the owner, shall be entitled to a lien for the value of such work or materials on said lot and wharf upon the same conditions and to be enforced in the same manner as in the case of work done in the erection of buildings, as provided in section 38-110. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1259.)

§ 38-124. Artisans' lien.

Any mechanic or artisan who shall make, alter, or repair any article of personal property at the request of the owner shall have a lien thereon for his just and reasonable charges for his work done and materials furnished, and may retain the same in his possession until said charges are paid; but if possession is parted with by his consent such lien shall cease. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1260.)

§ 38-125. Enforcement by sale.

If the amount due and for which a lien is given by section 38-124 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

§ 38-126. Enforcement by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)

Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

Sec.

- 38-201. Repealed.
- 38-202. Enforcement of lien by sale.
- 38-203. Enforcement of lien by bill in equity.
- 38-204. Lien of liverymen.
- 38-205. Lien for storage, repairs and supplies for motor vehicles.
- 38-206. Enforcement of lien by sale.
- 38-207. Application of proceeds of sale.
- 38-208. Limitation on lien for storage.
- 38-209. Liens acquired under prior law.

§ 38-201. Repealed. June 3, 1952, 66 Stat. 98, ch. 361, § 6.

Section, acts Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1262, Apr. 19, 1920, 41 Stat. 568, ch. 153, related to liens of garage keepers and liverymen and is now covered by sections 38-204 to 38-209.

§ 38-202. Enforcement of lien by sale.

If the amount due and for which a lien is given by section 38-201 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds

of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

REFERENCE IN TEXT

Section 38-201, referred to in text, was repealed by act June 3, 1952, 66 Stat. 98, ch. 361, § 6, and is now covered by sections 38-204, 38-205.

CROSS REFERENCES

Hotel, boarding-house, and lodginghouse keepers' liens, see § 34-103.

Liens of liverymen and liens for storage, repairs and supplies for motor vehicles not subject to this section, see § 38-209.

§ 38-203. Enforcement of lien by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)

CROSS REFERENCE

Liens of liverymen and liens for storage, repairs and supplies for motor vehicles not affected by this section, see § 38-209.

NOTES TO DECISIONS

1. Conversion

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Bullock v. Young* (D. C. Mun. App. 1956, 118 A. 2d 917).

§ 38-204. Lien of liverymen.

It shall be lawful for all persons keeping or boarding any animals at livery within the District, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, or board of such animals shall have been paid: *Provided, however,* That before enforcing the lien hereby given notice in writing shall be given to such owner in person or by registered mail at his last-known place of residence of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid. (June 3, 1952, 66 Stat. 96, ch. 361, § 1.)

CROSS REFERENCE

Certain provisions with respect to enforcement of liens not subject to this section, see § 38-209.

§ 38-205. Lien for storage, repairs and supplies for motor vehicles.

All persons storing, repairing, or furnishing supplies of or concerning motor vehicles including trailers shall have a lien for their agreed or reasonable charges for such storage, repairs, and supplies when such charges are incurred by an owner or conditional vendee or chattel mortgagor (including a grantor of deed of trust in lieu of mortgage) of such motor vehicle, and may detain such motor vehicle

at any time they may have lawful possession thereof. Such lien shall have priority over all other liens or rights in or to the vehicle except as hereinafter limited with respect to claims for storage. Before enforcing such lien, notice in writing shall be given to the title holder, all lien holders shown by the certificate of title or registry of the vehicle, and any other persons known to claimant who have any interest in or lien upon the vehicle. Such notice shall be delivered personally or sent by registered mail to the last-known address of the person to whom given, shall state that a lien is claimed for the charges therein set forth or thereto attached, and shall demand payment thereof. There shall be incorporated in or attached to said notice a statement of particulars of the charge or charges for which a lien is claimed, to which may be added a claim for storage of the vehicle from the date of said notice to the date of payment or sale, which amount shall be set forth at a daily or weekly rate which shall not be in excess of charges prevailing at the time for similar storage, and shall not be in excess of \$3 per day or \$21 per week, which additional charge shall in no event cover a period in excess of ninety days. (June 3, 1952, 66 Stat. 97, ch. 361, § 2.)

CROSS REFERENCES

Certain provisions with respect to enforcement of liens not subject to this section, see § 38-109.

Motor vehicle title liens, see §§ 40-701 to 40-715.

NOTES TO DECISIONS

In general 1
Authority of Director of Vehicles and Traffic 2
Bankruptcy 3
Conversion 4
Extent of lien 5
Notice of lien 6
Possession 7

1. In general

Congress seems to have taken notice that motor vehicles are sold frequently upon conditional sale contracts, and accordingly provided for a lien in favor of garage keepers, where the charges are incurred either by the owner or the conditional vendee. *Barrett v. Commercial Credit Co.* (1924, 296 F. 996, 54 App. D.C. 249).

The very fact that the statute awards a lien for work done or material furnished at the instance of the conditional vendee, and in view of the further fact that the automobile business is largely conducted upon a credit basis, by which dealers protect themselves through conditional sales agreements, are indicative of the legislative intent to give such a lien priority over the conditional bill of sale. *Id.*

2. Authority of Director of Vehicles and Traffic

Sole function of Director of Vehicles and Traffic under automobile lien statute is to satisfy himself that lienor has complied with notice provisions thereof. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

3. Bankruptcy

Where garage keeper, having a subsisting lien upon bankrupt's automobile, lawfully regained and held possession of automobile before owner was adjudicated a bankrupt, garage keeper had a statutory lien valid against the trustee in bankruptcy, even though it arose and was perfected while the bankrupt was insolvent and within four months of filing of petition in bankruptcy. *Gordon v. Sullivan* (1951, 188 F. 2d 980, 88 U. S. App. D. C. 144).

4. Conversion

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Bullock v. Young* (D.C. Mun. App. 1956, 118 A. 2d 917).

5. Extent of lien

Where automobile owner contracted with garage keeper for small repair job and, despite repeated promises to call for automobile, left it with garage keeper who was required to provide valuable space for its storage, a quasi contract or promise implied in law to pay for such storage was created and that obligation was recognizable under automobile lien statute. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

6. Notice of lien

Garage owner, who did not give notice of lien until he had stored automobile for six months after repairing it, did not lose his lien or his right to claim storage thereby even though automobile lien statute allowed such notice after 30 days. *Sanders v. Keneipp et al.* (D. C. Mun. App. 1954, 109 A. 2d 141).

7. Possession

Where garage keeper performed repairs upon an automobile, and turned over automobile to its owner, but garage keeper subsequently resumed possession of automobile, garage keeper had a lien on automobile by operation of law and did not lose it by failing to give statutory notice. *Gordon v. Sullivan* (1951, 188 F. 2d 980, 88 U. S. App. D. C. 144).

Where garage keeper made repairs upon an automobile and turned it over to the owner, and garage keeper subsequently repossessed the automobile from a third party by paying storage charges on automobile, garage keeper's taking and retention of automobile were lawful and he was entitled to retain possession as against the owner's trustee in bankruptcy. *Id.*

§ 38-206. Enforcement of lien by sale.

If the amount due and for which a lien is given by section 38-204 or 38-205 hereof is not paid by the end of thirty days after the giving of notice, then the party entitled to such lien may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District. Said advertisement shall set forth the date, time, and place of sale, which shall not be less than fifteen days from date of the first publication of such notice, that the purpose of the sale is to satisfy a lien, the amount for which said lien is claimed, including storage to date of sale if allowable, the names of all interested parties, and a description of the chattel, including, in the case of vehicles, the make, type, year and model number, serial number and engine number, if any, and State or District license number and year.

Any person selling such property in order to satisfy a fraudulent, excessive, or unreasonable lien shall be guilty of a conversion of such property and liable to the owner in damages therefor. (June 3, 1952, 66 Stat. 97, ch. 361, § 3.)

NOTES TO DECISIONS

1. Conversion

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. *Bullock v. Young* (D.C. Mun. App. 1956, 118 A. 2d 917).

§ 38-207. Application of proceeds of sale.

The proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien; second, to payment of other liens, if any, in the order of their priority; and, third, to the owner of the property. (June 3, 1952, 66 Stat. 97, ch. 361, § 4.)

§ 38-208. Limitation on lien for storage.

To the extent that any lien provided for in this chapter is based on a claim for storage of a motor vehicle in excess of \$150, such lien shall be, as to such excess, inferior to the lien of a conditional vendor or chattel mortgagee (as defined in section 38-205) claiming under an instrument recorded on a date earlier than the period to which such charges are attributable. (June 3, 1952, 66 Stat. 97, ch. 361, § 5.)

§ 38-209. Liens acquired under prior law.

Section 38-201 is hereby repealed and sections 38-104, 38-125, 38-202, 34-105, 38-126 and 38-203 are hereby made inapplicable to liens provided for in sections 38-204 and 38-205 hereof: *Provided, however,* That any liens heretofore acquired under the provisions of said section 38-201, shall be unaffected by the repeal of said section and may be enforced either in the manner provided in said sections 38-104, 38-125, 38-202, 34-105, 38-126 and 38-203 or in the manner provided herein. (June 3, 1952, 66 Stat. 98, ch. 361, § 6.)

Chapter 3.—HOSPITALS

Sec.

- 38-301. Hospitals to have lien for services on recovery in accident cases.
- 38-302. Notice to be filed.
- 38-303. Liability for not paying hospital amount of its lien.
- 38-304. Permission to examine hospital records.
- 38-305. Clerk to provide lien docket.

§ 38-301. Hospitals to have lien for services on recovery in accident cases.

Every association, corporation, or other institution, and any agency of the United States or the District of Columbia, maintaining a hospital in the District of Columbia, which shall furnish medical or other service to any patient injured by reason of an accident causing injuries not covered by the Employees' Compensation Act or the Workmen's Compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages: *Provided,* That the lien herein set forth shall not be applied or considered valid against any one suffering injuries coming under the Employees' Compensation Act or the Workmen's Compensation Act in this District. (June 30, 1939, 53 Stat. 990, ch. 255, § 1; June 19, 1948, 62 Stat. 496, ch. 525, § 1.)

AMENDMENT

1948—Act June 19, 1948, inserted after "institution" the words "and any agency of the United States or the District of Columbia".

§ 38-302. Notice to be filed.

No such lien shall be effective, however, unless a written notice containing the name and address of

the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the United States District Court for the District of Columbia in a docket provided for such liens, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm, or corporation against such liability, where the name of such insurance carrier is ascertained. (June 30, 1939, 53 Stat. 990, ch. 255, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 38-303. Liability for not paying hospital amount of its lien.

Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; and any such association, corporation, or other institution, and any agency of the United States or the District of Columbia, maintaining such hospital, may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment. (June 30, 1939, 53 Stat. 990, ch. 255, § 3; June 19, 1948, 62 Stat. 496, ch. 525, § 2.)

AMENDMENT

1948—Act June 19, 1948, inserted after "institution" the words "and any agency of the United States or the District of Columbia".

§ 38-304. Permission to examine hospital records.

Any person or persons, firm or firms, corporation or corporations legally liable for such lien or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the ledger entries and similar records of any such association, corporation, or other institution or body, and of any agency of the United States or the

District of Columbia, maintaining such hospital for the purpose of ascertaining the basis for such lien. (June 30, 1939, 53 Stat. 991, ch. 255, § 4; June 19, 1948, 62 Stat. 496, ch. 525, § 3.)

AMENDMENT

1948—Act June 19, 1948, inserted after word "body" the words "and of any agency of the United States or the District of Columbia".

§ 38-305. Clerk to provide lien docket.

The clerk of the United States District Court for the District of Columbia shall provide a suitable bound book to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the name of the person, firm, or corporation alleged to be liable for the injuries, the date of the accident, and the name of the hos-

pital or other institution or agency making the claim. Said clerk shall make a proper index of the same in the name of the injured person and the clerk shall charge such reasonable fees, not to exceed the sum of \$1, as the court may by rule fix for the recording, indexing, and the releasing of the lien so filed. (June 30, 1939, 53 Stat. 991, ch. 255, § 5; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); June 19, 1948, 62 Stat. 496, ch. 525, § 4; May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1948—Act June 19, 1948, inserted after word "institution" the words "or agency".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1949, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."



40

39

TITLE 39.—MILITARY

Chap.	Sec.
1. Composition, Organization, and Control....	39-101
2. Commissioned Officers.....	39-201
3. Noncommissioned Officers.....	39-301
4. Enlisted Personnel.....	39-401
5. Armament, Equipment, and Supplies.....	39-501
6. Active Military Duty.....	39-601
7. Courts-martial	39-701
8. Pay and Allowances.....	39-801
9. Miscellaneous Provisions.....	39-901

Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL

Sec.
39-101. Militia—Persons to be enrolled.
39-102. Exemptions from service.
39-103. Assessors to make list of persons liable to enrollment.
39-104. Duty of enrolled militia.
39-105. Ordering enrolled militia into service.
39-106. Organized militia—Volunteer service—Designation.
39-107. Organization of National Guard units.
39-108. Reserve corps—Organization—Composition.
39-109. Government employees—Leaves of absence.
39-110. Government employees ordered to duty—Restoration to Government position.
39-111. Disbanding companies below minimum strength.
39-112. President to be Commander-in-Chief.

§ 39-101. Militia—Persons to be enrolled.

Every able-bodied male citizen resident within the District of Columbia, of the age of eighteen years and under the age of forty-five years, excepting persons exempted by section 39-102, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 1.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146 amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-102. Exemptions from service.

In addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the District of Columbia, namely: Officers of the government of the

District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the Regular or Volunteer Army or Navy of the United States; officers who have served for a period of five years in the militia of the District of Columbia or of any state of the United States; ministers of the gospel; practicing physicians; conductors and engine-drivers of railroad trains; members of the paid police and fire departments. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 2.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-103. Assessors to make list of persons liable to enrollment.

The commissioners of the District of Columbia shall provide for the enrollment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrollment; and such record shall be deemed a sufficient notification to all persons whose names are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrollment they shall furnish the commanding general of the militia with a copy of the same. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 3.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-104. Duty of enrolled militia.

The enrolled militia shall not be subjected to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 4.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-105. Ordering enrolled militia into service.

Whenever it shall be necessary to call out any portion of the enrolled militia the commander-in-chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this chapter, who does not appear at the time and place designated, may be arrested by order of the commanding general and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the commanding general may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 5.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-106. Organized militia—Volunteer service—Designation.

The organized militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 10; Feb. 18, 1909, 35 Stat. 629, ch. 146, § 10.)

AMENDMENT

1909—Act Feb. 18, 1909, amended section to read as set out in the text. Prior to the 1909 amendment the section provided: "The active militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia; and in case the militia of the District of Columbia are called into the service of the United States, or required for the suppression of riots, or to aid civil officers in the execution of the laws, shall be the first to be ordered into service."

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-107. Organization of National Guard units.

Except as otherwise specifically provided by law, the organization of the National Guard, including the composition of all units thereof, shall be the same as that which is or may after June 3, 1916, be prescribed for the Regular Army, subject in time of peace to such general exceptions as may be authorized by the Secretary of War. And the President may prescribe the particular unit or units, as to branch or arm of service, to be maintained in each state, territory, or the District of Columbia in order to secure a force which, when combined, shall form complete higher tactical units. (June 3, 1916, 39 Stat. 197, ch. 134, § 60.)

CODIFICATION

Act June 15, 1933, 48 Stat. 156, ch. 87, § 6, amended the above section by adding thereto the following proviso: "Provided, That no change in allotment, branch, or arm of units or organizations wholly within a single State will be made without the approval of the Governor of the State concerned."

Section 11 of act 1889, 25 Stat. 774, ch. 328, as amended by act Feb. 18, 1909, 35 Stat. 629, ch. 146, § 11, is deemed to have been superseded by this section. Sections 12-17 of the above-mentioned act were repealed by act Feb. 18, 1909, 35 Stat. 630, ch. 146.

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011-3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCES

See U.S. Code, title 32.

System of discipline and field exercise, see § 39-904.

§ 39-108. Reserve corps—Organization—Composition.

A reserve corps of the National Guard of the District of Columbia is hereby organized, to consist of honorably discharged officers and men of the Army, the Navy, and the Marine Corps of the United States, honorably discharged officers and men of the organized militia of any state or territory who are residents of the District of Columbia, and honorably discharged members of the National Guard of the

District of Columbia, whose military training and physical condition shall conform to the standard determined by regulations to be promulgated by the President of the United States: *Provided*, That the term of enlistment in the reserve and the military duties and obligations required of reservists shall be determined by regulations to be promulgated by the President of the United States: *Provided further*, That when called out for military duty, reservists shall receive the same pay and allowances as officers and men of like grade on the active list of the National Guard of the District of Columbia. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 72.)

CODIFICATION

Section 73 of act 1909, relating to exemption from jury service of officers and enlisted men is compiled in the Code as § 11-1420.

Section 74 of 1909 act made act Jan. 21, 1903, 32 Stat. 775 applicable to the District of Columbia; but this act had been superseded by the National Defense Act of June 3, 1916, 39 Stat. 166, ch. 134.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-109. Government employees—Leaves of absence.

All officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year. (May 12, 1917, 40 Stat. 72, ch. 12.)

REFERENCES IN TEXT

The Officers' Reserve Corps was organized under act June 3, 1916, 39 Stat. 189, ch. 134, § 37, as amended June 4, 1920, 41 Stat. 775, ch. 227, subch. I, § 32; Sept. 22, 1922, 42 Stat. 1033, ch. 423, § 2; June 15, 1933, 48 Stat. 154, ch. 87, § 3. Such acts were repealed July 9, 1952, 66 Stat. 505, ch. 608, pt. VIII, § 803.

The Officers' Reserve Corps, the Organized Reserves and the Enlisted Reserve Corps were included in the organization of the Army by act June 3, 1916, 39 Stat. 166, ch. 134, § 1, as amended June 4, 1920, 41 Stat. 759, ch. 227, subch. I, § 1; June 15, 1933, 48 Stat. 153, ch. 87, § 1; Dec. 13, 1941, 55 Stat. 800, ch. 571, § 3, and were grouped therein into a reserve component known as the Organized Reserve Corps by act Mar. 28, 1948, 62 Stat. 87, ch. 157, § 1. Such acts were repealed June 28, 1950, 64 Stat. 271, ch. 383, title IV, § 401(a).

The Organized Reserve Corps (redesignated the Army Reserve July 9, 1952, 66 Stat. 498, ch. 608, pt. III, § 302) was included in the organization of the Army by act June 28, 1950, 64 Stat. 268, ch. 383, title III, § 301, as amended July 9, 1952, 66 Stat. 508, ch. 608, pt. VIII, § 807(b). Such acts were repealed Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53.

The Army Reserve is included in the organization of the Army by section 1 of act Aug. 10, 1956, 70A Stat. 166, ch. 1041, set out as U.S. Code, title 10, § 3062.

CROSS REFERENCE

Leave of absence of officers or employees who are members of the National Guard, see § 39-608.

§ 39-110. Government employees ordered to duty—Restoration to Government position.

Members of the Officers' Reserve Corps who are in the employ of the United States government or of the District of Columbia and who are ordered to duty by proper authority shall, when relieved from duty, be

restored to the positions held by them when ordered to duty. (May 12, 1917, 40 Stat. 72, ch. 12.)

REFERENCES IN TEXT

The Officers' Reserve Corps was organized under act June 3, 1916, 39 Stat. 189, ch. 134, § 37, as amended June 4, 1920, 41 Stat. 775, ch. 227, subch. I, § 32; Sept. 22, 1922, 42 Stat. 1033, ch. 423, § 2; June 15, 1933, 48 Stat. 154, ch. 87, § 3. Such acts were repealed July 9, 1952, 66 Stat. 505, ch. 608, pt. VIII, § 803.

The Officers' Reserve Corps, the Organized Reserves and the Enlisted Reserve Corps were included in the organization of the Army by act June 3, 1916, 39 Stat. 166, ch. 134, § 1, as amended June 4, 1920, 41 Stat. 759, ch. 227, subch. I, § 1; June 15, 1933, 48 Stat. 153, ch. 87, § 1; Dec. 13, 1941, 55 Stat. 800, ch. 571, § 3, and were grouped therein into a reserve component known as the Organized Reserve Corps by act Mar. 28, 1948, 62 Stat. 87, ch. 157, § 1. Such acts were repealed June 28, 1950, 64 Stat. 271, ch. 383, title IV, § 401(a).

The Organized Reserve Corps (redesignated the Army Reserve July 9, 1952, 66 Stat. 498, ch. 608, pt. III, § 302) was included in the organization of the Army by act June 28, 1950, 64 Stat. 268, ch. 383, title III, § 301, as amended July 9, 1952, 66 Stat. 508, ch. 608, pt. VIII, § 807(b). Such acts were repealed Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53.

The Army Reserve is included in the organization of the Army by section 1 of act Aug. 10, 1956, 70A Stat. 166, ch. 1041, set out as U.S. Code, title 10, § 3062.

§ 39-111. Disbanding companies below minimum strength.

When any company of the National Guard shall, for a period of not less than ninety days, contain less than the required number of enlisted men, or upon a duly ordered inspection, shall be found to have fallen below a proper standard of efficiency, the commanding general may, with consent of the President, either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and noncommissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter re-entering the service shall have allowed to them, as part of their term of service, the time already served. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 18; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 12; June 3, 1916, 39 Stat. 200, ch. 134, § 68.)

CODIFICATION

Section 14 of act 1889 fixed the minimum number of enlisted men in any company at forty. This section was repealed by act Feb. 18, 1909, 35 Stat. 630, ch. 146. It is considered that section 11 of act 1889, as amended by act Feb. 18, 1909, 35 Stat. 629, ch. 146, § 11, was designed to take the place of section 14 of act 1889, above referred to. Section 11 is considered as having been superseded by section 60 of the National Defense Act of 1916 (§ 39-107 herein).

AMENDMENTS

1916—Act June 3, 1916, provided that "no organization of the National Guard * * * shall be disbanded without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President."

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 18 to 12.

CROSS REFERENCE

Disbanding of National Guard organizations, consent of President, see U.S. Code, title 32, § 104.

§ 39-112. President to be Commander-in-Chief.

The President of the United States shall be the commander-in-chief of the militia of the District of Columbia. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 6.)

CROSS REFERENCES

See U.S. Code, title 32.

Soldiers' and Sailors' Civil Relief Act of 1940, see U.S. Code, title 50 App., § 501 et seq.

Chapter 2.—COMMISSIONED OFFICERS

Sec.

- 39-201. Commanding general—Appointment and removal—Rank.
- 39-202. Staff officers—Appointment and removal—Noncommissioned staff.
- 39-203. Qualifications of staff officers—Tenure—Vacancies.
- 39-204. Detail for adjutant-general.
- 39-205. Retired Army officer may be detailed as adjutant-general.
- 39-206. Officers—Appointment—Oath.
- 39-207. Officers of staff departments—Appointment—Examination.
- 39-208. Vacancies above grade of second lieutenant—How filled.
- 39-209. Appointments to grade of second lieutenant.
- 39-210. Examinations for promotion—Retirement for disability—Suspension for failure to appear.
- 39-211. Examinations for second lieutenants.
- 39-212. Special examination of officer's capability—Certificate to President.
- 39-213. Retirement after ten years' service—Increased rank—Retirement at sixty-four years of age—Wearing uniform after retirement—Service on military boards—Pay and allowances—Retirement on recommendation of commanding general.
- 39-214. Discharge of commissioned officer.

§ 39-201. Commanding general—Appointment and removal—Rank.

There shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia with the rank of brigadier-general, or major general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 7; Sept. 2, 1957, 71 Stat. 596, Pub. L. 85-270, § 1.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

1957—Act Sept. 2, 1957, inserted "or major general".

CROSS REFERENCES

See U.S. Code, title 32.

Power to make rules and regulations, see § 39-905.
President as Commander in Chief, see § 39-112.

§ 39-202. Staff officers—Appointment and removal—Noncommissioned staff.

The staff of the militia of the District of Columbia shall be appointed and commissioned by the President. It shall consist of one adjutant-general, one inspector-general, one quartermaster-general, one

commissary-general, one chief of ordnance, one chief engineer, one surgeon-general, one judge-advocate-general, and one inspector-general of rifle practice each with the rank of major; and four aids-de-camp, each with the rank of captain. The commanding general may appoint a noncommissioned staff of the militia, to consist of one sergeant-major, one quartermaster-sergeant, one commissary sergeant, one ordnance sergeant, two staff sergeants, one hospital steward, one color sergeant, and one sergeant bugler. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 8; June 3, 1916, 39 Stat. 199, ch. 134, § 66.)

AMENDMENT

1916—Act June 3, 1916, omitted the following words at the end of the first sentence "and hold office until their successors are appointed and qualified, but may be removed at any time by the President," also after the words "adjutant general" the words "with the rank of lieutenant colonel."

CROSS REFERENCES

See U.S. Code, title 32.

Date of commissions, see § 39-902.

General provision as to duties of officers, see § 39-901.

Noncommissioned officers, see § 39-301.

§ 39-203. Qualifications of staff officers—Tenure—Vacancies.

It is hereby provided that staff officers, including officers of the pay, inspection, subsistence, and medical departments, appointed in the National Guard of the District of Columbia, shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the National Guard of the District of Columbia. (July 11, 1919, 41 Stat. 127, ch. 8, § 69.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-204. Detail for adjutant-general.

The President may assign an officer of the army to act as adjutant-general of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the commanding general and the provisions of this title: *Provided, however,* That the officer so assigned shall receive no other pay or emolument than that to which his rank in the army entitles him when on detached service. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 9.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-205. Retired Army officer may be detailed as adjutant-general.

The President of the United States may detail as adjutant-general of the District of Columbia militia any retired officer of the Army who may be nominated to the President by the commanding general of the District of Columbia militia, said retired officer while so detailed to have the active service pay and allowances of his rank in the Regular Army. (June 6, 1900, 31 Stat. 671, ch. 811; Sept. 2, 1957, 71 Stat. 596, Pub. L. 85-270, § 2.)

AMENDMENT

1957—Act Sept. 2, 1957, substituted "commanding general of" for "brigadier-general commanding."

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-206. Officers—Appointment—oath.

All officers shall be commissioned by the President of the United States, on the recommendation of the commanding general. They shall be nominated as herein provided. No person commissioned as an officer shall assume such rank or enter upon the duties of the office to which he may be commissioned until he has accepted such commission and taken such oath or affirmation as may be prescribed. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 19; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 13.)

AMENDMENT

1909—Act Feb. 18, 1909, added the words "on the recommendation of the commanding general" at the end of the first sentence, omitted from the second sentence the words "In time of peace, or when not in the service of the United States they shall be previously elected or."

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-207. Officers of staff departments—Appointment—Examination.

The officers of the staff departments, staff corps, and the organizations created by this chapter when organized, shall be nominated by the commanding general, subject to the examination required by law. (Mar. 1, 1889, 25 Stat. 775, ch. 328, §§ 20, 21; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 14.)

AMENDMENT

1909—Act Feb. 18, 1909, amended section to read as set out in the text. As originally enacted it read as follows: "The staff officers of a regiment or battalion shall be nominated by the permanent commander thereof. Field officers of regiments or battalions shall be nominated by the commanding general. Captains and lieutenants of companies shall be elected by the written votes of the enlisted men of the respective companies."

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-208. Vacancies above grade of second lieutenant—How filled.

Vacancies occurring in the cavalry, coast artillery corps, field artillery, and infantry above the grade of second lieutenant shall, subject to the examination required by law, be filled by promotion according to seniority from the next lower grade in the troop, the separate company, the field battery, the separate battalion, and the regiment in which the vacancy occurs. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 22; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 15.)

AMENDMENT

1909—Act Feb. 18, 1909, amended section to read as set out in the text. As originally enacted it read as follows: "Elections of officers shall be ordered and held under such regulations as may be prescribed by the commanding general."

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-209. Appointments to grade of second lieutenant.

All appointments to the grade of second lieutenant shall be from the enlisted men, under regulations prescribed by the commanding general, and subject

to the examination required by law. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 16.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-210. Examinations for promotion—Retirement for disability—Suspension for failure to appear.

The commanding general is authorized to prescribe a system of examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interest of the service. If any officer fails to appear for examination within thirty days after notification to so appear or fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided*, That should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for ninety days, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 23; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 17.)

AMENDMENT

1909—Act Feb. 18, 1909, amended section to read as set out in the text. As originally enacted it read as follows: "Every person accepting an election or nomination as an officer shall appear before an examining board, to be appointed by the commanding general, which board shall examine said officer as to his military and other qualifications. If any officer shall fail to appear before the board of examination within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall thereupon declare the election or nomination of such officer null and void. If, in the opinion of the board such officer is competent, and otherwise qualified, they shall certify the fact to the commanding general, who shall thereupon recommend him to the President for commission."

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-211. Examinations for second lieutenants.

The commanding general is authorized to prescribe a system of examination of enlisted men to determine their fitness for promotion to the grade of second lieutenant. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 18.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-212. Special examination of officer's capability—Certificate to President.

Whenever, in the opinion of the commanding general of the militia of the District of Columbia, an officer of the said militia has become incapacitated for the performance of duty for any reason, the commanding general shall submit the name of such officer to the Secretary of War, with a view to his being ordered before a board of examination, to be appointed by the Secretary of War, which board shall examine said officer as to his physical, mental, and military qualifications.

If any officer shall fail to appear before a board of examination so appointed within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall forward the record of examination to the Secretary of War, with his recommendation thereon, for submission to the President. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 19.)

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCE

See U.S. Code, title 32.

NOTES TO DECISIONS

1. Federal recognition of officers

The withdrawal of federal recognition to an officer of the National Guard of the state does not terminate his status as a state officer. *Hurley v. United States ex rel. Gladman* (1931, 47 F. 2d 431, 60 App. D.C. 69).

§ 39-213. Retirement after ten years' service—Increased rank—Retirement at sixty-four years of age—Wearing uniform after retirement—Service on military boards—Pay and allowances—Retirement on recommendation of commanding general.

Any commissioned officer in the National Guard of the District of Columbia who shall have served as such in the National Guard of the District of Columbia for the continuous period of ten years may, upon his own application, be placed by the President of the United States upon a retired list, which is hereby authorized, with the rank held by him at the time such application is made: *Provided, however*, That an officer so retired, who at the time of making such application has remained in the same grade for the continuous period of ten years, or whose services have been especially meritorious, may be retired with increased rank of one grade and shall, before being so retired, receive from the President of the United States the commission of the new grade: *Provided further*, That whenever any officer on the active list reaches the age of sixty-four years he shall be retired; with or without increase of rank in the discretion of the President of the United States. Retired officers on occasions of ceremony may, and when acting under orders, as hereinafter provided, shall wear the uniform of the highest rank attained by them in the military service of the United States, the militia of the States or Territories, or the National Guard of the District of Columbia. Retired officers shall be eligible to perform any military duty to the same extent as if not retired, and the commanding general may, in his discretion, by order, require them to serve upon military boards, courts of inquiry, and courts-martial, or to perform any other special or temporary duty, and for such service they shall receive the same pay and allowances as are provided by law for like service by officers on the active list of the National Guard of the District of Columbia. All retired officers shall be amendable to

court-martial for military offenses to the same extent as if upon the active list of the National Guard of the District of Columbia. The names of all officers of retired rank shall be borne upon a separate roster, kept under the supervision of the adjutant-general. The commanding general may at any time recommend to the President of the United States and the President may retire any commissioned officer who shall have been ordered before a medical board consisting of at least three commissioned medical officers and upon whom such a board shall have made report showing such officer to be physically unable to properly perform the duties of his office. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 20.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-214. Discharge of commissioned officer.

A commissioned officer may be honorably discharged—

Upon tender of resignation;

Upon disbandment of the organization to which he belongs;

Upon report of a board of examination, or for failure to appear before such board when ordered.

He may be dismissed upon the sentence of a court-martial; conviction in a court of justice of an infamous offense. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 24; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 21.)

AMENDMENT

1909—Act Feb. 19, 1909, did not amend the text of this section, but changed the section number from 24 to 21.

Chapter 3.—NONCOMMISSIONED OFFICERS

Sec.

39-301. Noncommissioned officers—Appointment—Reduction to ranks.

§ 39-301. Noncommissioned officers — Appointment—Reduction to ranks.

The commanding officers of regiments and battalions not part of regiments shall appoint and warrant the noncommissioned staff officers of their respective regiments or battalions, and they shall, in their discretion, warrant the noncommissioned officers of the companies of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the companies, respectively. In troop, battery, and companies not part of a regiment or battalion and in the hospital corps the noncommissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the troop, battery, company, or hospital corps. The officer warranting a noncommissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the noncommissioned officers named in this section, but such as were enlisted as noncommissioned officers shall be discharged. Noncommissioned officers who shall be dropped vacate their positions. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 25; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 22.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections

of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

1909—Act Feb. 18, 1909, amended the section to read as set out in the text. As originally enacted it provided as follows: "Noncommissioned staff officers shall be appointed by the permanent commander of the organization to which they belong; and permanent commanders of battalions shall appoint the noncommissioned officers of companies, upon the written nomination of the respective captains; but they may withhold such appointment if, in their judgment, there be proper cause; noncommissioned officers of unattached companies shall be appointed by there [their] respective captains. The permanent commander of any battalion or unattached company may reduce to the ranks any company noncommissioned officers of his command."

CROSS REFERENCES

See U.S. Code, title 32.

General provisions as to duties of officers, see § 39-901. Noncommissioned staff of the militia, see § 39-202.

Officers generally, see § 39-201 et seq.

Chapter 4.—ENLISTED PERSONNEL

Sec.

39-401. Term of enlistment—Re-enlistment.

39-402. Enlistment contract and oath.

39-403. Discharge of enlisted men from the National Guard.

39-404. Discharge without honor.

39-405. Dishonorable discharge.

§ 39-401. Term of enlistment—Re-enlistment.

Original enlistments in the National Guard and in the National Guard of the United States shall be for a period of three years, and subsequent enlistments for periods of one or three years each: *Provided*, That all enlisted men of the National Guard on June 15, 1933, may, under such regulations as may be prescribed by the Secretary of War, be enlisted in grade, rating, and branch in the National Guard of the United States for the remaining unexpired portions of their enlistments in the National Guard: *And provided further*, That in the event of an emergency declared by Congress the period of any enlistment which otherwise would expire may by Presidential proclamation be extended for a period of six months after the termination of the emergency. (June 3, 1916, 39 Stat. 200, ch. 134, § 69; June 4, 1920, 41 Stat. 781, ch. 227, § 37; June 6, 1924, 43 Stat. 470, ch. 275, § 4; June 15, 1933, 48 Stat. 156, ch. 87, § 7.)

CODIFICATION

Section 26 of act 1889, 25 Stat. 775, ch. 328, as amended by act Feb. 18, 1909, 35 Stat. 632, ch. 146, § 23, is deemed to have been superseded by this section.

AMENDMENTS

1933—Act June 15, 1933, added the provisos.

1924—Act June 6, 1924, provided for subsequent enlistments of "one year or three years each."

1920—Act June 4, 1920, provided for original enlistments for a period of 3 years and subsequent enlistments for 1 year.

Act June 3, 1916, had provided for an enlistment of six years, the first three in active organization and the remaining three in National Guard Reserve.

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947,

61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCES

Disbanding companies below minimum strength, see § 39-111.
Organization of National Guard, see §§ 39-106, 39-107.
System of discipline and field exercise, see § 39-904.

NOTES TO DECISIONS

In general 1
Contract of enlistment 2
Enlisted into military service 3
Trial by military authorities 4

1. In general

It is immaterial whether the arrest was made before or after the issue or the service of the writ to release minor son from military service. *Ex Parte Foley* (D.C. Ky. 1917, 243 F. 470).

Petitioner was not entitled to a discharge, and he could not be furloughed to the Reserve when he was in actual military service. *Ex Parte Roach* (D.C. Ala. 1917, 244 F. 625).

Effect of this section was at most to make the enlistment voidable by the parent. *Reed v. Cushman* (C.C.A. 1, 1918, 251 F. 872).

2. Contract of enlistment

Fact that minor is under 21 when he enlisted, or that the written consent of his parent or guardian was not given to such enlistment, or that he was an alien, who had not made a declaration of his intention to become a citizen, or that he had a mother dependent upon him for support does not make his contract of enlistment void. *Ex Parte Dostal* (D.C. Ohio 1917, 243 F. 664).

3. Enlisted into military service

It was not intended that the provision containing the expression "enlisted or mustered into the military service of the United States" should apply to only one branch of that service. *Hoskins v. Dickerson* (C.C.A. 5, 1917, 239 F. 275).

4. Trial by military authorities

Where petitioners were acting, under orders of the President in the discharge of a high duty, and might be ordered at any time to perform active military service, the State had no right to try the men for offense, but it was a case for the military authorities. *In re Wulzen* (D.C. Ohio 1916, 235 F. 362).

§ 39-402. Enlistment contract and oath.

Men enlisting in the National Guard of the District of Columbia, shall sign an enlistment contract and subscribe to the following oath of enlistment: "I do hereby acknowledge to have voluntarily enlisted this ---- day of -----, 19--, as a soldier in the National Guard of the United States and of the District of Columbia, for the period of three (or one) years, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States, and of the officers appointed over me according to law and the rules and Articles of War."

The oath of enlistment prescribed in this section may be taken before any officer of the National Guard authorized to administer oaths of enlistment in the National Guard of the District of Columbia, by respective laws thereof. All oaths of enlistment administered prior to June 19, 1935 by the officers described above are hereby validated. (June 3, 1916,

39 Stat. 201, ch. 134, § 70; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 38; June 15, 1933, 48 Stat. 156, ch. 87, § 8; June 19, 1935, 49 Stat. 391, ch. 277, § 3.)

REFERENCES IN TEXT

Articles of War, referred to in the text, refer to Articles of War as codified in R.S. section 1342, Arts. 1—128, repealed June 4, 1920, 41 Stat. 812, ch. 227, subch. II, section 4, and now covered by the Uniform Code of Military Justice, section 1 of act Aug. 10, 1956, 70A Stat. 36, set out as U.S. Code, title 10, chapter 47.

CODIFICATION

Section 27 of act 1889, 25 Stat. 776, ch. 328, as amended by act Feb. 18, 1909, 35 Stat. 632, ch. 146, is deemed to have been superseded by this section.

AMENDMENTS

1935—Act June 19, 1935, added the second paragraph.

1933—Act June 15, 1933, changed the words "of enlistment" which followed the word "oath" in paragraph one to "or affirmation."

1920—Act June 4, 1920, substantially reworded the first paragraph.

CROSS REFERENCE

See U.S. Code, title 32, § 304.

§ 39-403. Discharge of enlisted men from the National Guard.

An enlisted man discharged from service in the National Guard, shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the Regular Army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the Secretary of War may prescribe. (June 3, 1916, 39 Stat. 201, ch. 134, § 72; June 4, 1920, 41 Stat. 781, ch. 227, § 40; June 15, 1933, 48 Stat. 157, ch. 87, § 10.)

CODIFICATION

Sections 28, 30 of act Mar. 1, 1889, 25 Stat. 776, ch. 328, as amended by act Feb. 18, 1909, 35 Stat. 632, ch. 146, are deemed to have been superseded by this section.

AMENDMENTS

1933—Act June 15, 1933, added the words "and the National Guard of the United States," and substituted "Secretary of War" for "President".)

1920—Act June 4, 1920, added the exception with respect to men drafted into the military service and an exception which was deleted by the 1933 amendment.

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 39-404. Discharge without honor.

An enlisted man may be discharged without honor at any time by order of the commanding general on account of fraudulent enlistment, or on account of his being continuously absent without leave from his command for a period of not less than three months. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 26.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-405. Dishonorable discharge.

An enlisted man shall be dishonorably discharged by order of the commanding general upon conviction of felony in a civil court; upon discovery of

re-enlistment after previous dishonorable discharge; or to carry out a sentence of a court-martial. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 27.)

CROSS REFERENCE

See U.S. Code, title 32.

Chapter 5.—ARMAMENT, EQUIPMENT, AND SUPPLIES

Sec.

- 39-501. Uniform, arms, and equipment—Issuance by War Department.
- 39-502. Regulations for reissue of equipment by commanding general.
- 39-503. Personal liability for equipment—Determination of value of lost equipment.
- 39-504. Returns of equipment.
- 39-505. Penalty for selling, pawning, injuring, or retaining public property.
- 39-506. Transfer of property on promotion, retirement, or dismissal.
- 39-507. Failure to transfer property—Surveying officer—Appointment—Duties.
- 39-508. Defective accounts—Surveying officer to fix responsibility.
- 39-509. Surveying officer to be appointed upon death or desertion of accounting officer.
- 39-510. Liability of officer or his estate until accounts are found correct.
- 39-511. Liability of officer's estate for property lost, injured, or destroyed.
- 39-512. Distinctive uniforms.
- 39-513. Right to own personal property—Actions for injuries.
- 39-514. Armories to be provided.
- 39-515. Annual inspections.
- 39-516. Use of Washington Barracks.
- 39-517. Purchase of supplies.

§ 39-501. Uniform, arms, and equipment—Issuance by War Department.

The uniforms, arms, and equipments of the National Guard shall as far as practicable be the same as prescribed and furnished to the Regular Army. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this chapter. Such property shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of War, to the commanding general, upon his requisitions for the same. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for by the commanding general at such times, in manner, and on such forms as the Secretary of War may require. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 31; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 29.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

Section 36 of act 1889, 25 Stat. 777, ch. 328, as amended by act Feb. 18, 1909, 35 Stat. 634, ch. 146, is deemed to have been superseded by act June 3, 1916, 39 Stat. 204, ch. 134, § 87, as amended by June 3, 1924, 43 Stat. 363, ch. 244, § 1, and Feb. 28, 1925, 43 Stat. 1077, ch. 371, § 4. Section 87, as amended in 1925, read as follows:

"SEC. 87. *Disposition and Replacement of Damaged Property,* and so forth.—All military property issued to the National Guard as herein provided shall remain the property of the United States. Whenever any such property issued to the National Guard in the District of Columbia shall have been lost, damaged, or destroyed, or become unserviceable or unsuitable by use in service or from any other cause, it shall be examined by a disinterested surveying officer of the Regular Army or the National Guard, detailed by the Secretary of War, and the report of such surveying officer shall be forwarded to the Secretary of War, or to such officer as he shall designate to receive such reports; and if it shall appear to the Secretary of War from the record of survey that the property was lost, damaged, or destroyed through unavoidable causes, he is hereby authorized to relieve the District of Columbia from further accountability therefor. If it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the District of Columbia to be paid from District funds, or any funds other than Federal. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary of War shall direct what disposition by sale or otherwise shall be made of them; and if sold, the proceeds of such sale, as well as stoppages against officers and enlisted men, and the net proceeds of collections made from any person or from the District to reimburse the Government for the loss, damage, or destruction of any property, shall be deposited in the Treasury of the United States as a credit to the District of Columbia, accountable for said property, and shall remain available throughout the then current fiscal year and throughout the fiscal year following that in which the sales, stoppages, and collections were effected, for the purposes provided for in that portion of its allotment set aside for the purchase of similar supplies, stores, or material of war: *Provided*, That if the District of Columbia shall neglect or refuse to pay, or to cause to be paid, the money equivalent of any loss, damage, or destruction of property charged against the District of Columbia by the Secretary of War after survey by a disinterested officer appointed as hereinbefore provided, the Secretary of War is hereby authorized to debar the District of Columbia from further participation in any and all appropriations for the National Guard until such payment shall have been made: *Provided further*, That property issued to the National Guard and which has become unserviceable through fair wear and tear in service, may, after inspection thereof and finding to that effect made by an officer of the Regular Army designated by the Secretary of War, be sold or otherwise disposed of, and the District of Columbia shall be relieved from further accountability therefor: such inspection, and sale or other disposition, to be made under regulations prescribed by the Secretary of War, and to constitute as to such property a discretionary substitute for the examination, report, and disposition provided for elsewhere in this section."

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 31 to 29.

CHANGE OF NAME

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10 Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-502. Regulations for reissue of equipment by commanding general.

The commanding general may transfer all public property, received by him for the use of the National Guard under the provisions of this chapter, to the several departmental officers of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the officers or soldiers to whom issued. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 32; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 30.)

AMENDMENT

1909—Act Feb. 18, 1909, made no change in the text of this section, but changed the section number from 32 to 30.

CROSS REFERENCE

See U. S. C., title 32.

§ 39-503. Personal liability for equipment—Determination of value of lost equipment.

Every officer and enlisted man to whom property of the United States has been issued shall be personally responsible to the United States for such property, and no one shall be relieved from such responsibility except it be shown to the satisfaction of the commanding general that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; and in all other cases the value of the property lost or destroyed shall be charged against the person at fault or to the organization to which it has been issued, and such person or organization, if not relieved from such charge by the commanding general, shall pay the value of such property to the Quartermaster-General within one year after such loss or destruction. The value of lost or destroyed property and the person or organization to be charged therewith shall be determined by a board to consist of an inspector of the staff of the commanding general of the militia and the commanding officer of the organization in which such property is lost. In case of disagreement such value shall be fixed by the commanding general of the militia. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 31.)

CROSS REFERENCES

See U.S. Code, title 32.

Disposition of funds, see § 39-806.

§ 39-504. Returns of equipment.

Every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the judge-advocate-general of the militia at the order of the commanding general. All money received on account of loss or damages shall be paid in the treasury of the United States, and shall be accounted for by the commanding general in his returns to the Secretary of War. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 33; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 32.)

AMENDMENT

1909—Act Feb. 18, 1909, did not change the text of this section, but changed the section number from 33 to 32.

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCES

See U.S. Code, title 32.

Disposition of funds, see § 39-806.

§ 39-505. Penalty for selling, pawning, injuring, or retaining public property.

Any officer or soldier who shall sell, dispose of, pawn or pledge, wilfully destroy or injure, or retain after proper demand made, any public property issued under the provisions of this title, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not exceeding two months, or by a fine not exceeding one hundred dollars, or by both; and it is hereby made the duty of the judge of the municipal court of the District of Columbia, upon information filed or complaint, made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the municipal court to be dealt with according to the provisions of this section. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 34; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 33; Apr. 1, 1942, 56 Stat. 190, h. 207, § 1.)

AMENDMENT

1909—Act Feb. 18, 1909, did not change the text of this section, but changed the section number from 34 to 33.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal court" was substituted for "police court" to conform to act Apr 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-506. Transfer of property on promotion, retirement, or dismissal.

Upon the promotion, tender of resignation, retirement, or dismissal of any officer who is responsible or accountable for public property, the commanding general of the militia shall designate an officer to accept and receipt for such property, and direct the officer responsible or accountable therefor to make prompt transfer of all property remaining on hand; and it shall be the duty of the officer responsible or accountable to proceed at once to complete such transfer and close his accounts without delay. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 34.)

AMENDMENT

The 1909 amendment repealed § 35 of the 1889 act, and inserted in lieu thereof §§ 34-38 (§§ 39-506 to 39-510). The original § 35 provided as follows: "Until an officer, or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct, the liability of such officer, or of his estate, for public property for which he is or may have been responsible shall be in no way affected by resignation, discharge, change in official position, or death. Upon the death or desertion of an officer responsible for public property his immediate commander shall at once

cause the property for which such officer was responsible to be collected, and a correct inventory made by actual count and examination; which inventory shall be forwarded to the commanding general, in order that any deficiency may be made good from the estate of the deceased or deserting officer; compensation for such deficiency may be recovered in the manner provided in § 34 [§ 39-505]."

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-507. Failure to transfer property—Surveying officer—Appointment—Duties.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same as aforesaid, fail to make proper transfer as directed within thirty days or any authorized extension of that period, the heads of the respective staff departments exercising supervision over or control of said property shall report the facts to the adjutant-general for the action of the commanding general of the militia. Upon receiving such a report the commanding general may in his discretion direct that a surveying officer be appointed, and it shall be the duty of such surveying officer to ascertain and verify all public property which the delinquent officer had on hand and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the head of the proper staff department. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 35.)

AMENDMENT

See amendment note to § 39-506.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-508. Defective accounts—Surveying officer to fix responsibility.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same and close his accounts as aforesaid, fail to close his accounts to the satisfaction of the commanding general, the heads of the respective staff departments exercising supervision over or control of said property will report the facts to the adjutant-general for the action of the commanding general of the militia. Upon receiving such a report, the commanding general may, in his discretion, direct that a surveying officer be appointed to determine and fix the responsibility for the loss or destruction of any public property for which said officer is responsible or accountable and which he has failed to transfer to the officer designated to receive the same. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 36.)

AMENDMENT

See amendment note to § 39-506.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-509. Surveying officer to be appointed upon death or desertion of accounting officer.

In the event of the death or desertion of any officer accountable for public property the commanding general shall direct that a surveying officer be appointed, and also designate an officer to receive such

property. Said surveying officer shall ascertain and verify all public property which the deceased or deserting officer had on hand at the time of his death or desertion and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the heads of the proper staff departments. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 37.)

AMENDMENT

See amendment note to § 39-506.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-510. Liability of officer or his estate until accounts are found correct.

Until an officer or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct the liability of such officer or of his estate for public property for which he is or may have been responsible or accountable shall be in no way affected by resignation, discharge, change in official position, desertion, or death. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

AMENDMENT

See amendment note to § 39-506.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-511. Liability of officer's estate for property lost, injured, or destroyed.

Compensation for any public property defaced, injured, lost, or destroyed through the neglect or default of a deceased officer may be recovered from his estate in the manner provided in section 39-505. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

AMENDMENT

See amendment note to § 39-506.

CROSS REFERENCES

See U.S. Code, title 32.

Disposition of funds, see § 39-806.

§ 39-512. Distinctive uniforms.

Any organization of the active militia may, with the approval of the commanding general, and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the commanding general except by his permission. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 37; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 40.)

AMENDMENT

1909—Act Feb. 18, 1909, did not change the text of this section but changed the section number from 37 to 40.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-513. Right to own personal property—Actions for injuries.

Organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any

organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought, in the name of such commanding officer, before the municipal court, or before the United States District Court for the District of Columbia, and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 38; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 41; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

The phrase "with the right of appeal to the supreme court of the District of Columbia" preceding "justice of the peace", as originally enacted, was omitted as unnecessary.

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 38 to 41.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

"Municipal court" was substituted for "justice of the peace" to conform to act Feb. 17, 1909.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-514. Armories to be provided.

The quartermaster-general of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the commanding general. He shall also provide each organization with such lockers, closets, gun racks, and cases or desks as may be necessary for the care, preservation, and safe-keeping of the arms, equipments, uniforms, records, and other militia property in their possession. He shall also provide suitable rooms for the offices of the commanding general and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safe-keeping of public property. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 39; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 42.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 39 to 42.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-515. Annual inspections.

An annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the commanding general may order and direct. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 42; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 45.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 42 to 45.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-516. Use of Washington Barracks.

National Guard shall have the use of the drill grounds and rifle range at the Washington Barracks, subject to the approval of the Secretary of War, and the commanding general of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 44; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 47.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 44 to 47.

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011-3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-517. Purchase of supplies.

The purchase of supplies and the procurement of services for all branches of the District of Columbia militia service may be made in open market, in the manner common among business men, when the aggregate of the amount required does not exceed one hundred dollars. (May 26, 1908, 35 Stat. 308, ch. 198, § 1.)

CROSS REFERENCE

Expenses and allowances, see § 39-802 et seq.

Chapter 6.—ACTIVE MILITARY DUTY

Sec.

39-601. Drills to be military duty.

39-602. Prescribing drills.

39-603. Suppression of riots.

39-604. Cause for being excused from duty when militia is ordered into service of United States or to suppress riots.

39-605. Parades to have right of way.

39-606. Rules for parades and encampments.

39-607. Camp duty.

39-608. Governmental employees to have leave of absence to attend parades and encampments.

§ 39-601. Drills to be military duty.

Any drill, parade, encampment or duty that is required, ordered, or authorized to be performed under the provisions of this title, shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extending beyond the term of service for which he is then ordered. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 40; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 43.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended,

and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section but changed the section number from 40 to 43.

CROSS REFERENCES

See U.S. Code, title 32.
Right-of-way, see § 39-605.
Rules of parade or encampment, see § 39-606.
Soldiers' and Sailors' Civil Relief Act of 1940, see U.S. Code, title 50 App., § 501 et seq.
System of discipline and field exercises, see § 39-104.

§ 39-602. Prescribing drills.

The commanding general shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof, without the permission of the commanding general. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 41; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 44.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 41 to 44.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-603. Suppression of riots.

When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force or violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the commissioners of the District of Columbia, or for the United States marshal for the District of Columbia, to call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws; the commander-in-chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 45; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 48.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of the 1889 act, but changed the section number from 45 to 48.

CROSS REFERENCES

See U.S. Code, title 32.
Enrolled militia subject to call, see § 39-104.

§ 39-604. Cause for being excused from duty when militia is ordered into service of United States or to suppress riots.

No officer or soldier of the National Guard, when ordered on duty to aid the civil authorities, or when ordered into the service of the United States in obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the commanding general in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this chapter the penalty shall be such as may be prescribed by the commanding general, or the by-laws of the organization to which the officer or soldier belongs. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 46; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 49.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 46 to 49.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-605. Parades to have right of way.

The United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided*, That the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments shall not be interfered with thereby. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 47; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 50.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 47 to 50.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-606. Rules for parades and encampments.

Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded; and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the municipal court, and the judge thereof may punish such offense by a fine not exceeding twenty-five dollars. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 48; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 51; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 48 to 51.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court. See section 11-751.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-607. Camp duty.

The National Guard shall perform not less than six consecutive days of camp duty in each year, at such time as may be ordered by the commanding general; and the quartermaster-general of the militia, subject to the approval of the commanding general, shall provide, by rental or otherwise, a suitable camp ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 43; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 46.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 43 to 46.

CROSS REFERENCE

Required drills and field exercises and participation therein, see U.S. Code, title 32, §§ 502, 503.

§ 39-608. Governmental employees to have leave of absence to attend parades and encampments.

All officers and employees of the United States and of the District of Columbia who are members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay or time, on all days of any parade or encampment ordered or authorized under the provisions of this title. This section shall be construed as covering all days of service which the National Guard, or any portion thereof, may be ordered to perform by the commanding general. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 49; July 1, 1902, 32 Stat. 615, ch. 1352; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 52.)

AMENDMENTS

1909—Act Feb. 18, 1909, did not amend the text of the section, but changed the section number from 49 to 52.

1902—Act July 1, 1902, provided that this section should be construed as covering all days of service which the National Guard, or any portion thereof, may be ordered to perform by the commanding general.

CROSS REFERENCES

See U.S. Code, title 32.

Leave of absence of Government employees who are members of the Reserve Corps, see §§ 39-109, 39-110.

Chapter 7.—COURTS-MARTIAL

Sec.

- 39-701. Military courts—Designated.
- 39-702. Courts of inquiry.
- 39-703. General courts-martial.
- 39-704. Constitution—Jurisdiction.
- 39-705. Prosecution of members prohibited.
- 39-706. Jurisdiction to be presumed.
- 39-707. Witnesses—Compulsory attendance.
- 39-708. Sentences—How executed.
- 39-709. Warrants for arrest of accused.

§ 39-701. Military courts—Designated.

The military courts of the District of Columbia shall be: General courts-martial, special courts-martial, the summary courts-martial, and courts of inquiry, as now or hereafter provided by law. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 54.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1888 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

1909—Act Feb. 18, 1909, repealed § 50 of act 1889 and inserted in lieu thereof §§ 54 and 55 [this section and § 39-702].

CROSS REFERENCES

Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures, see U.S. Code, title 32, § 326.

General courts-martial, special courts-martial and summary courts-martial of National Guard not in Federal service, see U.S. Code, title 32, §§ 327-329.

§ 39-702. Courts of inquiry.

Courts of inquiry, to consist of not more than three officers, may be ordered by the commanding general for the purpose of investigating the conduct of any officer, either at his own request or on complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the commanding general, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 55.)

AMENDMENT

See amendment note to § 39-701.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-703. General courts-martial.

General courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the President of the United States or commanding general at such times as the interests of the service may require. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 51; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 56.)

CODIFICATION

Sections 52-54 of act of 1889, 25 Stat. 779, ch. 328 were repealed by act of Feb. 18, 1909, 35 Stat. 635, ch. 146.

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 51 to 56.

CROSS REFERENCE

General courts-martial of National Guard not in Federal service, see U.S. Code, title 32, § 327.

§ 39-704. Constitution—Jurisdiction.

The constitution and jurisdiction of military courts, the form and manner in which their proceedings shall be conducted and reported, and the forms of oaths and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision shall be governed by the Articles of War and the law and procedure of the military courts of the United States. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 57.)

REFERENCES IN TEXT

Articles of War, referred to in the text, refer to Articles of War as codified in R.S. section 1342, Arts. 1—128, repealed June 4, 1920, 41 Stat. 812, ch. 227, subch. II, section 4, and now covered by the Uniform Code of Military Justice, section 1 of act Aug. 10, 1956, 70A Stat. 36, set out as U.S. Code, title 10, chapter 47.

CROSS REFERENCES

See U.S. Code, title 32.

Failure of member of National Guard to report for duty when ordered into service, see § 39-604.

Failure of members of enrolled militia to appear when ordered out, see § 39-105.

Failure to return, or destruction of Government property, see § 39-504.

§ 39-705. Prosecution of members prohibited.

No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court, nor shall any officer or enlisted man be liable to civil or criminal prosecution for any act done while in the discharge of his military duty. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 58.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-706. Jurisdiction to be presumed.

The jurisdiction of the courts and boards established by this title shall be presumed, and the burden of proof shall rest on any person to oust such courts or boards of jurisdiction in any action or proceedings. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 59.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-707. Witnesses—Compulsory attendance.

Every person not belonging to the National Guard of the District of Columbia who, being duly subpoenaed to appear as a witness before the military courts herein provided for, wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be guilty of a misdemeanor, for which such person shall be punished on information in the criminal courts of the District of Columbia, and it shall be the duty of the United States attorney for the District of Columbia, on certification of the facts to him by any military court herein provided for, to file an information against and prosecute the person so offending and the punishment of such person on conviction shall be by a fine of not more than one hundred dollars, or imprisonment not exceeding thirty days, or both, at the discretion of the court: *Provided*, That this section shall not apply to persons residing beyond the limits of the District of Columbia, and that the fees of such witness and his mileage at the rate provided for witnesses in the United States District Court in said District shall be duly paid or tendered said witness; *And provided*, That no witness shall be compelled to incriminate himself or to answer any questions which may tend to criminate

or degrade him. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 60.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-708. Sentences—How executed.

The sentences of said courts, whether of fine or imprisonment, shall be executed by the United States marshal for the District of Columbia in the same manner as are sentences of the criminal courts of said District. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 61.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-709. Warrants for arrest of accused.

Whenever it shall appear to a regularly constituted court-martial convened under the provisions of this chapter that the accused, having been duly ordered or summoned to appear before such court-martial for trial, has refused or neglected so to appear, such court-martial shall issue a warrant or attachment for the arrest of the accused, directed to the United States marshal for the District of Columbia, who shall forthwith execute said warrant or attachment, make proper return thereof to such court-martial, and produce to such court-martial the body of the accused, if within the District of Columbia, and to retain the custody thereof and continue so to produce said body during the sessions of such court-martial until the conclusion of the trial, unless sooner discharged by said court-martial. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 62.)

CROSS REFERENCE

See U.S. Code, title 32.

Chapter 8.—PAY AND ALLOWANCES

Sec.

- 39-801. Payment for active service.
- 39-802. Allowances for general expenses.
- 39-803. Musicians' pay.
- 39-804. Subsistence while on duty.
- 39-805. Annual estimates.
- 39-806. Deductions for lost property—Officers' clothing—Use of fines—Use of appropriations.

§ 39-801. Payment for active service.

Whenever the National Guard of the District of Columbia shall be ordered to duty in case of riot, tumult, breach of the peace, or whenever called in aid of the civil authorities, all enlisted men who do duty shall be paid at the rate equivalent to two times the pay of enlisted men of the Regular Army of like grade. Commissioned officers who do duty shall be entitled to and shall receive the same pay and allowances as commissioned officers of like grade of the Regular Army. Each mounted officer and enlisted man shall be paid a reasonable per diem compensation for each horse actually furnished and used by him: *Provided*, That when the National Guard of the District of Columbia is called into actual service of the United States the officers and enlisted men shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the Regular Army. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 53.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-802. Allowances for general expenses.

There shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the commanding general, and paid in the manner provided in section 39-901. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 55; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 63.)

CODIFICATION

The last phrase of this section in the original act read as follows: "and paid in the manner provided for in section 60." Section 60 of the 1889 act now appears as § 39-901, and as it does not refer to payment, it seems probable that the reference should have been to § 58 of that act which appears in this code as § 39-805.

AMENDMENT

1909—Act Feb. 18, 1909, did not change the text of this section, but changed the section number from 55 to 63.

CROSS REFERENCES

See U.S. Code, title 32.

Method of purchase of services or supplies, see § 39-517.

§ 39-803. Musicians' pay.

During the annual encampment, and on every duty on parade ordered by the commanding general, there shall be allowed and paid for each day of service: To each member of the regularly enlisted bands, four dollars; to the chief musicians, eight dollars; and to the principal musicians, six dollars. In event there is no enlisted band or field music, or not a sufficient number of either, the commanding general may authorize the employment of such as he may deem necessary for the occasion: *Provided*, That the total pay of the enlisted musicians shall not in any event exceed the rates authorized by this section. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 56; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 64.)

CODIFICATION

Act July 15, 1939, 53 Stat. 1030, ch. 281; *Provided*, That so much of the act of March 1, 1889 (25 Stat. 773), as amended by the act of February 18, 1909 (35 Stat. 629), as provides and fixes the rates of extra compensation to members of the regularly enlisted bands of the Militia of the District of Columbia, is hereby repealed.

AMENDMENT

1909—Act Feb. 18, 1909, changed the number of this section from 56 to 64; omitted the words "to each mem-

ber of the regularly enlisted corps of field music, two dollars," and changed "chief musician" and "principal musician" to "chief musicians" and "principal musicians" in the first sentence, and inserted the final proviso in lieu of a sentence which read as follows: "The payments for bands of music and drum corps shall be made in the manner provided in section sixty."

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-804. Subsistence while on duty.

During the annual encampment, or when ordered on duty to aid the civil authorities, the National Guard shall be furnished with subsistence stores, of the kind, quality, and amount allowed and prescribed by the army. Such stores shall be issued from the stores and supplies appropriated for the use of the army, upon the approval and by the direction of the Secretary of War, to the commanding general upon his requisitions for the same. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 57; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 65.)

AMENDMENT

1909—Act Feb. 18, 1909; did not amend the text of this section, but changed the section number from 57 to 65.

CHANGE OF NAME

The title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, title 10, Armed Forces, which in sections 3011-3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-805. Annual estimates.

The commanding general shall annually transmit to the Commissioners of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this title, and the said Commissioners shall include the same in their annual estimates of appropriations for the District; and all moneys appropriated to pay the expenses authorized by this title shall be disbursed in accordance with law. (Feb. 18, 1909, 35 Stat. 636, ch. 146, § 66.)

CODIFICATION

Act June 11, 1896, 29 Stat. 412, ch. 419, provided as follows: "Hereafter all leases and contracts involving expenditures on account of the militia shall be made by the Commissioners of the District of Columbia; and appropriations for the militia shall be disbursed only upon vouchers duly authorized by the Commissioners, for which they shall be held strictly accountable."

The 1909 act repealed section 58 and inserted in lieu thereof section 66 which substituted the closing words "disbursed in accordance with law" for "disbursed by the commissioners of the District of Columbia, upon vouchers duly certified and approved by the commanding general, and accounted for by them in the same manner as all other moneys appropriated for the expenses of the District."

CROSS REFERENCES

See U.S. Code, title 32.

Method of purchase of services or supplies, see § 39-517.

§ 39-806. Deductions for lost property—Officers' clothing—Use of fines—Use of appropriations.

All moneys collected on account of deductions made from the pay of any officer or enlisted man

of the National Guard of the District of Columbia, on account of government property lost or destroyed by such individual shall be repaid into the United States Treasury to the credit of the officer of the militia of the District of Columbia who is accountable to the United States Government for such property lost or destroyed: *Provided further*, That there may be paid to all commissioned officers (without discrimination, and in lieu of the limited pay authorized by this section) an allowance to be used by them in the purchase and maintenance of clothing and equipment: *Provided further*, that after March 2, 1911, all moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia for or on account of any violation of the regulations governing said National Guard, and all moneys which, by reason of the absence of officers or enlisted men from duly ordered assemblies or other duty, are not expended for pay of troops, shall be held by the commanding general of the militia of the District of Columbia, who is authorized to expend such moneys for necessary clerical and general expenses of the service, heretofore or hereafter incurred, including law books and books of reference, or for the pay of troops, other than government employees; and for all moneys so expended the commanding general shall make an accounting in like manner as for the appropriation disbursed for pay of troops: *Provided further*, That after March 2, 1911, any of the moneys appropriated for the District of Columbia Militia may be used to supplement specific appropriations or allotments which may be found insufficient for the purposes for which made, and authority is hereby given to supplement the regular ration by purchase of such additional articles of subsistence as may be deemed necessary: *Provided further*, That after March 2, 1911, the commanding general of the District of Columbia Militia is hereby authorized to make such deductions from any pay of any officer or enlisted man derived from appropriations or allotments made under the provisions of section sixteen hundred and sixty-one, United States Revised Statutes or other federal enactments as may be necessary to reimburse the United States or the District of Columbia for public property lost, destroyed, or damaged by such individual. (Mar. 2, 1911, 36 Stat. 1004, ch. 192.)

REFERENCE IN TEXT

R. S., § 1661, referred to in the text, was repealed by act Mar. 3, 1933, 47 Stat. 1428, ch. 202, § 1.

CROSS REFERENCES

See U.S. Code, title 32.

Other provisions concerning disposition of funds, see § 39-504.

Soldiers' and Sailors' Civil Relief Act of 1940, see U.S. Code, title 50 App. § 501 et seq.

Chapter 9.—MISCELLANEOUS PROVISIONS

Sec.

- 39-901. Duties of officers.
- 39-902. Date of commissions.
- 39-903. Regulations—Company and battalion rules.
- 39-904. System of discipline and field exercise.
- 39-905. Commanding general to make regulations.
- 39-906. Naval battalion not affected.

§ 39-901. Duties of officers.

The departmental and military duties of the officers provided for in this title shall be correlative with those discharged by similarly designated officers in the Army of the United States. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 60; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 68.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 60 to 68.

CROSS REFERENCE

See U.S. Code, title 32.

NOTES TO DECISIONS

1. Officers exceeding authority

Actions of company captain in giving furlough without authority from superior officers, were not binding upon the military authorities. *Ex Parte Roach* (D.C. Ala. 1917, 244 F. 625).

§ 39-902. Date of commissions.

Any commission issuing under the provisions of this title shall, where the rank remains unchanged, bear the date of the commission held on Feb. 18, 1909; and any officer who has served continuously in the same grade may be recommissioned with rank from date of his original commission to that grade. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 76.)

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-903. Regulations—Company and battalion rules.

Companies, battalions, or regiments may adopt constitutional articles of agreement or by-laws subject to the approval of the commander-in-chief, for the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for nonperformance of duty, and the determination of causes upon which excuses from fines may be based: *Provided, however*, That such articles or rules shall not be repugnant to law or the regulations for the government of the militia: *And provided further*, That the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the commanding general, shall be deposited in the office of the adjutant-general. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 59; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 67.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section but changed the section number from 59 to 67.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-904. System of discipline and field exercise.

The system of discipline and field exercise ordered to be observed by the Army of the United States, or such other system as may be directed for the militia by laws of the United States, shall be observed by the National Guard. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 61; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 69.)

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 61 to 69.

CROSS REFERENCE

See U.S. Code, title 32.

§ 39-905. Commanding general to make regulations.

The commanding general, subject to the approval of the commander-in-chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the army so far as they may be applicable. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 62; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 70.)

CODIFICATION

Section 63 of act 1889, 25 Stat. 781, ch. 328, provided: "That the act 'more effectually to provide for the organization of the militia of the District of Columbia,' approved March third, eighteen hundred and three, is hereby repealed."

Act Feb. 18, 1909, 35 Stat. 636, ch. 146, amended § 63 of act 1889 by changing the section from sixty-three to seventy-one.

AMENDMENT

1909—Act Feb. 18, 1909, did not amend the text of this section, but changed the section number from 62 to 70.

CROSS REFERENCE

See U.S. Code, title 32.

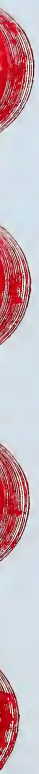
§ 39-906. Naval battalion not affected.

Nothing contained in this title shall be held to alter the status or organization of the naval battalion as now provided for by law. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 75.)

CROSS REFERENCE

See U.S. Code, title 32.





TITLE 40.—MOTOR VEHICLES

Chap.	Sec.
1. Registration of Motor Vehicles.....	40-101
2. Inspection	40-201
3. Operators' Permits.....	40-301
4. Motor Vehicle Safety Responsibility.....	40-401
5. Public-Owned Vehicles.....	40-501
6. Regulation of Traffic.....	40-601
7. Liens on Motor Vehicles or Trailers.....	40-701
8. Regulation of Parking.....	40-801
9. Installment Sales of Motor Vehicles.....	40-901

Chapter 1.—REGISTRATION OF MOTOR VEHICLES

Sec.
40-101. Definitions.
40-102. Registration of motor vehicles—Certificates— Tags—Duplicates—Dealers—Fees—Official and foreign vehicles—Transfers—Regulations.
40-103. Fees classified and use of proceeds designated.
40-104. Unlawful acts—Penalty.
40-105. Provisions not affected.

§ 40-101. Definitions.

As used in this chapter—

(a) The term "motor vehicle" means any vehicle propelled by an internal-combustion engine or by electricity or steam, except road rollers, farm tractors, and vehicles propelled only upon stationary rails or tracks.

(b) The term "person" means an individual, partnership, corporation, or association.

(c) The term "owner" means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations.

(d) The term "director" means the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the commissioners.

(e) The term "dealer" means any person engaged in the business of manufacturing, distributing, or dealing in motor vehicles or trailers.

(f) The term "public highway" means any road, street, alley, or way, open to use of the public, as a matter of right, for purposes of vehicular traffic.

(g) The term "trailer" means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(h) The term "farm tractor" means a motor vehicle designed and used primarily for drawing implements of agricultural husbandry.

(i) The term "pneumatic tire" means a tire inflated with compressed air.

(j) The terms "operate" and "operated" shall include operating, moving, standing, or parking any motor vehicle or trailer on a public highway of the District of Columbia. (Aug. 17, 1937, 50 Stat. 679, ch. 690, § 1, title IV; Sept. 8, 1950, 64 Stat. 791, ch. 921, §§ 1, 2.)

AMENDMENT

1950—Act Sept. 8, 1950, inserted the words "or trailers" at the end of paragraph (e), and added paragraph (j), defining terms "operate" and "operated".

EFFECTIVE DATE

Section 7 of act Aug. 17, 1937, provided that: "This title shall take effect on January 1 of the first calendar year following the enactment thereof [Aug. 17, 1937], except that the Commissioners of the District of Columbia are authorized to provide for the registration of motor vehicles under this title for such calendar year, beginning with the 1st day of November preceding such effective date."

TRANSFER OF FUNCTIONS

Reorganization Order No. 54 of the Board of Commissioners dated June 30, 1953, and made effective Aug. 15, 1953, established under the direction and control of the Engineer Commissioner, a Department of Vehicles and Traffic, headed by a Director. The Department of Vehicles and Traffic was later redesignated as the Department of Motor Vehicles by Order No. 58-919 of the Commissioners, dated June 10, 1958. The new department is to provide for the planning of traffic and parking facilities and the administration of the Motor Vehicle laws of the District. A Commissioners' Traffic Advisory Board was established, and the members of the former board reappointed. The previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers' Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency were abolished by the order. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

CROSS REFERENCE

Powers and duties of department of vehicles and traffic, see § 40-603.

NOTES TO DECISIONS

"Operate," defined 1
Owners 2

1. "Operate" defined

In view of statutory provisions dealing with registration of motor vehicles and defining terms "operate" and "operated" to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, defendant, who had no operator's permit and who was manually pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by reaching through open window and manipulating steering wheel was guilty of violating regulation that no individual shall operate a motor vehicle without first having obtained an operator's permit. *Richardson v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 492).

2. Owners

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title was defective and automobile was still registered in sellers' names. *Burt and Mumford v. Cordover* (D. C. Mun. App. 1955, 117 A. 2d 116).

§ 40-102. Registration of motor vehicles and trailers—
Certificates—Tags—Duplicates—Dealers—Fees—
Official and foreign vehicles and trailers—Trans-
fers—Regulations.

(a) No motor vehicle or trailer shall be operated (except motor vehicles or trailers operated by non-residents, exempted under the provisions of section 40-303, motor vehicles or trailers covered by a dealer's registration as provided in subsection (b) (1) of this section, and motor vehicles or trailers covered by a special use certificate as provided in subsection (b) (4) of this section) unless registered in the department of vehicles and traffic of the District of Columbia by the owner thereof. Upon receipt of an application from the owner of a motor vehicle or trailer and (except in the case of a motor vehicle or trailer covered by subsection (b) (2) of this section) payment of a registration fee computed as provided in section 40-103, and if there is in force with respect to such motor vehicle or trailer a valid certificate of title issued under section 40-603, the director shall issue to such owner a registration certificate and identification tags for such motor vehicle or trailer.

(b) The Commissioners of the District of Columbia by regulation shall provide for the issuance by the director—

(1) annually to any dealer, upon payment of the fee prescribed in section 40-103, of a registration certificate and identification tags bearing a distinguishing dealer's mark, for interchangeable use on motor vehicles and trailers in accordance with regulations promulgated by the Commissioners;

(2) annually, without charge, of certificates of registration and identification tags for all motor vehicles and trailers owned by the United States or by the District of Columbia, or officially used by any duly accredited representative of a foreign government;

(3) of duplicate registration certificates or duplicate identification tags, upon proof satisfactory to the director of loss, mutilation, or destruction thereof, upon payment of a fee of \$1 for each set of duplicate tags or 50 cents for each duplicate registration certificate; and

(4) to any person, upon payment of a fee of \$1, of a special use certificate and special use identification tags bearing a distinguishing mark, valid for a period not exceeding ten days, for use on a motor vehicle or trailer in accordance with regulations promulgated by the Commissioners: *Provided*, That if any person be convicted of a violation of such regulations, the director may refuse thereafter to issue a special use certificate and special use identification tags to such person for a period of one year: *Provided further*, That the issuance of a special use certificate and special

use identification tags for a motor vehicle or trailer shall not constitute a registration of such motor vehicle or trailer for any purpose.

(c) Every registration made under this title shall expire at midnight on the last day of the registration year for which the registration was made, unless the time be extended by the Commissioners. Any such registration may be renewed for the ensuing registration year upon application made by the owner during the months of February and March, and upon payment of the fees required by law. During the month of March it shall be lawful to operate a motor vehicle or trailer registered for the ensuing registration year. For the purposes of this chapter, a registration year shall be deemed to begin on April 1 and end on March 31.

(d) Upon the sale or other transfer to another owner of any motor vehicle or trailer registered under this title, the registration thereof shall expire. The owner selling or otherwise transferring such vehicle or trailer may register another motor vehicle or trailer for the unexpired portion of the registration year upon payment of a fee of \$1 and a sum equal to the difference between the registration fee originally paid and the fee computed for such other motor vehicle or trailer under section 40-103, in case the latter is the greater. Upon the death of a joint owner of a motor vehicle or trailer registered under this chapter the registration thereof shall be transferred to the survivor or survivors and the fee for such transfer shall be \$1.

(e) The Commissioners of the District of Columbia are authorized to prescribe such regulations as may be necessary to carry out the provisions of this title and shall prescribe such forms of application for registration and for a special use certificate, such forms of registration and special use certificate, such design of identification tags, and provide for the keeping of such records of registration and issuance of special use certificates and transfers of registration as will facilitate the identification and the regulation of motor vehicles and trailers operated in the District of Columbia.

(f) The Commissioners of the District of Columbia are further authorized to prescribe regulations under which the director may revoke or suspend the registration of any dealer who shall cease to be a dealer as defined in this chapter, or who shall have violated the provisions of this chapter or the regulations promulgated thereunder by the Commissioners, and to revoke or suspend and provide for the return to the director of all dealers' identification tags issued to such dealer, subject to review by the Commissioners under rules and regulations prescribed by them. Pending such review, any such order of revocation or suspension shall be stayed unless the Commissioners shall otherwise direct. No order of the director or the Commissioners hereunder shall be set aside or suspended by any court unless such order is arbitrary or capricious. (Aug. 17, 1937, 50 Stat. 680, ch. 690, § 2, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1045, ch. 313, § 1; Sept. 8, 1950, 64 Stat. 792, ch. 921, § 3; May 18, 1954, 68 Stat. 111, ch. 218, § 601; Apr. 6, 1956, 70 Stat. 102, ch. 182, § 1.)

AMENDMENTS

1956—Act Apr. 6, 1956, amended paragraph (d) by adding second sentence pertaining to registration of another vehicle or trailer for the unexpired portion of the registration year on sale or transfer of a motor vehicle or trailer.

1954—Act May 18, 1954, amended paragraph (d) by deleting the second sentence.

1950—Act Sept. 8, 1950, amended section generally, and among other changes, added "and trailers" after "motor vehicles" throughout.

1939—Act July 17, 1939, amended paragraph (c) by changing registration year to begin on the first day of April and to end on the last day of March.

1938—Act May 16, 1938, amended paragraphs (c) and (d) by changing period of registration from the calendar year to a registration year beginning on the first day of March and ending on the last day of February.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 610 of act May 18, 1954, provided that: "This title [amending this section and §§ 40-103, 47-1206, 47-1208, 47-1209, and repealing §§ 47-1210, 47-1211] shall become effective on and after the 1st day of April following the enactment of this Act [May 18, 1954] by ninety days or more".

EFFECTIVE DATE

Section effective on Jan. 1 of first calendar year following Aug. 17, 1937, see section 7 of act Aug. 17, 1937, set out as a note under section 40-101.

CROSS REFERENCES

Operators' permits, see § 40-301 et seq.

Rules and regulations generally, see § 40-603.

Titling fees, see § 40-603.

NOTES TO DECISIONS

Purpose 1
Recording of lien 2
Violation 3

1. Purpose

Purpose of Vehicle Title and Registration Regulations was to make it extremely difficult, if not impossible, to perpetrate fraudulent automobile transfers. *Chiplock v. Stewart Motor Co.* (D. C. Mun. App. 1952, 91 A. 2d 851).

2. Recording of lien

Where automobile dealer had a "floor plan" arrangement by which plaintiff would advance funds to dealer for purchase of automobiles and would take back chattel mortgages, and dealer had arrangement whereby finance company would purchase the conditional sales contracts executed by buyers of automobiles, and the buyer of an automobile gave conditional sales contract which was assigned to finance company but company never received title certificate because dealer had financial difficulties and never repaid plaintiff, plaintiff was estopped from asserting lien against buyer who had no actual knowledge of plaintiff's recorded chattel mortgage lien, and the buyer, not being in default, was entitled to use and enjoyment of automobile, and finance company was entitled to have its lien recorded on certificate of title. *Smith, Kirkpatrick Co., Inc. v. Continental Autos, Ltd., et al.* (1960, 184 F. Supp. 764).

3. Violation

Where defendant was convicted for operating an automobile without identification tags, basic error was committed in convicting him of an offense for which he was not arrested or charged, and while great strictness should not be employed in construing an information in traffic cases, it is nevertheless the law that an information must state an offense. *Smith v. District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 766).

§ 40-103. Fees classified and use of proceeds designated.

(a) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under sections 40-101 to 40-105, the registration fee provided in this section, except that in the event the Commissioners

prescribe and issue as the official identification tags for the District of Columbia tags treated with special reflective materials designed to increase the visibility and legibility of such tags, the Commissioners may charge a fee not exceeding fifty cents in addition to all other fees which may be required.

(b) Class A. For each passenger vehicle, including passenger vehicles licensed under paragraph (d) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of which is less than three thousand five hundred pounds, \$22; three thousand five hundred pounds or more, \$32.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class B. For each truck, tractor, and passenger-carrying vehicle for hire having a seating capacity of eight passengers or more in addition to the driver or operator, with the exception of passenger vehicles licensed under paragraph (b) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is less than three thousand pounds, \$40; three thousand pounds or more but less than four thousand pounds, \$44; four thousand pounds or more but less than five thousand pounds, \$52; five thousand pounds or more but less than six thousand pounds, \$60; six thousand pounds or more but less than seven thousand pounds, \$68; seven thousand pounds or more but less than eight thousand pounds, \$74; eight thousand pounds or more but less than nine thousand pounds, \$84; nine thousand pounds or more but less than ten thousand pounds, \$96; ten thousand pounds or more but less than twelve thousand pounds, \$122; twelve thousand pounds or more but less than fourteen thousand pounds, \$142; fourteen thousand pounds or more but less than sixteen thousand pounds, \$172, sixteen thousand pounds or more, \$202: *Provided*, That in determining the total weight of a vehicle subject to the provisions of this clause, there shall be excluded, in computing such weight; the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class C. For each trailer, when the manufacturer's shipping weight of the chassis, plus the weight of the body, is less than five hundred pounds, \$8; five hundred pounds or more but less than one thousand pounds, \$12; one thousand pounds or more but less than one thousand five hundred pounds, \$20; one thousand five hundred pounds or more but less than two thousand five hundred pounds, \$32; two thousand five hundred pounds or more but less than three thousand five hundred pounds, \$46; three thousand five hundred pounds or more but less than six thousand pounds, \$60; six thousand pounds or more but less than eight thousand pounds, \$74; eight thousand pounds or more but less than ten thousand pounds, \$92; ten thousand pounds or more but less than twelve thousand pounds, \$122; twelve thousand

pounds or more but less than sixteen thousand pounds, \$152; sixteen thousand pounds or more, \$182: *Provided*, That in determining the total weight of a trailer subject to the provisions of this Class C, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, \$12.00.

Class E. For each motor vehicle classified by the Commissioners or their designated agent as an antique motor vehicle on the basis of a finding that such vehicle was manufactured prior to January 1, 1930, and is owned solely as a collector's item, with its use limited to participation in club activities, exhibits, tours, parades, and similar uses, but in no event for general transportation, \$5.

Class F. For dealers' identification tags, first set of tags, \$30, and \$10 for each additional set.

Class G. For each motor vehicle propelled by fuel not subject to taxation under chapter 19 of title 47, and motor vehicles propelled by any means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

(c) When application for registration of any motor vehicle or trailer or for registration as a dealer or for issuance of dealers' identification tags is received by the director on or after October 1, the registration fee, or the fee for issuance of dealers' identification tags shall be one-half the amount otherwise provided.

(d) Proceeds from fees payable under this chapter shall be divided between the General Fund and the Highway Fund. The Commissioners are authorized and empowered to determine the percentage of all proceeds from fees payable under this chapter which shall be deposited to the credit of the General Fund of the District of Columbia: *Provided*, That the percentage of proceeds deposited to the credit of the General Fund shall be not less than sixty-four per centum or more than seventy-four per centum of all proceeds from fees payable under this chapter. The remainder of such proceeds payable under this chapter, all moneys collected from the motor-vehicle-fuel tax, and fees charged for the titling of motor vehicles and trailers, including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia and shall be appropriated and used solely and exclusively for the following purposes:

(1) For construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however*, That the total amount to be expended under this item

shall not exceed 15 per centum of the total payment appropriated for pay and allowances of officers and members of the Metropolitan police force.

For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances for officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created.

(e) Notwithstanding the provisions of this chapter, special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by clause 1 of class B and class C and G of subsection (b) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted. (Aug. 17, 1937, 50 Stat. 681, ch. 690, § 3, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2; Sept. 8, 1950, 64 Stat. 793, ch. 921, §§ 4, 5, 6; May 18, 1954, 68 Stat. 112, ch. 218, §§ 603, 604; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, §§ 1, 2; Sept. 6, 1960, 74 Stat. 816, Pub. L. 88-716, §§ 1-3.)

AMENDMENTS

1960—Subsec. (a) amended by act Sept. 16, 1960, § 1, which authorized the Commissioners to charge a fee of not more than 50 cents in addition to other fees in the event they prescribe and issue as the official tags for the District tags treated with special reflective materials.

Subsec. (b) amended by act Sept. 16, 1960, § 2, which eliminated words "gasoline-propelled" in Class A and Class B, substituted "set of tags, \$30" for "three sets of tags, \$50" in Class F, and added Class G.

Subsec. (e) amended by act Sept. 16, 1960, § 3, which inserted a reference to class G of subsection (b) of this section.

1957—Section 1, of act of Sept. 2, 1957, struck out Class C in subsection (b) and substituted a new Class C as above set out.

Section 2 of the same act also inserted into the section a new Class E, as above set out.

1954—Act May 18, 1954, amended the section in order to provide a "flat fee" system of registration fees based on the weight of the vehicle in place of the previous system of combined registration fees and personal property taxes on motor vehicles.

The act increased the registration rates in classes A, B, C, D, and E; and amended subsection (d) so as to provide that the proceeds from fees paid under the chapter be divided between the General Fund and the special Treasury account as provided in the section.

1950—Subsec. (a) amended by act Sept. 8, 1960, by adding "or trailer" after "motor vehicle"; by striking out the figures and words "\$25 and \$5" in Class F of (b), and inserting in lieu thereof the figures and words "\$50 and \$10"; by adding the words "or trailer or for registration as a dealer or for issuance of dealers' identification tags" and "or the fee for issuance of dealers' identification tags" respectively, after the words "motor vehicle" and "registration fee" in (c); and by adding the words "and trailers" after the words "titling of motor vehicles" in (d).

1939—Subsec. (c) amended by act July 17, 1939, by changing "September 1" to "October 1."

1938—Subsec. (b) amended by act May 16, 1938, by inserting "wholly" in clause (1) of Class A; "wholly or partially" in clause (2) of Class A; "wholly" in clause (1) of Class B; "wholly or partially" in clause (2) of Class B; by removing trailers from the provisions of clause (1) of

Class B and inserting Class C and changing the then Classes C to E to Classes D to F.

Subsec. (c) amended by act May 16, 1938, by changing "August 1" to "September 1" and in 1939 by changing "September 1" to "October 1."

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on and after first day of April following May 18, 1954, by ninety days or more, see section 610 of act May 18, 1954, set out as a note under § 40-102.

EFFECTIVE DATE

Section effective on Jan. 1, of first calendar year following Aug. 17, 1937, see section 7 of act Aug. 17, 1937, set out as a note under section 40-101.

CROSS REFERENCES

Department of motor vehicles and traffic, see § 40-603.
Fees for operators permits, see § 40-301.
Inspection fees, see §§ 40-201, 40-202.
Motor vehicle fuel tax, see § 47-1901 et seq.
Titling and retitling, fees, see § 40-603.

§ 40-104. Unlawful acts—Penalty.

(a) It shall be unlawful—

(1) for any person to operate any motor vehicle or trailer upon any public highway of the District of Columbia (except motor vehicles or trailers operated by nonresidents exempted under the provisions of section 40-303) (A) if such motor vehicle or trailer is not registered or covered by a dealer's registration or by a special use certificate as required by this chapter, (B) if such motor vehicle or trailer does not have attached thereto and displayed thereon the identification tags required therefor, or (C) if such person does not have in his possession or in the motor vehicle or trailer operated the registration certificate or special use certificate required therefor;

(2) for the owner of any motor vehicle or trailer knowingly to permit the operation thereof contrary to any provision of paragraph (1);

(3) to use a false or fictitious name or address in any application for registration or for a special use certificate, or any renewal or duplicate thereof, or knowingly to make any false statement or conceal any material fact in any such application.

(b) Any person violating any provision of this chapter or the regulations made or promulgated under the authority hereof shall upon conviction thereof be subject to a fine of not more than \$300 or imprisonment of not more than thirty days, or both such fine and imprisonment. All such prosecutions shall be in the municipal court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 682, ch. 690, § 4, title IV; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Sept. 8, 1950, 64 Stat. 794, ch. 921, § 7.)

AMENDMENT

1950—Subsec. (a) amended by act Sept. 8, 1950, by inserting "or covered by a dealer's registration or by a special use certificate" in (1) (A); by striking out "certificate of registration" and inserting in lieu thereof "registration certificate or special use certificate" in (1) (C); by inserting "or trailer" in (2); and by inserting "or for a special use certificate," in (3).

EFFECTIVE DATE

Section effective on Jan. 1, of first calendar year following Aug. 17, 1937, see section 7 of act Aug. 17, 1937, set out as a note under section 40-101.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 40-105. Provisions not affected.

(a) Nothing in this chapter shall be construed to affect the power of the Commissioners of the District of Columbia, under the District of Columbia Traffic Act, 1925, as amended, to make rules and regulations, not inconsistent with the provisions of this chapter, with respect to the registration of motor vehicles.

(b) Nothing in this chapter shall be construed to relieve any person from the payment of any license tax under sections 47-2101 to 47-2109, 47-2301 to 47-2350. (Aug. 17, 1937, 50 Stat. 682, ch. 690, § 5, title IV.)

REFERENCE IN TEXT

The District of Columbia Traffic Act, 1925, as amended referred to in the text, is classified to sections 11-601, 11-616, 11-617, 11-621, 11-623, 11-1407, 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-612, 40-614, and 40-615.

EFFECTIVE DATE

Section effective on Jan. 1, of first calendar year following Aug. 17, 1937, see section 7 of act Aug. 17, 1937, set out as a note under section 40-101.

Chapter 2.—INSPECTION

Sec.

- 40-201. Annual inspection of motor vehicles—Inspection fee.
- 40-202. Payment to collector of taxes.
- 40-203. Appropriations for facilities for inspection
- 40-204. Vehicles exempt from inspection fee.
- 40-205. Vehicles not inspected, or unsafe.
- 40-206. Penalties.
- 40-207. Regulations by Commissioners.

§ 40-201. Annual inspection of motor vehicles—Inspection fee.

At the time of the registration of each motor vehicle or trailer there shall be levied and collected a fee known as the "inspection fee" of \$1. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 1.)

AMENDMENT

1947—Act July 16, 1947, added "or trailer" and struck out provision for subsequent inspections at a fee of 50 cents.

EFFECTIVE DATE OF 1947 AMENDMENT

Section 4 of act July 16, 1947, provided that: "This article [amending this section and §§ 40-203, 40-204] shall become effective thirty days after the approval of this Act [July 16, 1947]."

CROSS REFERENCES

Fees generally, see § 40-103.
Other provisions concerning supervision, control, and inspection of motor vehicles, see § 40-603.

§ 40-202. Payment to collector of taxes.

The inspection fee shall be paid to the collector of taxes and shall be deposited in the Treasury of the United States to the credit of the special fund created by sections 47-1901 to 47-1916, and the District of Columbia Revenue Act of 1937. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 2.)

REFERENCES IN TEXT

The District of Columbia Revenue Act of 1937, referred to in the text, is classified to §§ 47-1401 to 47-1409, 47-1601 to 47-1626, 47-1701 to 47-1715, 47-1801 to 47-1808,

47-1901 to 47-1903, 47-1905 to 47-1907, 47-1908, 47-1911, and 47-2501 to 47-2504, and §§ 40-101 to 40-105.

CROSS REFERENCE

Disposition of fees, see § 40-103.

§ 40-203. Appropriations for facilities for inspection.

The annual estimates of appropriations for the government of the District of Columbia for the fiscal year 1939 and succeeding fiscal years shall include estimates of appropriations for the construction and/or rental and/or leasing of ground and buildings, the purchase of equipment and supplies, and the payment of salaries of mechanics, laborers, clerks, and other employees to carry out the annual inspection of all motor vehicles and trailers in the District of Columbia. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 3; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 2.)

AMENDMENT

1947—Act July 16, 1947, added the words "or trailers."

EFFECTIVE DATE OF 1947 AMENDMENT

Amendment of section by act July 16, 1947, effective 30 days after July 16, 1947, see section 4 of act July 16, 1947, set out as a note under section 40-201.

§ 40-204. Vehicles exempt from inspection fee.

All motor vehicles and trailers owned and officially used by the government of the United States or by the government of the District of Columbia or by the representatives of foreign governments, shall be subject to annual inspection, such inspections to be furnished without charge. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 4; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 3.)

AMENDMENT

1947—Act July 16, 1947, added the words "or trailers."

EFFECTIVE DATE OF 1947 AMENDMENT

Amendment of section by act July 16, 1947, effective 30 days after July 16, 1947, see section 4 of act July 16, 1947, set out as a note under section 40-201.

CROSS REFERENCE

Publicly owned vehicles, see § 40-501 et seq.

§ 40-205. Vehicles not inspected, or unsafe.

The Commissioners of the District of Columbia or their designated agent may refuse to register any motor vehicle or trailer which has not been inspected as required, or which is unsafe or improperly equipped, or otherwise unfit to be operated, and for like reason they may revoke or suspend any registration already made: *Provided*, That the provisions of section 40-302 (a) shall be applicable in all cases where registration is refused, revoked, or suspended under the terms of this chapter. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 5.)

§ 40-206. Penalties.

Any individual, partnership, firm, or corporation found guilty of using or permitting the use of any unregistered motor vehicle or trailer, or who is found guilty of using or permitting the use of the same during the period for which any such vehicle's registration is revoked or suspended under the terms of this chapter, shall, for each such offense, be fined not more than \$300. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 6.)

§ 40-207. Regulations by Commissioners.

The Commissioners of the District of Columbia shall make such regulations as in their judgment are necessary for the administration of this chapter, and may affix thereto such reasonable fines and penalties as in their judgment are necessary to enforce such regulations. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 7.)

CROSS REFERENCE

Rules and regulations generally, see § 40-603.

Chapter 3.—OPERATORS' PERMITS

Sec.

- 40-301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Possession of operator—Operation without permit prohibited.
- 40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Non-residents—Penalty.
- 40-303. Nonresidents exempt from registration—Period of exemption.

§ 40-301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit.

(a) (1) The Commissioners or their designated agent shall, upon application, the payment of a fee of \$3, and compliance with such regulations as the Commissioners or their designated agent may prescribe, issue a motor vehicle operator's permit valid for a period not in excess of three years, to any individual sixteen years of age or over who, after examination, in the opinion of the Commissioners or their designated agent, is mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property. The Commissioners or their designated agent shall cause each applicant to be examined as to his knowledge of the traffic regulations of the District and shall require the applicant to give a practical demonstration, or produce evidence acceptable to the Commissioners or their designated agent, of his ability to operate a motor vehicle within a congested portion of the District, except that upon the renewal of any such operator's permit such examination and demonstration may be waived in the discretion of the Commissioners or their designated agent. Should the Commissioners or their designated agent believe that the issuance or reissuance of a permit in accordance with the provisions of this chapter may prove a menace to public safety, they or their agent may refuse the issuance or reissuance thereof. No operator's permit issued to any individual under eighteen years of age shall authorize the operation by such individual while he is under the age of eighteen years of any motor vehicle other than a passenger vehicle or motorcycle or motor bicycle, used solely for purposes of pleasure and not for compensation.

(2) The Commissioners or their designated agent may, upon application and the payment of a fee of \$1, issue a learner's permit, valid for a period of sixty days, to any applicant for a motor vehicle operator's permit, sixteen years of age or over, who has successfully passed all parts of the examination other

than the driving demonstration test. Such permit shall entitle the permittee, while having such permit in his immediate possession, to operate a passenger motor vehicle, used solely for purposes of pleasure and not for compensation, when accompanied by the holder of a valid motor vehicle operator's permit who is occupying a seat beside such permittee.

(3) Any pupil fifteen years of age or over enrolled in a high school or junior high school driver education and training course approved by the Commissioners or their designated agent may, without obtaining either an operator's or a learner's permit, operate a dual-control motor vehicle at such times as such pupil is under instruction and accompanied by a licensed motor-vehicle driving instructor: *Provided*, That such instructor shall at all times while he is engaged in such instruction have on his person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to him such certificate.

(4) In case of the loss of an operator's permit or a learner's permit, the individual to whom such permit was issued shall forthwith notify the commissioners or their designated agent, who shall furnish such individual with a duplicate permit. The fee for each such duplicate permit shall be 50 cents.

(5) Enlisted men of the Army, Navy, Marine Corps, and Coast Guard shall be issued, without charge, a permit to operate Government-owned vehicles, while engaged in official business, upon the presentation of a certificate from their commanding officers to the effect that they are assigned to operate a Government vehicle and are qualified to drive, and upon proving to the satisfaction of the director of vehicles and traffic that they are familiar with the traffic regulations of the District of Columbia.

(6) Notwithstanding the provisions of this subsection, the Commissioners or their designated agent may, upon compliance with such regulations as they or their designated agent may prescribe, extend for a period not in excess of six years the validity of the operator's permit of any person who is a resident of the District and who is on active duty outside the District in the Armed Forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.

(b) Each operator's permit shall state the name and address of the permittee, together with such other matter as the Commissioners or their designated agent may by regulation prescribe, and shall bear the signature of the permittee.

(c) Any individual to whom has been issued a permit to operate a motor vehicle shall have such permit in his immediate possession at all times when operating a motor vehicle in the District and shall exhibit such permit to any police officer when demand is made therefor. Any individual failing to comply with the provisions of this subdivision shall upon conviction thereof, be fined not less than \$2 nor more than \$40: *Provided*, That this shall not apply to transient visitors from States in the Union which do not require drivers' permits.

(d) No individual shall operate a motor vehicle in the District, except as provided in section 40-303, without first having obtained an operator's permit or a learner's permit issued under the provisions of this chapter. Any individual violating any provision of this subdivision shall, upon conviction thereof, be fined not more than \$300 or be imprisoned not more than ninety days.

(e) Nothing in this chapter shall relieve any individual from compliance with section 47-2331 (e). (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 7; July 3, 1926, 44 Stat. 812, ch. 739, § 2; Feb. 18, 1929, 45 Stat. 1226, ch. 258; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; June 20, 1939, 53 Stat. 850, ch. 231; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 2; Dec. 15, 1944, 58 Stat. 806, ch. 589, § 1; Apr. 20, 1948, 62 Stat. 173, ch. 215, §§ 1, 2; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 1, 2, 3, 4, 5; July 24, 1956, 70 Stat. 633, ch. 695, § 2.)

REFERENCE IN TEXT

"This chapter" referred to in the text is classified to §§ 11-601, 11-616, 11-617, 11-621, 11-623, 11-1407, 40-301 to 40-303, 40-601 to 40-603, 40-605, and 40-609 to 40-615.

AMENDMENTS

Prior to the 1926 amendment, this section provided for the annual renewal of operators' permits and prescribed fees of \$1 and \$2. The 1926 amendment also added the third sentence in paragraph (a); added "which do not require drivers' permits" at the end of paragraph (c); changed paragraph (d) which prior thereto related to the issuance without charge of temporary permits to expire on March 31, 1936, to persons holding permits issued prior to that act; and reduced the penalty in paragraph (e) from "not more than one year" to "not more than six months."

The act of 1926 also provided, "(g) This act shall become effective immediately upon passage, and promptly thereafter the director shall commence the call of outstanding permits and the reissuance thereof in accordance with the provisions of this act, and shall complete such reissuance within a period of one year."

The 1929 act added the proviso to paragraph (a).

The 1931 act inserted "commissioners or their designated agent" in lieu of "director." This act became effective July 1, 1931.

The 1939 act added the proviso in paragraph (e).

The act of Nov. 25, 1942, amended subsec. (e) of section by deleting proviso which provided that operators of Government-owned vehicles stationed outside of District were not required to have permits while operating within limits of District, and also provided that violation of subsec. (e) was punishable with \$500 fine and/or imprisonment not more than six months.

The act of Dec. 15, 1944, amended subsec. (a) by adding last two pars.

The act of April 20, 1948, amended subsec. (a) generally.

Section 1 of act Aug. 16, 1954, amended the first paragraph of subsection (a) by designating the \$3 fee and providing for the issuance of operators permits in accordance with regulations of the Commissioners for not to exceed three year periods. The subsection was further amended to permit the Director of Vehicles and Traffic to waive the road test for an applicant presenting a license from a State having equivalent standards.

Section 2 of the act amended paragraph 2 of subsection (a) to permit the issuance of a learner's permit for 60 days.

Section 3 of the act added a new paragraph (6) to subsection (a).

Section 4 of the act amended subsection (b) so as to eliminate the requirement that judges make a notation of traffic violations on the permit.

Section 5 of the act repealed former subsection (d) and renumbered former subsections (e) and (f) as present subsections (d) and (e).

The act of July 24, 1956, amended subsection (a) (2) by striking out the word "District".

EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act July 24, 1956, provided that: "This Act [amending this section and § 40-603] shall take effect thirty days after its approval [July 24, 1956]."

EFFECTIVE DATE OF 1954 AMENDMENT

Section 9 of act Aug. 16, 1954, provided that: "This Act [amending this section and §§ 40-303, 40-609] shall become effective thirty days after its enactment [Aug. 16, 1954]."

EFFECTIVE DATE

Section 17(a) of act Mar. 3, 1925, provided that this section shall take effect sixty days after Mar. 3, 1925.

TRANSFER OF FUNCTIONS

See note under section 40-101 concerning Department of Motor Vehicles.

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Definition of "this chapter" and other terms used, see § 40-602.

Fees and disposition thereof, see § 40-103.

Licensing provisions of this section not affected by provisions for licensing motor vehicles generally, see § 40-105.

Metropolitan Police may not perform any functions under this chapter, except enforcement thereof, see § 40-603.

Power of Commissioners to make rules and regulations for issuance and revocation or suspension of operators' permits, see § 40-603.

Prosecution of violations of this chapter, see § 40-603.

Rules and regulations concerning motor vehicles generally, see § 40-603.

NOTES TO DECISIONS

In general 1
Change of residence 2
Evidence 3
Exclusive powers of Congress 4
Fines 5
Government employees 6
Law governing 7
Nonresidents 8
"Operate," defined 9
Permit in possession 10
Suspension of permit 11

1. In general

In action by child and others against automobile owners, father and son, for injuries received when child was pinned to school bus from which she had just alighted by owners' automobile which was then being driven by father's employee without owners' permission, questions whether father was negligent in permitting employee to have access to the automobile and whether there was causal connection between such negligence and injury were for jury. *Boland, etc. v. Love et al.* (1955, 222 F. 2d 27, 95 U. S. App. D. C. 337).

In prosecution for driving without permit and leaving scene of collision, tried by court, erroneous admission of officer's testimony that persons who witnessed collision identified accused, in his presence, as driver of automobile involved in collision, was not cured by court's recognition of error and statement that such testimony was disregarded, where competent evidence of accused's guilt was far from conclusive. *Penwell v. District of Columbia* (1943, 31 A. 2d 891).

2. Change of residence

A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

3. Evidence

Evidence was sufficient to show that motorist having Maryland driver's permit and owning automobile having Maryland tags was District of Columbia resident required to have District operator's permit and was not resident of Maryland not required to have District permit to operate automobile in District. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

4. Exclusive powers of Congress

Congress, as to the District of Columbia, has express power to exercise exclusive legislation in all cases whatsoever, thus possessing the combined powers of a general and a state government in all cases where legislation is possible, and when and how it shall delegate or distribute authority to make detailed regulations under the police power are questions which Congress may determine for itself. *LaForest v. Board of Comrs. of District of Columbia* (1937, 92 F. 2d 547, 67 App. D.C. 396).

5. Fines

Fine of \$275 with commitment to jail for sixty days on default of payment, was not excessive. *Dorsey v. Peak* (1928, 24 F. 2d 892, 58 App. D.C. 64).

6. Government employees

Traffic regulations apply to United States employees, driving government automobiles. *Croson v. District of Columbia* (1925, 2 F. 2d 924, 55 App. D.C. 122).

There is no exception in favor of the vehicles of the Post Office Department, and the manifest purpose of the acts does not imply such an exception. *White v. District of Columbia* (1925, 4 F. 2d 163, 55 App. D.C. 197).

7. Law governing

Where, in personal injury action, which arose from automobile accident occurring in Virginia, but which was brought in Federal District Court in District of Columbia in which defendants resided, court was unable to determine from Virginia decisions standard of conduct to be required of the parties, District of Columbia law would be referred to to determine such standard. *Boland etc. v. Love et al.* (1955, 222 F. 2d 27, 95 U.S. App. D.C. 337).

8. Nonresidents

The exception of motorist not residing in District of Columbia and complying with automobile registration and driver's license laws of a State from statutory prohibition against operation of automobile in District without District operator's permit is a defense and not part of description of offense, and District law enforcement officers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

9. "Operate," defined

In view of provisions dealing with registration of motor vehicles and defining terms "operate" and "operated" to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, defendant, who had no operator's permit and who was manually pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by reaching through open window and manipulating steering wheel was guilty of violating regulation that no individual shall operate a motor vehicle without first having obtained an operator's permit. *Richardson v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 492).

10. Permit in possession

Holder of a permit is required to have it in his immediate possession when operating a motor vehicle and exhibit the same to any police officer when demand is made therefor. *Dorsey v. Peak* (1928, 24 F. 2d 892, 58 App. D.C. 64).

11. Suspension of permit

Failure to prove that the permit had not been restored before the date of arrest was immaterial, even though the information contained no averment of it, as such averment was mere surplusage, and the burden of proof respecting it did not rest on the prosecution. *Chesevoir v. District of Columbia* (1929, 29 F. 2d 798, 58 App. D.C. 268).

Action of the Commissioners in suspending petitioner's permit was not based upon illegally delegated power. *LaForest v. Board of Comrs. of District of Columbia* (1937, 92 F. 2d 547, 67 App. D.C. 396).

§ 40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Commissioners or their designated agent may with or without a prior hearing revoke or suspend an operator's permit for any cause which they or their agent may deem sufficient: *Provided*, That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further*, That such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the Commissioners of the District of Columbia for a review of their order or the order of their agent, and, if upon such review, the Commissioners shall sustain such order, the same shall become effective immediately: *Provided further*, That application to said Commissioners for a review shall not operate as a stay of such order of the commissioners or their agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen: *Provided further*, That any individual whose permit shall be denied, suspended, or revoked by the commissioners or their agent may, within thirty days after such denial, revocation, or suspension is ordered, if application for a review by the commissioners of an order for revocation or suspension has not been filed, or in case such application has been filed, within thirty days after decision of the Commissioners, apply to the Municipal Court of Appeals for the District of Columbia for a writ of error to review the order of the Commissioners or their agent complained of or the decision of the Commissioners. Said court is authorized to promulgate rules governing the application for the writ, and the record and proceedings thereon, and to affirm, modify, or reverse the order of the Commissioners or their agent or the decision of the Commissioners, where the writ is allowed pursuant hereto; and the decision of said court shall be final: *And provided further*, That the application to said court for a writ of error shall not operate as a stay of such order of the Commissioners or their agent or the decision of the Commissioners.

(b) In case the operator's permit of any individual is revoked no new permit shall be issued to such individual for at least six months after the revocation except in the discretion of the Commissioners or their designated agent.

(c) The Commissioners of the District of Columbia, or their designated agent, may suspend or revoke the right of any nonresident person as defined in section 40-303, to operate a motor vehicle in the District of Columbia, for any cause they or their agent may deem sufficient, and the proper authority at the place of issuance of the permit, or other authority to operate a motor vehicle shall be notified of such suspension and the reason therefor, immediately: *Provided*, That such order of suspension or

revocation shall take effect ten days after its issuance, and the same be subject to review and appeal in the manner and under the same conditions as are provided for such matters in subsection (a) of this section.

(d) Any individual found guilty of operating a motor vehicle in the District during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this act shall, for each such offense, be fined not less than \$100 nor more than \$500, or imprisoned not less than 30 days nor more than one year, or both. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 13; July 3, 1926, 44 Stat. 814, ch. 739, § 3; Feb. 27, 1931, 46 Stat. 1424, 1428, ch. 317, §§ 2, 4; June 7, 1934, 48 Stat. 926, ch. 426; May 15, 1936, 49 Stat. 1273, ch. 393; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1.)

REFERENCES IN TEXT

"This chapter" referred to in the text is classified to sections 11-601, 11-616, 11-617, 11-621, 11-623, 11-1407, 40-301 to 40-303, 40-601 to 40-603, 40-605, and 40-609 to 40-615.

CODIFICATION

"The Municipal Court of Appeals for the District of Columbia" was substituted for "any justice of the United States Court of Appeals for the District of Columbia" to conform to the provisions of act Aug. 31, 1954, which vested exclusive jurisdiction to review action of the Commissioners in revoking, suspending or denying a license under this section in the Municipal Court of Appeals for the District of Columbia. See § 11-772(e)(3).

AMENDMENTS

1936—Act May 15, 1936, amended paragraph (c) by adding the proviso and giving the right to revoke for any cause, this right being previously given only upon conviction of a violation.

1931—Act Feb. 27, 1931, substituted "commissioners or their designated agent" for "director"; and in subdivision (a) substituted "five days" for "ten days" in the second proviso; omitted from the second proviso "but if the director or his assistant, such order shall thereupon be vacated;" and added the third proviso.

1926—Act July 3, 1926, amended paragraph (a) generally, and among other changes, provided for a hearing on revocation or suspension of operator's permit.

CHANGE OF NAME

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "court of appeals of the District of Columbia."

EFFECTIVE DATE OF 1931 AMENDMENT

Section 6 of act Feb. 27, 1931, provided that: "This Act [amending this section and §§ 40-303, 40-602, 40-603, 40-605, and 40-609] shall take effect July 1, 1931."

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Definition of "this chapter" and other terms used, see § 40-602.

Revocation and suspension of licenses and permits generally, see § 40-402.

NOTES TO DECISIONS

Actual physical control 1
Appeals 2
Authority to revoke 3
Foreign registration after suspension 4
Mandatory revocation 5
Operating vehicle after revocation 6
"Operator" defined 7
Public sidewalk 8
Reasonableness of regulation 9
Statutory right of review 10

1. Actual physical control

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator's permit

had been revoked, was sitting behind steering wheel, and motor was running, in absence of any explanatory testimony from defendant, trial court was justified in finding that defendant was in actual physical control of automobile, capable of putting it into movement or preventing its movement, and hence "operating" the automobile within meaning of statute prohibiting operation during period for which operator's permit has been revoked. *Houston v. District of Columbia* (D. C. Mun. App. 1959, 149 A. 2d 790).

2. Appeals

Where there was nothing in record on appeal by motorist from order of the Board of Commissioners of the District of Columbia sustaining order suspending motor vehicle operator's permit of motorist, to support motorist's contention that prior to his election to forfeit collateral posted by him when he was charged with backing without caution and with being involved in an accident involving a pedestrian, there was a mutual understanding between him and office of Corporation Counsel that charge of an accident involving a pedestrian would be withdrawn, Municipal Court of Appeals for the District of Columbia could not consider that contention on appeal. *Lambert v. Board of Commissioners of District of Columbia* (D. C. Mun. App. 1955, 116 A. 2d 926).

3. Authority to revoke

Where driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under "point system" of regulation exceeded 12 thereby permitting revocation of driver's operator's permit, Director of Motor Vehicles did not abuse his discretion in allowing points to be assessed for conviction outside District, since, if incident had occurred in District of Columbia, it would have meant mandatory revocation of driver's permit without exercise of any discretion by Director, without a hearing and without reference to any point system. *Council v. Director of Motor Vehicles, etc.* (D.C. Mun. App. 1960, 159 A. 2d 874).

Traffic hearing officer did not exceed his authority in revoking operator's permit of a motorist convicted of speeding in a school zone even though under the "point system" used in the District, only three points could be assessed for such violation, since notwithstanding such point system Director of Vehicles and Traffic was authorized to revoke operator's permit when, following lawful hearing, he concluded that motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. *Tillman v. Director of Vehicles and Traffic of District of Columbia* (D. C. Mun. App. 1958, 144 A. 2d 922).

4. Foreign registration after suspension

One whose operator's permit in the District of Columbia had been revoked was properly convicted of driving in the District during the suspension period though he had become a resident of Virginia and had obtained registration and operator's licenses from that state. *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

5. Mandatory revocation

Where it was mandatory on the Commissioners to revoke the defendant's operator's permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on the matter of revocation and administrative review. *Oliver v. Silver* (D.C. Mun. App. 1959, 155 A. 2d 719).

In prosecution for operating a motor vehicle in the District of Columbia during period for which defendant's operator's permit had been revoked, charge that there was no dispute as to fact that defendant's permit had been revoked and that he had driven in the District was not erroneous in view of defendant's statement in final argument that prosecutor's statement that defendant was driving a motor vehicle on a street in the District was substantially true. *Mathews v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 650).

In prosecution for operating a motor vehicle in District of Columbia during period for which defendant's operator's permit had been revoked, failure of court to charge

that if the Government failed to prove each element of the offense beyond a reasonable doubt, the jury should find the defendant not guilty, was error but not prejudicial in view of defendant's failure to request such instruction and failure to object to charge as given and in view of charge that jury was sole judge of facts and that it was their duty as finders of the facts to reach a verdict on the testimony. *Id.*

6. Operating vehicle after revocation

Conviction for operating a motor vehicle after revocation of license was affirmed, and it was not necessary for the prosecution to show that no new permit had been issued. *Chesevoir v. District of Columbia* (1929, 29 F. 2d 798, 58 App. D.C. 268).

7. "Operator" defined

In view of Motor Vehicle Safety Responsibility Act definition of driver or operator, and in view of regulation defining driver or operator as "every person who drives or is in actual physical control of a vehicle", an "operator" within this section, prohibiting operation of a motor vehicle during a period for which operator's permit has been revoked is one who is in actual physical control of a vehicle upon a public highway. *Houston v. District of Columbia* (D.C. Mun. App. 1959, 149 A. 2d 790).

8. Public sidewalk

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator's permit had been revoked, was sitting behind steering-wheel, and motor was running, conviction of operating a motor vehicle during period for which his operator's permit had been revoked was not invalid on ground that traffic statutes and regulations were directed at operation of motor vehicles on public highways since a public sidewalk is part of the public highway. *Houston v. District of Columbia* (D. C. Mun. App. 1959, 149 A. 2d 790).

9. Reasonableness of regulation

Point system which provides for the assessment of points against the motorist for moving traffic violations and for suspension of the motorist's operating permit upon accumulation of eight points, is a reasonable regulation concerning the control of traffic and Board of Commissioners had the authority to enact such a system. *Ritch, Jr. v. Director of Vehicles and Traffic of District of Columbia* (D. C. Mun. App. 1956, 124 A. 2d 301).

10. Statutory right of review

Where statute authorized the Board of Commissioners of District of Columbia to delegate any of its functions to other agencies and the Board did delegate its right to review action of Department of Vehicles and Traffic in revoking a motorist operator's permit to the Director of Vehicles and Traffic, motorist who had his operator's permit revoked was not denied statutory right of having his case reviewed by the commissioners when it was reviewed by the Board's legally delegated authority. *Ritch, Jr. v. Director of Vehicles and Traffic of District of Columbia* (D. C. Mun. App. 1956, 124 A. 2d 301).

§ 40-303. Nonresidents exempt from registration—Period of exemption.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 40-301 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Commissioners or their designated agent have previously found that a similar privilege is

extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The Commissioners or their designated agent shall from time to time ascertain such privileges and cause their or his findings to be promulgated. When the laws of any State, Territory, or possession of the United States or of a foreign country or of a political subdivision thereof contain a reciprocity provision similar to that hereinabove set forth, or the privilege extended to a legal resident of the District is for the remaining portion of the current District of Columbia registration year, then the owner of any motor vehicle who is a legal resident of such State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof shall comply with the provisions of section 40-301 and with every other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District at the time of the expiration of the current motor vehicle registration issued to such owner by such State, Territory, or possession of the United States or a foreign country or political subdivision thereof, unless the Commissioners or their designated agent shall have entered into a reciprocal agreement or arrangement with the duly authorized representatives of such State, Territory, or possession of the United States or a foreign country or political subdivision thereof, further to limit or to extend the period of time during which the validity of the motor vehicle registration and identification tags of such State, Territory, or possession of the United States or foreign country or political subdivision thereof shall be recognized by the District. The Commissioners or their designated agent are hereby authorized and empowered to enter into reciprocal agreements and arrangements as aforesaid. The following persons shall, with respect to the registration of motor vehicles and the licensing of operators thereof, if they have complied with the laws of the State, Territory, or possession from which they have been elected or appointed, or of which they are legal residents, be exempt during their respective terms of office or during the period of their employment as administrative employees from compliance with section 40-301 and with any other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District: Senators and Representatives in Congress; Delegates to Congress; Resident Commissioners; administrative employees of Senators, Representatives, Delegates, and Resident Commissioners who are legal residents of the State, Territory, or possession from which said Senators, Representatives, Delegates, and Resident Commissioners have been elected or appointed; and officers of the executive branch of the Government of the United States who are not domiciled within the District of Columbia, whose appointment to the office held by them was by the President of the United States, subject to confirmation by the Senate, and whose tenure of office is at the pleasure of the President.

(b) Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the

United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of section 40-301. Any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than \$5 nor more than \$50 or imprisoned not less than 30 days, or both. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 8; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; Aug. 16, 1954, 68 Stat. 733, ch. 741, § 6.)

AMENDMENT

1954—Act Aug. 16, 1954, amended subsection (a) to authorize the District to enter into reciprocity agreements on registration of vehicles and licensing of drivers and to clarify the application of laws in the case of similar reciprocity provisions.

Act Aug. 16, 1954, also added a new provision exempting certain Government officials from the requirement of registering personal motor vehicles and licensing operators in the District. The exemption was extended to administrative employees of Members of Congress, Delegates, and Resident Commissioners.

1931—Act Feb. 27, 1931, inserted "commissioners or their designated agent" in lieu of "director."

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 16, 1954, effective 30 days after Aug. 16, 1954, see section 9 of act Aug. 16, 1954, set out as a note under § 40-301.

EFFECTIVE DATE OF 1931 AMENDMENT

Amendment of section by act July 1, 1931, effective July 1, 1931, see section 6 of act Feb. 27, 1931, set out as a note under § 40-302.

EFFECTIVE DATE

Section 17(a) of act Mar. 3, 1925, provided that this section shall take effect sixty days after Mar. 3, 1925.

CROSS REFERENCES

Alcoholic Beverage Control Act as not affecting this section, see § 25-127.

Definition of terms, see § 40-602.

NOTES TO DECISIONS

In general 1
Change of residence 2
Construction 3
Duty of nonresident to obey regulations 4
Evasion of revocation 5
Evidence 6
Owners 7

1. In general

Where bus passenger sued bus company for injuries arising from bus collision with automobile owned by District of Columbia and being operated by policeman, bus company could not maintain a third party action against District of Columbia for contribution notwithstanding provisions of the Financial Responsibility Act. *Capital Transit Co. v. District of Columbia* (1955, 225 F. 2d 38, 96 U. S. App. D. C. 199).

2. Change of residence

A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

3. Construction

In the first part of this act the word "registration" is applied to the vehicle and the word "licensing" to the

operator; and in the latter part the words "licensed or registered" should be treated as used in the same relation as their noun forms in the first part. *King v. District of Columbia* (1922, 277 F. 562, 51 App. D.C. 160). This case was in effect overruled on another point by *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

The meaning of this act being doubtful, the District's interpretation thereof as evidenced by its agreement with Virginia as to operation of a motor vehicle in the District by a person of that State should prevail. *King v. District of Columbia* (1922, 277 F. 562, 51 App. D.C. 160). This case was in effect overruled on another point by *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

The exception of motorist not residing in District of Columbia and complying with automobile registration and driver's license laws of a state from statutory prohibition against operation of automobile in District without District operator's permit is a defense and not part of description of offense, and District law enforcement officers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

4. Duty of nonresident to obey regulations

This act does not relieve a nonresident operator of amenability to valid traffic regulations. *King v. District of Columbia* (1922, 277 F. 562, 51 App. D.C. 160). This case was in effect overruled on another point by *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

This section does not exempt a nonresident from compliance with the laws of the District of Columbia when, while a resident of the District, his driver's permit was revoked under § 40-302 and he is subject to punishment under that section. *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

5. Evasion of revocation

One may be convicted of operating a motor vehicle without a license who procures a Virginia license after his District license has been revoked, and drives in the District during its unexpired period. *District of Columbia v. Fred* (1930, 50 S. Ct. 163, 281 U.S. 49, 74 L. Ed. 694).

6. Evidence

Evidence was sufficient to show that motorist having Maryland driver's permit and owning automobile having Maryland tags was District of Columbia resident required to have District operator's permit and was not resident of Maryland not required to have District permit to operate automobile in District. *Bush v. District of Columbia* (D. C. Mun. App. 1951, 78 A. 2d 234).

7. Owners

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers' names. *Burt and Mumford v. Cordover* (D. C. Mun. App. 1955, 117 A. 2d 116).

Chapter 4—MOTOR VEHICLE SAFETY RESPONSIBILITY

Sec.

40-401 to 40-416. Repealed.

40-417. Short title.

40-418. Definitions.

40-419. Administration by Commissioners.

40-420. Review by Commissioners.

40-421. Abstract of operating record.

40-422. Information regarding financial responsibility to be furnished person injured.

40-423. Service of process on nonresident.

40-424. Operator deemed to be agent of owner.

40-425. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C.

40-426. Report of accident required.

40-427. Form of accident report.

40-428. Incapacity of person to make an accident report.

Sec.

40-429. Additional information concerning accident to be furnished on request.

40-430. Suspension of license and registration for failure to report.

40-431. Accident reports to be confidential.

40-432. Application of chapter—Amount.

40-433. Determination of the amount of security.

40-434. Exceptions to requirements as to security and suspension.

40-435. Automobile liability policy or bond—Requirements.

40-436. Security—Form and amount.

40-437. Failure to deposit security—Suspension.

40-438. Release from liability.

40-439. Adjudication of nonliability—Release from requirement of the deposit of security.

40-440. Agreements for payment of damages.

40-441. Payment upon judgment—Release of judgment debtor.

40-442. Termination of security requirement.

40-443. Duration of suspension.

40-444. Nonresidents—Unlicensed drivers—Unregistered vehicles—Accidents in other States.

40-445. Commissioners authorized to decrease amount of security.

40-446. Correction of Commissioners' action within one year.

40-447. Disposition of security.

40-448. Return of deposit.

40-449. Matters not to be evidence in civil suits.

40-450. Persons required to deposit proof of future responsibility.

40-451. Proof of financial responsibility for the future.

40-452. "Judgment" and "State" defined.

40-453. Suspension of license and registration for certain convictions—Effect of proof of financial responsibility—Vehicles owned or leased by the United States, a State or a political subdivision thereof—Suspension for out of District convictions.

40-454. Duration of suspension—Giving and maintenance of proof of financial responsibility.

40-455. Suspension of unlicensed or licensed person after certain convictions—Proof of financial responsibility required—Certificate of conviction to be forwarded to Commissioners.

40-456. Suspension of nonresident's operating privilege—Duration.

40-457. Report by courts of nonpayment of judgments.

40-458. Judgment against a nonresident—Transmittal of copy to license and registration official of defendant's State.

40-459. Suspension for nonpayment of judgment.

40-460. Government vehicles—Exception as to nonpayment of judgment provisions.

40-461. Consent by judgment creditor to allowance of license, registration, or operating privileges to judgment debtor.

40-462. Commissioners finding that an insurer is obligated to pay judgment—Effect of finding—License, registration and operating privileges in the event of a finding.

40-463. Continuance of suspension until judgment paid and proof given.

40-464. Discharge in bankruptcy.

40-465. Required payments—Amounts—Settlements.

40-466. Installment payment of judgments—Default.

40-467. Breach of agreement to pay in installments.

40-468. Proof required for each registered vehicle.

40-469. Alternate methods of giving proof.

40-470. Certificate of insurance as proof.

40-471. Certificate filed by nonresident as proof of financial responsibility.

40-472. Default by nonresident insurance carrier.

40-473. "Motor-vehicle liability policy" defined.

40-474. Notice of cancellation or termination of certified policy.

40-475. Provisions of chapter not to affect other policies.

40-476. Surety bond as proof of financial responsibility.

40-477. Bond a lien against scheduled real estate—Recording—Notice.

40-478. Action on bond.

Sec.

- 40-479. Deposit of money with Commissioners—Certificate—Evidence of no unsatisfied judgments.
- 40-480. Application of money deposit—Limits.
- 40-481. Owner of a motor vehicle may give proof for others.
- 40-482. Substitution of proof.
- 40-483. Requirement of other proof of financial responsibility—Prior proof—Suspension.
- 40-484. Duration of proof—Cancellation or return of proof.
- 40-485. Transfer of registration to defeat purpose of chapter.
- 40-486. Surrender of license and registration.
- 40-487. Failure to report accident—Penalty.
- 40-488. Erroneous report—Forged signature—Filing forged evidence of proof of financial responsibility—Penalty—False swearing.
- 40-489. Operating motor vehicle when license suspended or revoked.
- 40-490. Failure to return license or registration—Penalty.
- 40-491. Penalty for violations of chapter.
- 40-492. Jurisdiction of the Municipal Court for the District of Columbia as to prosecutions for violations of provisions of chapter.
- 40-493. Vehicles insured under other laws—Exception.
- 40-494. Self-insurers.
- 40-495. Appropriations authorized.
- 40-496. Retroactive application of chapter.
- 40-497. Provisions of chapter not to prevent other processes provided by law.
- 40-498. Interpretation of provisions of chapter.
- 40-498a. Effect of Reorganization Plan Number 5 of 1952.
- 40-498b. Separability of provisions.
- 40-498c. Effect of prior law—Repeal.

§§ 40-401 to 40-416. Repealed. May 25, 1954, 68 Stat. 139, ch. 222, § 82.

Sections, act May 3, 1935, 49 Stat. 166, ch. 89, §§ 1-16, related to the financial responsibility of owners and operators of motor vehicles, and are now covered by sections 40-417 to 40-498.

Section 40-402 was amended by act May 9, 1941, 55 Stat. 184, ch. 98, § 1.

Sections 40-403 and 40-409 were amended by act Aug. 24, 1937, 50 Stat. 751, ch. 753, § 1, and section 40-404 by section 2 of said act.

EFFECTIVE DATE OF REPEAL

Sections repealed effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under section 40-417.

§ 40-417. Short title.

This chapter may be cited as the "Motor Vehicle Safety Responsibility Act of the District of Columbia." (May 25, 1954, 68 Stat. 120, ch. 222, § 1.)

EFFECTIVE DATE

Section 87 of act May 25, 1954, provided that: "This Act [§§ 40-417 to 40-498c] shall take effect on year after its enactment [May 25, 1954]."

§ 40-418. Definitions.

The following words and phrases used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article except in those instances where the context clearly indicates a different meaning.

(a) **COMMISSIONERS.**—The Board of Commissioners of the District of Columbia, or their designated agent or agents.

(b) **DRIVER OR OPERATOR.**—Every person who drives or is in actual physical control of a motor vehicle upon a public highway or who is exercising control over or steering a vehicle being pushed or towed by a motor vehicle upon a public highway.

(c) **LICENSE.**—Any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of the District of Columbia including—

(1) any temporary or learner's permit;

(2) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(3) any nonresident's operating privilege as defined herein.

(d) **MOTOR VEHICLE.**—Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from over-head trolley wires, but not operated upon rails.

(e) **NONRESIDENT.**—Every person who is not a resident of the District of Columbia.

(f) **NONRESIDENT'S OPERATING PRIVILEGE.**—The privilege conferred upon a nonresident by the laws of the District of Columbia pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District of Columbia.

(g) **OWNER.**—A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(h) **PERSON.**—Every natural person, firm, copartnership, association, or corporation.

(i) **PUBLIC HIGHWAY.**—Any street, road, or public thoroughfare.

(j) **REGISTRATION.**—The registration plates issued under the laws of the District of Columbia pertaining to the registration of vehicles.

(k) **VEHICLE.**—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. (May 25, 1954, 68 Stat. 120, ch. 222, § 2.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

- Chattel mortgagee 1
Conditional sales 2
Joint enterprise 3
"Operator" defined 4
Owners and ownership 5

1. Chattel mortgagee

Chattel mortgagee is not an "owner" of an automobile, nor does he become such merely by virtue of a default by the mortgagor, though the right to possession may accrue immediately upon default, but something more than a lien on the automobile, though presently and summarily enforceable, is necessary. *Mason v. Automobile Finance Co.* (1941, 121 F. 2d 32, 73 App. D.C. 284).

2. Conditional sales

One who had sold and delivered taxicab to another on conditional sale contract and had retained legal title solely for security, was not the owner thereof nor liable for the property damage caused by negligence of another to whom purchaser had entrusted the taxicab and was not estopped to deny such ownership though his name appeared on taxicab. *Gasque v. Saidman* (D.C. Mun. App. 1945, 44 A. 2d 537).

3. Joint enterprise

Whether the contributory negligence of the driver of a rented taxicab may be imputed to its owner must be based on the theory that both were engaged in a joint enterprise, but to establish such relationship there must exist not only a community of interest in the subject of the venture but also an equal right, express or implied, to direct and control the management and movement of the car. *National Trucking and Storage Co. v. Driscoll* (D.C. Mun. App. 1949, 64 A. 2d 304).

To constitute a joint enterprise there must be not only joint or community of interest but also an equal right, express or implied, to direct and control the management and movement of the motor vehicle involved. *Gasque v. Saidman* (D.C. Mun. App. 1945, 44 A. 2d 537).

4. "Operator" defined

In view of Motor Vehicle Safety Responsibility Act definition of driver or operator, and in view of regulation defining driver or operator as "every person who drives or is in actual physical control of a vehicle", an "operator" within provision prohibiting operation of a motor vehicle during a period for which operator's permit has been revoked is one who is in actual physical control of a vehicle upon a public highway. *Houston v. District of Columbia* (D.C. Mun. App. 1959, 149 A. 2d 790).

5. Owners and ownership

The terms "owner" and "ownership" must be defined by judicial determination, made in a manner giving effect to the objects and purposes of statutory provisions. *Mason v. Automobile Finance Co.* (1941, 121 F. 2d 32, 73 App. D.C. 284).

Possession plus power and legal right to permit its use by another constitutes ownership. *Id.*

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners", and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers' names. *Burt and Mumford v. Cordover* (D.C. Mun. App. 1955, 117 A. 2d 116).

§ 40-419. Administration by Commissioners.

(a) The Commissioners shall administer and enforce the provisions of this chapter, and may make rules and regulations necessary for its administration.

(b) The Commissioners shall receive and consider any pertinent information upon request of persons aggrieved by their orders or acts under any of the provisions of this chapter.

(c) The Commissioners shall prescribe and provide suitable forms requisite or deemed necessary for the purpose of this chapter.

(d) The Commissioners shall retain records required for the administration of this chapter for a period of five years, after which the Commissioners may destroy or otherwise dispose of such records. (May 25, 1954, 68 Stat. 121, ch. 222, § 3; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 1.)

AMENDMENT

1960—Subsec. (d) added by act Sept. 8, 1960.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-420. Review by Commissioners.

Any order or act of any agent of the Commissioners under the provisions of this chapter shall be subject to review by the Commissioners. Application for review of any such order or act shall be in writing and shall set out in detail the reasons for such review. Such application shall be filed with the

Commissioners within five days after the issuance of the order or occurrence of the act in question. If upon review the Commissioners shall sustain such order or act, the same shall become effective immediately.

Any person whose license or motor-vehicle registration shall be denied, suspended, or revoked by the Commissioners under the provisions of this chapter may, within thirty days after such denial, revocation, or suspension has been reviewed by the Commissioners and sustained by them, file in the Municipal Court of Appeals for the District of Columbia an application for the allowance of an appeal from the order or decision of the Commissioners. If a majority of the court are of the opinion that the appeal should be allowed, the appeal shall be recorded as granted and the case set down for hearing on appeal. If a majority of the court shall be of the opinion that the appeal should be denied such denial shall stand as an affirmation of the order appealed from. Said court is authorized to prescribe fees and promulgate rules governing the application for the allowance of an appeal and the record and proceedings on appeal, and the said court shall have power to affirm, modify, or reverse the order or decision of the Commissioners, where the appeal is allowed pursuant hereto; and the decision of said court whether in denying an application for allowance of appeal or in deciding an appeal after it has been granted shall be final. The application to said court for the allowance of an appeal shall not operate as a stay of such order of the Commissioners, unless the applicant shall have deposited with the Commissioners, under protest and subject to the decision of the court, security in the amount required by the Commissioners in accordance with the provisions of this chapter, or a bond in an amount equal to the amount of security required by the Commissioners, guaranteeing that the applicant, in the event the order appealed from is sustained or modified by the court, will comply fully therewith. In the event said order of the Commissioners shall be ordered vacated, either by the court or the Commissioners, the security deposited under protest shall be returned to the depositor or the bond shall be canceled.

For the purposes of this section, the phrase "review by the Commissioners" shall mean a review by the Board of Commissioners of the District of Columbia or a review by any board of review established by the Commissioners of the District of Columbia to review the order or act of any agent of the Commissioners pursuant to the provisions of this chapter. No member of such board of review established by the Commissioners shall review any of his own orders or acts. (May 25, 1954, 68 Stat. 122, ch. 222, § 4; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 3.)

AMENDMENT

1958—Act Aug. 28, 1958, struck the second sentence providing for filing of application of review with commissioners within five days after issuance of order or occurrence complained of, and added the new matter set out as the second and third sentences of the section.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

Section 16 of act Aug. 28, 1958, provides as follows: "Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

NOTES TO DECISIONS

1. Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-421. Abstract of operating record.

(a) The Commissioners shall upon request furnish any person a certified abstract of the District of Columbia operating record of any person subject to the provisions of this chapter, which abstract shall include enumeration of any motor-vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor-vehicle laws as reported to the Commissioners and a record of any vehicles registered in the name of such person. The Commissioners shall collect for each abstract the sum of \$2.

(b) The Commissioners shall upon request furnish any person an uncertified abstract of the District operating record of any person subject to the provisions of this chapter, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor vehicle laws, as reported to the Commissioners. The Commissioners shall collect for each such uncertified abstract a sum equal to the cost to the District of furnishing such abstract, as such cost may be determined by the Commissioners from time to time. (May 25, 1954, 68 Stat. 122, ch. 222, § 5.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-422. Information regarding financial responsibility to be furnished person injured.

The Commissioners shall furnish to any person who may be injured in person or property by any motor vehicle, upon written request, a statement that the owner or operator of any motor vehicle has furnished evidence of his ability to respond in damages in accordance with the provisions of this chapter, and if such owner or operator shall have furnished evidence of having had in effect at the time of such injury or damage a motor-vehicle liability policy, the name and address of the insurance carrier writing such policy. The Commissioners shall collect for each abstract the sum of \$2. (May 25, 1954, 68 Stat. 122, ch. 222, § 6.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-423. Service of process on nonresident.

(a) The operation by a nonresident or by his agent of a motor vehicle on any public highway of the District of Columbia shall be deemed equivalent to an appointment by such nonresident of the Commissioners or their successors in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceedings against such nonresident growing out of any accident or collision in which said nonresident or his agent may be involved while operating a motor vehicle on any such public highway, and said operation shall be a signification of his agreement that any such process against him, which is so served, shall be of the same legal force and validity as if served upon him personally in the District of Columbia. Service of such process shall be made by leaving a copy of the process with a fee of \$2 in the hands of the Commissioners or in their office, and such service shall be sufficient service upon the said nonresident: *Provided*, That the plaintiff in such action shall first file in the court in which said action is commenced an undertaking in form and amount, and with one or more sureties, approved by said court, to reimburse the defendant, on the failure of the plaintiff to prevail in the action, for the expenses necessarily incurred by the defendant, including a reasonable attorney's fee in an amount to be fixed by the said court in defending the action in the District of Columbia, except that nothing contained in this proviso shall be construed to require the United States or the District of Columbia to file the undertaking hereby required: *And provided further*, That notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt appended to the writ and entered with the declaration, or such notice of such service and a copy of the process may be served upon the defendant in the manner provided by section 13-108. The court in which the action is pending may order such continuances as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least twenty days shall have elapsed after service upon the defendant, as hereinabove provided, of a copy of the process and notice of service of said process upon the Commissioners.

(b) For the purposes of this section—

(1) The term "operation" as used in connection with a motor vehicle includes any use as well as any operation of such vehicle.

(2) The term "nonresident" shall include any person who is not a resident of the District of Columbia and who was the owner or operator of a motor vehicle at the time such vehicle was involved in an accident or collision in the District of Columbia, and includes any such person who was a resident of the District of Columbia at the time such motor vehicle was involved in such accident or collision but who subsequently became a nonresident of the District of Columbia and is a nonresident thereof at the time process is sought to be served on him as a result of such accident or collision.

(c) The appointment of the Commissioners or their successors in office to be the true and lawful attorney for such nonresident as provided by this section shall be irrevocable and binding upon the executor, administrator, or other personal representative of such nonresident. Where a nonresident has been served in accordance with this section and he dies thereafter, the court must allow the action to be continued against his executor, administrator, or other personal representative upon motion, and with such notice as the court deems proper. Except as otherwise provided in the two preceding sentences, service of process may be made on the executor, administrator, or other personal representative of a nonresident in the same manner as is provided in this section in the case of a nonresident. (May 25, 1954, 68 Stat. 123, ch. 222, § 7; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 4.)

AMENDMENT

1958—Act Aug. 28, 1958, amended section generally, and among other changes, designated first paragraph as (a), second paragraph as (b), inserted exception clause at the end of the first proviso preceding the color in paragraph (a), added the definition of the term "operation" in paragraph (b), and added paragraph (c).

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

Attorney's fees 1
Common law 2
Forum non conveniens 3
Nature and scope of process 4
Notice and mailing of process 5
Power of attorney 6
Purpose of substituted service 7
Residents 8
Review 9
Surety 10
Undertaking 11

1. Attorney's fees

Where it was clear that statute providing for institution in District of Columbia of automobile negligence action against nonresident, had been invoked against defendant, that defendant engaged attorney and came into District to defend suit, and that plaintiff failed to prevail in the action, defendant was entitled, in absence of special circumstances or presentation of reason to contrary to an attorney's fee under bond executed by plaintiff as required by statute. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

Where motion by nonresident defendant for attorney's fee under bond executed by unsuccessful plaintiff in automobile negligence action was presented to same judge who tried case, judge could have fixed amount of fee without taking evidence on the subject, since he was considered to be an expert on the value of legal services. *Id.*

Fact that defendant operated taxicab in District of Columbia and lived "within metropolitan area" in nearby Maryland did not preclude his recovery of attorney's fee under bond executed in his favor by plaintiff who instituted in the District of Columbia an automobile negligence action against defendant as a "nonresident." *Id.*

2. Common law

Statute is in derogation of common law and must be strictly construed. *Wood v. White* (1938, 97 F. 2d 646, 68 App. D.C. 341).

3. Forum non conveniens

Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Caspar et al. v. Devine et ano.* (1958, 257 F. 2d 197, 103 U.S. App. D. C. 193).

4. Nature and scope of process

Financial Responsibility Act authorizing substituted service on nonresident motorist imposes a contractual

obligation in derogation of common law, affects substantial rights, and has effect of conferring jurisdiction upon courts where none existed before, and hence it must be strictly construed and strictly complied with. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

5. Notice and mailing of process

Requirement of Financial Responsibility Act, which authorizes substituted service on non-resident motorist, that notice of such service and a copy of the process be sent by registered mail to defendant, was not met by mailing a copy of the complaint to defendant. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

6. Power of attorney

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Ass'n* (D. C. Mun. App. 1956, 127 A. 2d 143).

7. Purpose of substituted service

Provision for service of summons on nonresident defendant in motor vehicle accident case by substituted service on Director of Vehicles and Traffic was passed for the benefit of injured persons within the District of Columbia, not for the benefit of nonresident motorists who caused injury within the District and then by absenting themselves therefrom avoid service and prevent recovery. *Seymour v. Hawkins* (1943, 133 F. 2d 15, 76 U.S. App. D.C. 376).

Financial Responsibility Act authorizing substituted service on non-resident motorist was not intended to reach an actual resident, but was enacted to provide a means of bringing before the local court a non-resident transient motorist, and hence the statute did not apply to a motorist who was a resident at time of accident and who never thereafter became a non-resident. *Brenner v. Margolies* (D. C. Mun. App. 1954, 102 A. 2d 300).

8. Residents

The Financial Responsibility Act of District of Columbia authorizing substituted service on nonresident motorist does not apply to one who was resident of the District at time of accident and who became nonresident after accident, but prior to time action was instituted. *Johnson v. Jacoby* (1952, 195 F. 2d 563, 90 U.S. App. D. C. 280).

Under the District of Columbia Financial Responsibility Act authorizing substituted service on "nonresident" motorist, quoted word did not include one who had lived in the District for more than 15 months before accident and continued to live there for more than eight months after it occurred, although he was driving a vehicle using New York license plates and may have been domiciled in New York on date of accident. *Id.*

One may be resident of District of Columbia although domiciled elsewhere for purposes of the Financial Responsibility Act authorizing substituted service on non-resident motorist. *Id.*

Statute does not apply where person was resident of District of Columbia at time of accident and later moved from the jurisdiction. *Wood v. White* (1938, 97 F. 2d 646, 68 App. D.C. 341).

9. Review

Where, on date complaint was filed, plaintiff furnished copies of complaint to be served to initiate the process of effecting service on nonresident defendants, but no undertaking was filed and no return of service appeared in the docket, and subsequently the District Court dismissed the complaint without prejudice, there was final judicial action subject to appellate review, notwithstanding no appearance was entered for the appellees in the appellate court or in the District Court. *Caspar*

et al. v. Devine et ano. (1958, 257 F. 2d 197, 103 U.S. App. D. C. 193).

10. Surety

Automobile negligence action defendant who, as successful nonresident defendant, was entitled to attorney's fee on plaintiff's undertaking, would have to give surety notice and an opportunity to be heard before he was entitled to have judgment on undertaking run against such surety. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

11. Undertaking

One purpose of statute requiring that plaintiff, who institutes automobile negligence action in District of Columbia against nonresident by service of process on Director of Vehicles and Traffic, file undertaking in favor of nonresident defendant is to prevent the reckless reaching out into other jurisdictions and forcing of nonresident to come back into District to defend collision suits, and another is to reimburse a nonresident defendant for expense of successfully defending such action. *Dew v. Simon* (D. C. Mun. App. 1953, 95 A. 2d 482).

The undertaking in favor of a nonresident defendant which is required of a plaintiff who institutes automobile negligence action in District of Columbia against such nonresident by service of process on Director of Vehicles and Traffic, is such an "undertaking" as is defined by Code as an agreement by a party to a suit upon which a judgment or decree may be rendered in same suit or proceeding in which it has been filed. *Id.*

§ 40-424. Operator deemed to be agent of owner.

Whenever any motor vehicle, after the passage of this chapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner. (May 25, 1954, 68 Stat. 123, ch. 222, § 8.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

In general 1

Accident occurring before effective date 2

Agency based on consent 3

Bailors and bailees 4

Burden of proof 5

Common law 6

Conditional sale vendor 7

Defective vehicles 8

Deviation from authorized use 9

Directed verdict 10

Evidence overcoming presumption 11

Findings 12

Husband and wife 13

Joint enterprises 14

Law governing 15

New trial 16

Operation and control 17

"Owners" and "ownership" 18

Ownership as evidence 19

Purpose 20

Questions of fact 21

Review 22

Setting aside default judgment 23

Unauthorized use 24

1. In general

Where statute, except final clause making proof of ownership of motor vehicle involved in accident prima facie evidence of consent, was in identical words of statute previously enacted by other states, there was imported into its terms the construction adopted by courts of such other states. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

2. Accident occurring before effective date

Prior to passage of the statute imposing on the owner of a car liability for the acts of any person who drives it

with his consent, a corporation was not liable for an accident of its driver merely because it had entrusted its car to him. *Balinovic v. Evening Star Newspaper Co.* (App. D.C., 1940, 113 F. 2d 505).

In accident occurring before enactment statute imposing liability on owner, a corporation was not liable for damages where the driver of its car at the time of the collision was engaged in chasing a traffic violator under direction of a policeman who was riding on the running board. *Id.*

The Automobile Financial Responsibility Law cannot be applied to a collision occurring before its effective date. *Smith v. Doyle* (1938, 98 F. 2d 341, 69 App. D.C. 60).

3. Agency based on consent

Where party, injured by taxicab owned and operated by member of unincorporated association composed of men who owned and operated taxicabs, obtained judgment against members of association on theory that they were engaged with negligent operator in joint enterprise and were responsible for his negligence, the negligent operator was "agent" of other members of association within this section, so that permits and registration certificates of members of association were required to be suspended unless judgment against them was promptly paid. *Champ v. Atkins* (1942, 128 F. 2d 601, 76 U.S. App. D.C. 15).

This section makes express or implied consent by owner to another's operation of his vehicle on public highways the equivalent of agency. *Rosenberg v. Murray* (1941, 116 F. 2d 552, 73 U.S. App. D.C. 67).

Congress intended to establish a new rule of liability in which agency is based on consent. *Forrester v. Jerman* (1937, 90 F. 2d 412, 67 App. D.C. 167).

Proof that record title to taxicab, O. D. T. certificate, tire ration application, gas allotment papers and Public Utilities Commission certificate were in defendant's name, which was on outside of taxicab, operated by another, gave rise to presumption that taxicab was being operated by defendant's agent with defendant's consent and required proof from defendant to the contrary. *Gasque v. Saidman* (D.C. Mun. App. 1945, 44 A. 2d 537).

In determining whether an automobile is operated with consent of owner, the usual rules governing relation of master and servant are applied and a substantial deviation from an authorized use terminates consent. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

4. Bailors and bailees

Owner of car was liable in damages for injury from accident which occurred when her car was being delivered to her by employee of a garage with which she had a monthly storage and delivery contract. *Jones v. King* (App. D.C., 1940, 113 F. 2d 522).

The better reasoned view is that the contributory negligence of a bailee is attributable to a bailor under the Automobile Financial Responsibility Law. *National Trucking and Storage Co. v. Driscoll* (D.C. Mun. App. 1949, 64 A. 2d 304).

5. Burden of proof

The effect of this provision is simply to shift burden of proof and impose on owner the affirmative duty of proving that automobile was not at time of accident operated with his express or implied consent. *Rosenberg v. Murray* (1941, 116 F. 2d 552, 73 App. D.C. 67).

In action against District of Columbia for damages sustained when truck collided with plaintiff's automobile, the presumption under the District of Columbia Motor Vehicle Safety Responsibility Act, if such act was applicable, that driver was operating truck with consent of district, arising out of proof of ownership of truck by district, placed on district the burden of proving that truck at time of accident was not operated with district's express or implied consent. *District of Columbia v. Abramson et ano.* (D.C. Mun. App. 1959, 148 A. 2d 578).

Financial Responsibility Act providing that proof of ownership of motor vehicle involved in accident shall be prima facie evidence that driver operated automobile with owner's consent casts burden of proof as to question of consent upon owner of automobile. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

Effect of Owners' Financial Responsibility Act declaring that where accident results when person other than owner is driving motor vehicle on highway, with express or implied consent of owner, driver shall be deemed agent of owner, and that proof of ownership shall be prima facie evidence of consent, is to place burden on owner of proving that vehicle was not operated with his express or implied consent at time of accident. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

The effect of statute making proof of ownership of automobile evidence of owner's consent to operation of automobile by another is simply to shift the burden of proof and impose on owner the affirmative duty of proving that automobile at time of accident was not operated with his express or implied consent. *Schwartzbach v. Thompson* (1943, 33 A. 2d 624). See, also, *Rice v. Simmons* (D.C. Mun. App. 1947, 53 A. 2d 587).

6. Common law

Except insofar as statute creates a prima facie case of owner's consent to use of his automobile at time of accident, common-law rules defining liability of employer for acts of employee are unaffected by such statute. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

7. Conditional sale vendor

One who had sold and delivered taxicab to another on conditional sale contract and had retained legal title solely for security, was not the owner thereof nor liable for the property damage caused by negligence of another to whom purchaser had entrusted the taxicab and was not estopped to deny such ownership though his name appeared on taxicab. *Gasque v. Saidman* (D. C. Mun. App. 1945, 44 A. 2d 537).

8. Defective vehicles

Where defendant owned the taxicab and rented it to the driver he was legally responsible for the driver's negligence as well as his own in maintaining a door of a cab in defective condition or the negligence of the driver in failing to see that the door was closed when the trip resulting in injury to plaintiff began. *Greene et al. v. Hathaway* (1951, 191 F. 2d 656, 89 U. S. App. D. C. 229).

9. Deviation from authorized use

Presumption that owner consented to use of automobile continues until there is creditable evidence to contrary and ceases when there is uncontradicted proof that automobile was not at time being used with owner's permission, but, when fact of deviation from authorized use is established, the issue is one of law for court. *Senator Cab Co. v. Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

10. Directed verdict

In action for damage growing out of operation of taxicab, where evidence established defendant's ownership of taxicab, and defendant's evidence was somewhat inconsistent and self-contradictory, and the police report of accident stated that defendant was driver of taxicab at time of accident and testimony of plaintiff and one of his witnesses, brought out on cross-examination, contradicted defendant's story that taxicab was being operated without defendant's permission and placed the defendant as operator, evidence was sufficient for jury and directed verdict for defendant was improper. *Hiscox v. Jackson* (1942, 127 F. 2d 160, 75 U.S. App. D. C. 293).

Under provision of statute that proof of ownership of automobile causing damage shall be prima facie evidence that driver was operating automobile with owner's consent, to justify a directed verdict for defendant, shown to be owner of automobile involved, evidence must destroy all inferences and presumptions supporting plaintiff and must raise no doubts against defendant. *Id.*

Under statute making proof of ownership of motor vehicle involved in accident prima facie evidence that driver was operating vehicle with owner's consent, where ownership is proved in defendant who offers no credible evidence to negative the statutory presumption, plaintiff who has otherwise established liability is entitled to directed verdict. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

11. Evidence overcoming presumption

The statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at the time being used with owner's permission. *Hudson v. Lazarus* (1954, 217 F. 2d 344, 95 U. S. App. D. C. 16).

Rosenberg v. Murray (1941, 116 F. 2d 552, 73 App. D. C. 67). See, also, *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777); *Schwartzbach v. Thompson* (1943, 33 A. 2d 624); *Rice v. Simmons* (D. C. Mun. App. 1947, 53 A. 2d 587).

Mere ownership of vehicle causing accident creates a presumption that operation was with the consent of the owner, but such may be overcome by uncontradicted proof that the vehicle was not being operated with the owner's consent, and when so overcome, the owner is entitled to a directed verdict. *Sawyer et ano. v. Miseli* (D.C. Mun. App. 1959, 156 A. 2d 141).

In action against District of Columbia for damages sustained when truck, which was owned by district and which was assigned to recreation department and which was operated by department employee, collided with plaintiff's automobile while employee was driving truck out from the curb in front of employee's house where employee had parked truck while he was having his lunch, proof of district's ownership of truck raised a presumption under District of Columbia Motor Vehicle Safety Responsibility Act, if such act was applicable, that employee was operating with consent of district, and the evidence, consisting of regulation of district commissioners requiring that government-owned vehicles be used exclusively for official purposes and testimony of employee's superiors in the department that employee did not have permission to use truck to go home for lunch, was sufficient to overcome such presumption. *District of Columbia v. Abrahamson et ano.* (D.C. Mun. App. 1959, 148 A. 2d 578).

In action for personal injuries and property damage sustained when truck owned by defendant and driven by one of his employees struck rear of plaintiff's vehicle, evidence on consent issue was sufficient to overcome statutory presumption and entitled defendant to directed verdict as a matter of law. *Stumpar v. Harrison* (D. C. Mun. App. 1957, 136 A. 2d 870).

In action against truck owners for damages caused by employee, where statutory presumption that owners had consented to such employee's driving truck was rebutted by uncontradicted proof that he had no authority to drive, fact that authorized employee-driver had turned truck over to unauthorized employee to park it did not establish owners' liability under principles of master and servant relationship, in view of fact that transfer of possession took place. *Chasin v. Miller* (D. C. Mun. App. 1953, 94 A. 2d 647).

Presumption created by Owners' Financial Responsibility Act which arises by mere fact of ownership of motor vehicle that owner has consented to driving of his automobile by another person, is sufficiently rebutted by the uncontradicted denial by owner that vehicle was used with his express or implied consent. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

Under statute, making proof of ownership prima facie evidence of consent, owner must offer evidence sufficient to overcome the prima facie case. *Senator Cab Co. v. Rothberg* (D. C. Mun. App. 1945, 42 A. 2d 245).

12. Findings

Where owner of automobile involved in accident had permitted driver to drive automobiles on previous occasions and the testimony, that at time of accident automobile was not driven with owner's consent was inconsistent and self-contradictory, a finding that owner had failed to break the force of the statutory presumption of consent was justified. *Schwartzbach v. Thompson* (1943, 33 A. 2d 624).

13. Husband and wife

Negligence of driver who was taking lady home at her request in her husband's automobile, was attributable to husband, under District of Columbia statute making one who operates automobile with owner's consent the agent of the owner in case of accident, in his action against motor carrier for expenses due to collision with its truck

and in carrier's counterclaim against him, in absence of sufficient evidence to overcome prima facie case of consent arising, by statute, from husband's ownership. *Baber v. Akers Motor Lines* (1954, 215 F. 2d 843, 94 U. S. App. D. C. 211).

District of Columbia rule that a married woman may not maintain action, under District of Columbia Financial Responsibility Act, for injuries she sustained as passenger in automobile while it was driven by one who was, at time of maintaining action, her husband, against person who lent automobile to her husband, whether spouses were married at time of accident was applicable to preclude actions being brought in District for injuries sustained in New York. *Baker v. Gaffney* (1956, 141 F. Supp. 602).

A married woman may not maintain action, under District of Columbia Financial Responsibility Act, for injuries she sustained as passenger in automobile while it was driven by one who was, at time of maintaining action, her husband, against person who lent automobile to her husband, whether spouses were married at time of accident. *Id.*

14. Joint enterprises

Whether the contributory negligence of the driver of a rented taxicab may be imputed to its owner must be based on the theory that both were engaged in a joint enterprise, but to establish such relationship there must exist not only a community of interest in the subject of the venture but also an equal right, express or implied, to direct and control the management and movement of the car. *National Trucking and Storage Co. v. Driscoll* (D.C. Mun. App. 1949, 64 A. 2d 304).

To constitute a joint enterprise there must be not only joint or community of interest but also an equal right express or implied, to direct and control the management and movement of the motor vehicle involved. *Gasque v. Saidman* (D. C. Mun. App. 1945, 44 A. 2d 537).

15. Law governing

Principle that questions of liability in tort are governed by law of state in which tort is committed is subject to exception where forum does not possess necessary procedural machinery to enforce such law. *Baker v. Gaffney* (1956, 141 F. Supp. 602).

16. New trial

Where principal question was whether colliding automobile was being operated with owner's consent and Municipal Court judge in case tried without a jury made a general finding for plaintiff and assessed damages and general finding was entered on the jacket of the case and in court's minutes and docket, and before judgment was entered defendant moved to set aside and render judgment for defendant, the court was without power to reverse such general finding and enter judgment for defendant, but the court's only recourse was to grant a new trial. *Rice v. Simmons* (D.C. Mun. App. 1947, 53 A. 2d 587).

17. Operation and control

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under Financial Responsibility Act for injuries sustained in collision when automobile was being driven by employee of service station and it appeared that owner at most entrusted employee with driving automobile from owner's place of work to service station, and that employee was not driving back to the station by any route at time of collision but was driving away from it. *Hudson v. Lazarus* (1954, 217 F. 2d 344, 95 U. S. App. D. C. 16).

Where parking lot attendant was authorized to drive automobile and park it in street in front of owner's store after 6:30 p.m. and attendant had driven four blocks beyond his usual route at time of accident at 6:45 p.m., finding that evidence did not establish that attendant had removed automobile from parking lot for purpose of delivering automobile to owner, and did establish that at time of accident attendant was operating automobile without consent of owner, did not justify judgment relieving owner from liability for attendant's negligence. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

18. "Owners" and "ownership"

The terms "owner" and "ownership" which are not defined in this provision must be defined by judicial determination, made in a manner giving effect to the objects and purposes of this provision. *Mason v. Automobile Finance Co.* (1941, 121 F. 2d 32, 73 App. D.C. 284).

Possession plus power and legal right to permit its use by another constitutes ownership within the meaning of this provision. *Id.*

Chattel mortgagee is not an "owner" of an automobile, nor does he become such merely by virtue of a default by the mortgagor, though the right to possession may accrue immediately upon default, but something more than a lien on the automobile, though presently and summarily enforceable, is necessary. *Id.*

19. Ownership as evidence

Under provision that proof of ownership of motor vehicle causing damage shall be "prima facie evidence" that driver operated automobile with owner's consent, with proof that defendant owned automobile involved and with no evidence on behalf of defendant, a plaintiff who has otherwise established liability is entitled to a directed verdict. *Hiscox v. Jackson* (1942, 127 F. 2d 160, 75 U.S. App. D.C. 293).

Under provision of statute that proof of ownership of motor vehicle causing damage shall be prima facie evidence that driver operated motor vehicle with owner's consent, the presumption continues until there is credible evidence to the contrary and ceases when there is uncontradicted proof that the vehicle was not at the time being used with the owner's permission. *Id.*

20. Purpose

In absence of some definite statutory criterion of ownership, the purpose of statute was to place liability on the person in a position immediately to allow or prevent the use of the automobile and to do so by giving a lawful and effective consent or prohibition to its operation by others, and its object was to control the giving of consent to irresponsible drivers by the one having that power rather than to impose liability on one having a naked legal title with no immediate right of control. *Mason v. Automobile Finance Co.* (1941, 121 F. 2d 32, 73 App. D.C. 284).

The statute has a twofold purpose: To furnish a financially responsible defendant in case a person driving a car, with the owner's consent, negligently causes damage to another; and to promote more careful driving. *National Trucking and Storage Co. v. Driscoll* (D.C. Mun. App. 1949, 64 A. 2d 304).

The purpose of this chapter was the extension of liability of master for acts of servant to those owners who entrust their automobiles to others or give consent, express or implied, to their use by others. *Senator Cab Co. v. Rothberg* (D.C. Mun. App. 1945, 42 A. 2d 245).

21. Questions of fact

In action for damages sustained when a plaintiff's taxicab was struck by an automobile owned by defendant, evidence, including testimony that driver and passenger in the automobile ran away from it after the collision which occurred about four blocks from automobile owner's home, and that automobile owner appeared on the scene shortly after the occurrence, was sufficient to present a question for the jury as to whether automobile was being driven at time of the accident by owner, or with consent of the owner. *Farralietano v. Ellis* (D.C. Mun. App. 1960, 157 A. 2d 127).

In an action against owner of an automobile, for damages sustained by a plaintiff, when his taxicab collided with the automobile, unless automobile owner offered uncontradicted proof that his automobile was not at the time of the accident being used with his permission, question of automobile owner's liability should have been submitted to the jury as a question of fact. *Id.*

Positive, unequivocal and uncontradicted testimony of owner of an automobile that it was not being used with his permission, at time it was involved in an accident in question, may constitute uncontradicted proof to that effect, for purposes of excusing owner from liability, but if the proof offered by the owner contains inconsistencies and self-contradictions, raising doubt as to owner's credibility or that of his witnesses, issue of permissive use of the automobile is for the jury. *Id.*

"Uncontradicted proof" requires evidence which destroys all inferences and presumptions supporting one party, and which raises no doubts against the other party. *Id.*

In action brought by automobile owner to recover for damage sustained when his automobile was struck, while parked, at night, against one whose automobile had been identified as the one doing the damage, defendant's evidence that neither he nor anyone with his consent had driven his automobile at time involved was not so uncontradicted as to justify withdrawal of matter from jury. *Love et ano. v. Gaskins* (D. C. Mun. App. 1959, 153 A. 2d 660).

Statutory presumption of consent may be overcome by positive testimony of motor vehicle's owner, and if such presumption is overcome by uncontradicted proof, owner is entitled to directed verdict as a matter of law; but if on the other hand, evidence contains inconsistencies and self-contradictions or is reasonably subject to contradictory interpretations, question is one of fact for jury determination. *Stumpner v. Harrison* (D. C. Mun. App. 1957, 136 A. 2d 870).

Upon establishment of defendant's ownership of automobile involved in accident while being driven by another, the Financial Responsibility Act creates presumption of agency and places burden of proof as to question of consent upon defendant, but defendant overcomes such presumption when he offers uncontradicted proof that automobile was not being used with his permission, and is then entitled to favorable finding as matter of law, but where defendant offers some credible evidence to overcome presumption, but not enough to entitle him to judgment as matter of law, question of liability becomes one of fact. *McMickle v. Nickens* (D. C. Mun. App. 1954, 104 A. 2d 409).

Where statutory presumption that defendant truck owners had consented to the driving of their truck by employee was overcome by uncontradicted proof, question of truck owners' liability to owners of automobiles struck by truck was not strictly one of fact such that trial court's decision should not be disturbed on appeal. *Chasin v. Miller* (D. C. Mun. App. 1953, 94 A. 2d 647).

Upon establishment of defendant's ownership of automobile involved, the Financial Responsibility Act creates a presumption of agency and places burden of proof as to question of consent upon defendant-owner, but defendant-owner overcomes such presumption when he offers uncontradicted proof that automobile was not being used with his permission and owner is then entitled to favorable finding as a matter of law, but, where defendant-owner offers some credible evidence to overcome the presumption but not enough to entitle him to judgment as matter of law, question of liability becomes one of fact. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

Whenever presumption raised by statute providing that proof of ownership of motor vehicle involved in accident shall be prima facie evidence that driver was operating vehicle with owner's consent is overcome by uncontradicted proof, a directed verdict for owner is proper, but if the evidence is contradictory, question of owner's liability is for the jury. *Milstead v. District of Columbia* (D. C. Mun. App. 1952, 91 A. 2d 93).

Although presumption, arising under Owners' Financial Responsibility Act by virtue of ownership of vehicle, that vehicle, driven by person other than owner when involved in accident, was being driven with consent of owner and thereby as agent of owner, ceases when confronted with uncontradicted denial by owner of giving of consent, when uncontradicted denial is self-contradictory and inconsistent, it becomes question for jury as to credibility of witness and as to whether presumption has been rebutted. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

Evidence presented was sufficient to meet the statutory presumption of consent under Owner's Financial Responsibility Act, and when a statutory presumption is met by some credible evidence, it becomes, in a sense, something like an inference and when more than a single inference may be drawn from the evidence, it becomes a question of fact for a jury's determination. *Bill's Auto Rental, Inc. v. Bonded Taxi Company* (D. C. Mun. App. 1950, 72 A. 2d 254).

If the presumption that automobile was being used with the express or implied consent of owner at time of accident is overcome by uncontradicted proof, a motion for directed verdict for the owner will be granted, but if the evidence is contradictory or reasonably subject to contradictory interpretations, the question of liability is for the trier of the facts. *Rice v. Simmons* (D.C. Mun. App. 1948, 58 A. 2d 587).

Where owner of taxicab driven by another was in taxicab at time of collision and the evidence was conflicting whether driver was driving with owner's consent, the inferences to be drawn from the facts were for jury. *Gasque v. Saidman* (D.C. Mun. App. 1945, 44 A. 2d 537).

22. Review

Where action against owner of taxicab involved in accident was heard before court without jury, and trial judge's memorandum opinion did not state whether statutory presumption of agency had been overcome as a matter of law or of fact, the Municipal Court of Appeals would assume that the trial judge had found for defendant as a matter of law. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

On appeal from judgment for plaintiff in action against automobile owner for damages resulting from operation of automobile by another, the test is whether the showing was such as to justify a holding that defendant had failed to break the force of the statutory presumption of owner's consent, and in applying that test and in measuring the force, effect and extent of the testimony, the municipal court of appeals, like the trial court, was governed by the rules of reason, credibility, and probability. *Schwartzbach v. Thompson* (1943, 33 A. 2d 624).

23. Setting aside default judgment

Where plaintiff obtained default judgment in automobile accident case and the court had jurisdiction of the subject and of the parties and there was a lack of proof of ownership of the automobile involved, such fact would render the judgment merely erroneous and not void and hence motion to set it aside was properly denied. *Lynch v. Williams etc.* (D.C. Mun. App. 1960, 162 A. 2d 770).

24. Unauthorized use

In action for damage to automobiles, uncontradicted testimony by defendant truck owners that driver-employees were instructed to allow no one else to drive, and that a helper-employee who was driving truck in intoxicated condition at time of collision, had no driver's license and went out on truck only when specifically instructed to do so, overcame statutory presumption that owners had consented to helper's driving of truck. *Chasin v. Miller* (D. C. Mun. App. 1953, 94 A. 2d 647).

Where lessee of taxicab obeyed lessor's instructions not to permit any one else to drive taxicab, but, after locking ignition, left keys on radio in her apartment, and another person obtained such keys without lessee's knowledge and became involved in automobile accident, owner did not consent to such use and was not liable for the accident. *Simon v. Dew* (D. C. Mun. App. 1952, 91 A. 2d 214).

Under Owners' Financial Responsibility Act which raises presumption of consent by owner to driving of his automobile by another person involved in accident upon showing of single fact of ownership, where there was uncontradicted testimony of owner and his agents which was not self-contradictory that automobile was driven without consent by third party when accident occurred, it was error to submit issue of owner's liability to jury. *Conrad v. Porter* (D. C. Mun. App. 1951, 79 A. 2d 777).

§ 40-425. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C.

(a) There is hereby created in the Treasury of the United States a special fund which shall be known as the Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C., to which shall be deposited any funds paid to the Commissioners as security or proof in accordance with the provisions of this chapter.

(b) Said Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C., is available to the Commissioners for disbursements required under the provisions of this chapter, such disbursements to be made in the same manner as other disbursements for the District of Columbia are made. (May 25, 1954, 68 Stat. 123, ch. 222, § 9.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-426. Report of accident required.

The driver of a vehicle of a type subject to registration under the motor vehicle laws of the District of Columbia which is in any manner involved in an accident within the District of Columbia, which accident has resulted in damage to the property of any one person in excess of \$100 or in bodily injury to or in the death of any person shall within five days after such accident report the accident on a form approved by the Commissioners to the office of the Commissioners subject to the following exceptions in sections 40-426 to 40-431. (May 25, 1954, 68 Stat. 124, ch. 222, § 10.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-427. Form of accident report.

The form of accident report prescribed by the Commissioners shall contain information sufficient to enable the Commissioners to determine whether the requirements for the deposit of security under this chapter are inapplicable by reason of the existence of insurance or other exceptions specified in this chapter. (May 25, 1954, 68 Stat. 124, ch. 222, § 11.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-428. Incapacity of person to make an accident report.

(a) An accident report is not required under sections 40-426 to 40-431 from any person who is physically incapable of making report during the period of such incapacity.

(b) If any driver be physically incapable of making a required accident report or refuses or neglects to make such report, and is not the owner of the vehicle involved in such accident, then the owner of such vehicle shall within five days after he learns of the accident make such report not made by the driver. (May 25, 1954, 68 Stat. 124, ch. 222, § 12; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 5.)

AMENDMENT

1958—Act Aug. 28, 1958, amended subsection (b) by inserting the phrase "or refuses or neglects to make such report."

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-429. Additional information concerning accident to be furnished on request.

The driver or the owner of the vehicle involved in the accident shall furnish such additional relevant information as the Commissioners may require. (May 25, 1954, 68 Stat. 124, ch. 222, § 13.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-430. Suspension of license and registration for failure to report.

The Commissioners are authorized in their discretion, to suspend the license and registration of any person who fails to report as required by the Commissioners until such report has been filed and for such further period, not to exceed thirty days, as the Commissioners may determine. (May 25, 1954, 68 Stat. 124, ch. 222, § 14; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 2.)

AMENDMENT

1960—Act Sept. 8, 1960, empowered the Commissioners to suspend the registration.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-431. Accident reports to be confidential.

Accident reports and supplemental information in connection therewith required under sections 40-426 to 40-431 may be examined by any person named in such report or his representative designated in writing, but shall not be open to public inspection, nor shall copying of lists of such reports be permitted. (May 25, 1954, 68 Stat. 124, ch. 222, § 15.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-432. Application of chapter—Amount.

The provisions of this chapter, requiring deposit of security and suspensions for failure to deposit security, subject to certain exemptions, shall apply to the driver and owner of any vehicle of a type subject to registration under the motor vehicle laws of the District of Columbia which is in any manner involved in an accident within the District of Columbia, which accident has resulted in bodily injury to or death of any person or damage to the property of any one person in excess of \$100. (May 25, 1954, 68 Stat. 124, ch. 222, § 16.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

Suspension mandatory 1
Waiver of deposit 2

1. Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

2. Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-433. Determination of the amount of security.

(a) The Commissioners, not less than twenty days after receipt of a report of an accident as described in sections 40-426 to 40-431, shall determine the amount of security which shall be sufficient in their judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each driver or owner. Such determination shall not be made with respect to drivers or owners who are exempt under succeeding sections of this chapter from the requirements as to security and suspension.

(b) The Commissioners shall determine the amount of security deposit required of any person upon the basis of the reports or other information submitted. In the event a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within fifty days after the accident and the Commissioners do not have sufficient information on which to base an evaluation of such injuries or damage, then the Commissioners after reasonable notice to such person, if it is possible to give such notice, otherwise without such notice, shall not require any deposit of security for the benefit or protection of such person. If the Commissioners find that a person required by this subsection to make such report or submit such information is or was physically incapable of so doing within the specified fifty-day period, the Commissioners shall permit such person to make such report or submit such information within thirty days after becoming physically able so to do.

(c) The Commissioners within fifty days after receipt of report of any accident referred to herein and upon determining the amount of security to be required of any person involved in such accident or to be required of the owner of any vehicle involved in such accident shall give written notice to every such person of the amount of security required to be deposited by him and that an order of suspension will be made as hereinafter provided upon the expiration of ten days after the sending of such notice unless within said time security be deposited as required by said notice. (May 25, 1954, 68 Stat. 125, ch. 222, § 17; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 3.)

AMENDMENT

1960—Subsec. (b) amended by act Sept. 8, 1960, empowered the Commissioners to permit a report or submission of information to be made within thirty days after a physically incapable person is able to do so.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

Suspension mandatory 1
Waiver of deposit 2

1. Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

2. Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-434. Exceptions to requirements as to security and suspension.

The requirements as to security and suspension in sections 40-432 to 40-449 shall not apply—

(1) to the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver shall not be exempt under this paragraph if at the time of the accident the vehicle was being operated without the owner's permission, express or implied;

(2) to the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;

(3) to a driver or owner whose liability for damages resulting from the accident is, in the judgment of the Commissioners, covered by any other form of liability insurance policy or bond;

(4) to any person qualifying as a self-insurer under section 40-494 or part II of the Interstate Commerce Act or to any person operating a vehicle for such self-insurer;

(5) to the driver or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(6) to the driver or owner of a vehicle which at the time of the accident was parked, unless such vehicle was parked at a place where parking was at the time of the accident prohibited under any applicable law or ordinance;

(7) to the owner of a vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such vehicle without such permission;

(8) to the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, a State or any political subdivision thereof, the District of Columbia, or to the driver of such vehicle if operating such vehicle with permission; or

(9) to the driver or the owner of a vehicle in the event at the time of the accident the vehicle was being operated by or under the direction of a police officer who, in the performance of his duties, shall have assumed custody of such vehicle. (May 25, 1954, 68 Stat. 125, ch. 222, § 18; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 6.)

REFERENCES IN TEXT

Part II of the Interstate Commerce Act, referred to in the text, is classified to U.S. Code, title 49, § 301 et seq.

AMENDMENT

1958—Act Aug. 28, 1958, amended paragraph (4) of the section by adding the phrase "or Part II of the Interstate Commerce Act".

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-435. Automobile liability policy or bond—Requirements.

(a) No policy or bond shall be effective under section 40-434 unless issued by an insurance company or surety company authorized to do business in the District of Columbia, except as provided in subdivision (b) of this section, nor unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than \$10,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than \$20,000 because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of property, to a limit of not less than \$5,000 because of injury to or destruction of property of others in any one accident.

(b) No policy or bond shall be effective under section 40-434 with respect to any vehicle which was not registered in the District of Columbia or a vehicle which was registered elsewhere than in the District of Columbia at the effective date of the policy or bond or the most recent renewal thereof unless the insurance company or surety company issuing such policy or bond is authorized to do business in the District of Columbia, or if said company is not authorized to do business in the District of Columbia, unless it shall execute a power of attorney authorizing the Commissioners to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident.

(c) The Commissioners may rely upon the accuracy of the information in a required report of an accident as to the existence of insurance or a bond unless and until the Commissioners have reason to believe that the information is erroneous. (May 25, 1954, 68 Stat. 126, ch. 222, § 19.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

Coverage of insurance 1
Power of attorney construed 2

1. Coverage of insurance

Where policy of liability insurance by its own terms "does not cover any liability for death sustained by named insured" the financial responsibility act was applicable, where the insured was killed in her own automobile driven by another and the administratrix of named insured could not recover. *Hepburn v. Pennsylvania Indem. Corp.* (1940, 109 F. 2d 833).

2. Power of attorney construed

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and

served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-436. Security—Form and amount.

(a) The security required under sections 40-432 to 40-449 shall be in such form and in such amount as the Commissioners may require, but in no case in excess of the limits specified in section 40-435 in reference to the acceptable limits of a policy or bond.

(b) Every depositor of security shall designate in writing every person in whose name such deposit is made, but any single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. (May 25, 1954, 68 Stat. 126, ch. 222, § 20.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-437. Failure to deposit security—Suspensions.

In the event that any person required to deposit security under sections 40-432 to 40-449 fails to deposit such security within ten days after the Commissioners have sent the notice as hereinbefore provided, the Commissioners shall thereupon suspend—

(1) the license of each driver in any manner involved in the accident;

(2) the registration of all vehicles owned by the owner of each vehicle of a type subject to registration under the laws of the District of Columbia involved in such accident;

(3) if the driver is a nonresident, the privilege of operating, within the District of Columbia, a vehicle of a type subject to registration under the laws of the District of Columbia; and

(4) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within the District of Columbia of a vehicle of a type subject to registration under the laws of the District of Columbia.

Such suspensions shall be made in respect to persons not otherwise exempt under this chapter who are required by the Commissioners to deposit security and who fail to deposit such security, except as otherwise provided under this chapter. (May 25, 1954, 60 Stat. 126, ch. 222, § 21.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

Suspension mandatory 1
Waiver of deposit 2

1. Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on

part of driver. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

2. Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D. C. Mun. App. 1957, 135 A. 2d 458).

§ 40-438. Release from liability.

(a) A person shall be relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident in the event he is released from liability by such other person.

(b) A covenant not to sue shall relieve the parties thereto as to each other from the security requirements of sections 40-432 to 40-449.

(c) In the event the Commissioners have evaluated the injuries or damage to any minor in an amount not more than \$200 the Commissioners may accept, for the purpose of sections 40-432 to 40-449 only, evidence of a release from liability executed by a natural guardian or a legal guardian on behalf of such minor without the approval of any court.

(d) In any accident involving property of the United States or the District of Columbia, should it appear upon investigation by or on behalf of the United States or the District that a person involved in such accident may not be liable to the United States or the District for any damage resulting therefrom, such person may submit, and the appropriate United States official and the Commissioners are hereby authorized to give to him, a statement to such effect, and such statement may be in lieu of the release required by this section: *Provided*, That the United States and the Commissioners may withdraw such statement at any time if it should appear that the person to whom it was given may be liable to the United States or the District for damages arising out of such accident, and if such statement be withdrawn, the person to whom it was given shall be required to comply with the provisions of this chapter. (May 25, 1954, 68 Stat. 127, ch. 222, § 22; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 7.)

AMENDMENT

1958—Act Aug. 28, 1958, amended the section by adding subparagraph (d) thereto.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-439. Adjudication of nonliability—Release from requirement of the deposit of security.

A person shall be relieved from the requirement for deposit of security in respect to a claim for injury or damage arising out of the accident in the event such person has been finally adjudicated not to be liable in respect to such claim. (May 25, 1954, 68 Stat. 127, ch. 222, § 23.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-440. Agreements for payment of damages.

(a) Any two or more of the persons involved in or affected by an accident as described in section 40-432 may at any time enter into a written agreement for the payment of an agreed amount with respect to all claims of any such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the Commissioners.

(b) The Commissioners, to the extent provided by any such written agreement filed with them, shall not require the deposit of security and shall terminate any prior order of suspension, or if security has previously been deposited, the Commissioners shall return such security to the depositor or his personal representative, or pay such security to the depositor's assignee, as the case may be, when all payments required by such agreement have been made in full, when an amount equal to such security has been paid in accordance with such agreement, or when such security is assigned to the person injured or damaged as a result of said accident.

(c) In the event of a default in any payment under such agreement and upon notice of such default the Commissioners shall take action suspending the license or registration of such person in default as would be appropriate in the event of failure of such person to deposit security when required under this chapter.

(d) Such suspension shall remain in effect and such license or registration shall not be restored unless and until the person in default has paid all payments then in default.

(e) The Commissioners may accept evidence of a payment to the driver or owner of a vehicle involved in any accident by any other person involved in such accident or by the insurance carrier of any other person involved in such accident on account of damage to property or bodily injury as a settlement agreement relieving such driver or owner from the security and suspension provisions of sections 40-432 to 40-449 in respect to any possible claim by the person on whose behalf such payment has been made might have for property damage or bodily injury arising out of the accident. A payment to the insurance carrier of a driver or owner under the carrier's right of subrogation for the purposes of sections 40-432 to 40-449 shall be considered the equivalent of a payment to such driver or owner. (May 25, 1954, 68 Stat. 127, ch. 222, § 24; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 8.)

AMENDMENT

1958—Act Aug. 28, 1958, amended the section by adding subsection (e) thereto.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-441. Payment upon judgment—Release of judgment debtor.

The payment of a judgment arising out of an accident or the payment upon such judgment of an amount equal to the maximum amount which could be required for deposit under sections 40-432 to 40-449 shall, for the purposes of such sections, release

the judgment debtor from the liability evidenced by such judgment. (May 25, 1954, 68 Stat. 127, ch. 222, § 25.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-442. Termination of security requirement.

The Commissioners, if satisfied as to the existence of any fact which under sections 40-438, 40-439, 40-440, and 40-441 would entitle a person to be relieved from the security requirements of sections 40-432 to 40-449, shall not require the deposit of security by the person so relieved from such requirement and shall terminate any prior order of suspension in respect to such person, or if security has previously been deposited by such person, the Commissioners shall immediately return such deposit to such person or to his personal representative. (May 25, 1954, 68 Stat. 127, § 26.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. Waiver of deposit

Question whether Commissioners of the District of Columbia should have discretion to waive deposit of security, as required by automobile statute relating to accidents when driver does not have liability policy, in cases of nonliability or in cases of possible extortion is for legislature. *Haith v. Commissioners of the District of Columbia* (D.C. Mun. App. 1957, 135 A. 2d 458).

§ 40-443. Duration of suspension.

Unless a suspension is terminated under other provisions of sections 40-432 to 40-449, any order of suspension by the Commissioners under such sections shall remain in effect and no license shall be renewed for or issued to any person whose license is so suspended and no registration shall be renewed for or issued to any person whose vehicle registration is so suspended until—

(1) such person shall deposit or there shall be deposited on his behalf the security required under sections 40-332 to 40-449; or

(2) one year shall have elapsed following the date of such suspension and evidence satisfactory to the Commissioners has been filed with them that during such period no action for damages arising out of the accident resulting in such suspension has been instituted.

An affidavit of the applicant that no action at law or damages arising out of the accident has been filed against him or, if filed, that it is not still pending shall be prima facie evidence of that fact. The Commissioners may take whatever steps are necessary to verify the statement set forth in any said affidavit. (May 25, 1954, 68 Stat. 128, ch. 222, § 27.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under

circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D.C. Mun. App. 1957, 135 A. 2d 458).

§ 40-444. Nonresidents—Unlicensed drivers—Unregistered vehicles—Accidents in other States.

(a) In case the driver or the owner of a vehicle of a type subject to registration under the laws of the District of Columbia involved in an accident within the District of Columbia has no license or registration in the District of Columbia, then such driver shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of sections 40-432 to 40-449 to the same extent that would be necessary if, at the time of the accident, he had held a license or been the owner of a vehicle registered in the District of Columbia.

(b) When a nonresident's operating privilege is suspended pursuant to section 40-437, the Commissioners shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the State in which such nonresident resides.

(c) Upon receipt of certification that the operating privilege of a resident of the District of Columbia has been suspended or revoked in any State pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the Commissioners to suspend a nonresident's operating privilege had the accident occurred in the District of Columbia, the Commissioners shall suspend the license of such resident if he was the driver, and all of his registrations if he was the owner of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such State relating to the deposit of such security.

The provisions of this subsection shall be applicable only to a certification from a State which by its laws has made provision for the suspension or revocation of the license and all registrations of a resident of such State for failure to deposit security for the payment of any judgment arising out of a motor vehicle accident in the District of Columbia, or for failure to make payment of an agreed amount with respect to all claims arising from such accident, in accordance with the provisions of this chapter. (May 25, 1954, 68 Stat. 128, ch. 222, § 28.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. Suspension mandatory

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. *Haith v. Commissioners of the District of Columbia* (D.C. Mun. App. 1957, 135 A. 2d 458).

§ 40-445. Commissioners authorized to decrease amount of security.

The Commissioners may reduce the amount of security ordered in any case within six months after

the date of the accident if in their judgment the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith. (May 25, 1954, 68 Stat. 129, ch. 222, § 29.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-446. Correction of Commissioners' action within one year.

Whenever the Commissioners have taken any action or have failed to take any action under sections 40-432 to 40-449 by reason of having received erroneous information, then upon receiving correct information within one year after the date of an accident the Commissioners shall take appropriate action to carry out the purposes and effect of this chapter. The foregoing shall not, however, be deemed to require the Commissioners to reevaluate the amount of any deposit required under sections 40-432 to 40-449. (May 25, 1954, 68 Stat. 129, ch. 222, § 30; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 4.)

AMENDMENT

1960—Act Sept. 8, 1960, eliminated words "or by reason of having received no information" which followed "having received erroneous information."

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-447. Disposition of security.

(a) Such security shall be applicable and available only—

(1) for the payment of any settlement agreement covering any claim arising out of the accident upon instruction of the person who made the deposit; or

(2) for the payment of a judgment or judgments, rendered against the person required to make the deposit for damages arising out of the accident in an action at law begun not later than one year after the deposit of such security.

(b) Every distribution of funds from the security deposits shall be subject to the limits of the Commissioners' evaluation on behalf of a claimant. (May 25, 1954, 68 Stat. 129, ch. 222, § 31.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-448. Return of deposit.

Upon the expiration of one year from the date of any deposit of security any security remaining or deposit shall be returned to the person who made such deposit or to his personal representative if an affidavit or other evidence satisfactory to the Commissioners has been filed with them stating—

(1) that no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made, and

(2) that there does not exist any unpaid judgment rendered against any such person in such an action.

The foregoing provisions of this section shall not be construed to limit the return of any deposit of security under any other provision of sections 40-432 to 40-449 authorizing such return. (May 25, 1954, 68 Stat. 129, ch. 222, § 32.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-449. Matters not to be evidence in civil suits.

The report required following an accident, the action taken by the Commissioners pursuant to sections 40-432 to 40-449, the findings, if any, of the Commissioners upon which such action is based, and the security filed as provided in sections 40-432 to 40-449, shall not be referred to in any way, and shall not be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (May 25, 1954, 68 Stat. 129, ch. 222, § 33.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-450. Persons required to deposit proof of future responsibility.

The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws or who have failed to pay judgments upon causes of action arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of the District of Columbia. (May 25, 1954, 68 Stat. 129, ch. 222, § 34.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-451. Proof of financial responsibility for the future.

The term "proof of financial responsibility for the future" as used in this chapter shall mean: Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a vehicle of a type subject to registration under the laws of the District of Columbia in the amount of \$10,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$20,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$5,000 because of injury to or destruction of property of others in any one accident. Wherever used in this chapter the term "proof of financial responsibility" or "proof" shall be synonymous with the term "proof of financial responsibility for the future". (May 25, 1954, 68 Stat. 129, ch. 222, § 35.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-452. "Judgment" and "State" defined.

The following words and phrases when used in sections 40-450 to 40-484 shall, for the purpose of

such sections, have the meanings respectively ascribed to them in this section.

(a) The term "judgment" shall mean: Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any State, the District of Columbia, or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any vehicle of a type subject to registration under the laws of the District of Columbia, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(b) The term "State" shall mean: Any State, Territory, or possession of the United States, or any province of the Dominion of Canada. (May 25, 1954, 68 Stat. 130, ch. 222, § 36.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-453. Suspension of license and registration for certain convictions—Effect of proof of financial responsibility—Vehicles owned or leased by the United States, a State, or a political subdivision thereof—Suspension for out of District convictions.

(a) The license and registration of all vehicles registered in the name of any person who by a final order or judgment shall have been convicted of, or shall have forfeited any bond or collateral given to secure appearance for trial for a violation of any of the following provisions of law:

(1) Operating a motor vehicle under the influence of any intoxicating liquor or narcotic drug;

(2) Any homicide committed by means of a motor vehicle;

(3) Leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is personal injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle;

(4) Reckless driving involving personal injury;

(5) Any felony in the commission of which a motor vehicle is used; or

(6) A conviction of, or forfeiture of bail or collateral for an offense in any State which, if committed in the District of Columbia, would be one of the offenses listed in paragraphs (1) through (5) of this subsection (a);

shall be suspended by the Commissioners and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in the name of such person as owner, except that (1) if such owner has previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, the Commissioners shall not suspend such registration unless otherwise required or permitted by law, or (2) if a

conviction arose out of the operation, with permission, of a vehicle owned by or leased to the United States, the District of Columbia, a State, or a political subdivision of a State or a municipality thereof, the Commissioners shall not suspend the registration of any vehicle so owned or leased. If such person be not a resident of the District of Columbia, the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be suspended until he shall have furnished proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, and such person shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of sections 40-450 to 40-484 to the same extent that would be necessary if, at the time of the conviction or forfeiture, he had held a license or had been the owner of a vehicle registered in the District of Columbia.

(b) Upon receipt of a certification from any State that the operating privilege of a resident of the District of Columbia has been suspended or revoked pursuant to a law providing for such suspension or revocation for a conviction or forfeiture under circumstances which would require the Commissioners to suspend a nonresident's operating privilege had the offense occurred in the District of Columbia, the Commissioners shall suspend the license of such resident and the registration of all vehicles registered in his name. (May 25, 1954, 68 Stat. 130, ch. 222, § 37; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 9; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 5.)

AMENDMENTS

1960—Subsec. (a) amended by act Sept. 8, 1960, which inserted words "shall have been convicted of, or" following "final order or judgment."

1958—Act Aug. 28, 1958, amended section generally, and among other changes, added subparagraph (6) of paragraph (a), the last sentence of paragraph (a) concerning nonresidents, and paragraph (b) with respect to suspension of operating privileges of residents of the District by any state.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. Violations in foreign jurisdictions

Where driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under "point system" of regulation exceeded 12 thereby permitting revocation of driver's operator's permit, Director of Motor Vehicles did not abuse his discretion in allowing points to be assessed for conviction outside District since, if incident had occurred in District of Columbia, it would have meant mandatory revocation of driver's permit without exercise of any discretion by Director, without a hearing and without reference to any point system. *Council v. Director of Motor Vehicles, etc.* (D.C. Mun. App. 1960, 159 A. 2d 874).

§ 40-454. Duration of suspension—Giving and maintenance of proof of financial responsibility.

The suspension or revocation hereinbefore required shall remain in effect and the Commissioners

shall not issue to such person any new or renewal of license or register or reregister in the name of such person as owner of any such vehicle until permitted under the motor vehicle laws of the District of Columbia and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. (May 25, 1954, 68 Stat. 131, ch. 222, § 38.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-455. Suspension of unlicensed or licensed person after certain convictions—Proof of financial responsibility required—Certificate of conviction to be forwarded to Commissioners.

(a) If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for:

(1) Driving a motor vehicle upon the highways without being licensed to do so under the laws of the District of Columbia when so required; or

(2) Driving a vehicle not registered under the laws of the District of Columbia when so required; the operating privilege of such person shall be suspended and no license shall thereafter be issued to such person, but if such person has obtained a license prior to the time the Commissioners have issued an order precluding the issuance of such license, then such license shall be suspended; and no vehicle shall continue to be registered or thereafter be registered in the name of such person as owner, unless such person shall give and thereafter maintain proof of financial responsibility.

(b) It shall be the duty of the clerk of the court in which any such conviction or forfeiture is ordered to forward immediately to the Commissioners a certified copy of said order, which certified copy shall be prima facie evidence of the facts stated therein. (May 25, 1954, 68 Stat. 131, ch. 222, § 39; Aug. 28, 1958, 72 Stat. 956, Pub. L. 85-792, § 10.)

AMENDMENT

1958—Aug. 28, 1958, amended section generally, and among other changes, added provision for suspension of license obtained prior to issuance of order precluding issuance of such license, and also added paragraph (b) respecting duty of clerk of court in which conviction or forfeiture is ordered to forward copy of such order to Commissioners.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-456. Suspension of nonresidents' operating privilege—Duration.

Whenever the Commissioners suspend or revoke a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future. (May 25, 1954, 68 Stat. 131, ch. 222, § 40.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-457. Report by courts of nonpayment of judgments.

Whenever any person fails within thirty days to satisfy any judgment, then upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court in which any such judgment is rendered within the District of Columbia to forward to the Commissioners immediately upon such request a certificate of facts relative to such judgment, upon a form provided by the Commissioners, which said certificate shall be prima facie evidence of the facts therein stated. (May 25, 1954, 68 Stat. 131, ch. 222, § 41; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 11.)

AMENDMENT

1958—Act Aug. 28, 1958, struck out the phrase "a certified copy of such judgment" and inserted in lieu thereof the phrase beginning with "a certificate of facts" and ending with "Commissioners" and also struck out the words "certified copy" and substituted in place thereof the word "certificate".

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-458. Judgment against a nonresident—Transmittal of copy to license and registration official of defendant's State.

If the defendant named in any certified copy of a judgment reported to the Commissioners is a nonresident, the Commissioners shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registrations of the State of which the defendant is a resident. (May 25, 1954, 68 Stat. 131, ch. 222, § 42.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-459. Suspension for nonpayment of judgment.

The Commissioners upon receipt of a certified copy of a judgment or a certificate of facts relative to such judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this chapter. (May 25, 1954, 68 Stat. 131, ch. 222, § 43; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 12.)

AMENDMENT

1958—Act Aug. 28, 1958, struck the word "and" following "copy of a judgment" and substituted the word "or" and also struck out the phrase "on a form provided by the Commissioners" following "such judgment".

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. In general

Where party, injured by taxicab operated by member of unincorporated association composed of men who owned and operated taxicabs, obtained judgment against members of association on theory that they were engaged with the negligent operator in joint enterprise and were responsible for his negligence, such judgment was conclusive in suit by members of association for declaratory judgment that members' permits and registration certificates should not be suspended on ground that they were not judgment debtors within this section. *Champ v. Atkins* (1942, 128 F. 2d 601, 76 U.S. App. D.C. 15).

§ 40-460. Government vehicles—Exception as to non-payment of judgment provisions.

The provisions of section 40-459 shall not apply with respect to any such judgment arising out of an accident caused by the ownership or operation with permission, of a vehicle owned by or leased to the United States, a State or any political subdivision thereof, the District of Columbia or any political subdivision of the District of Columbia. (May 25, 1954, 68 Stat. 131, ch. 222, § 44.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-461. Consent by judgment creditor to allowance of license, registration, or operating privileges to judgment debtor.

If the judgment creditor consents in writing, in such form as the Commissioners may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Commissioners, in their discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 40-466, provided the judgment debtor furnishes proof of financial responsibility. (May 25, 1954, 68 Stat. 131, ch. 222, § 45.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-462. Commissioners finding that an insurer is obligated to pay judgment—Effect of finding—License, registration and operating privileges in the event of a finding.

No license, registration, or nonresident's operating privilege of any person shall be suspended under the provisions of sections 40-450 to 40-484 if the Commissioners shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this chapter, but has not paid such judgment for any reason. A finding by the Commissioners that an insurer is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. Whenever in any judicial proceedings it shall be determined by any final judgment, decree or order that an insurer is not obligated to pay any such judgment, the Commissioners, notwithstanding any contrary finding theretofore made by them shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, as provided in section 40-459. (May 25, 1954, 68 Stat. 132, ch. 222, § 46.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-463. Continuance of suspension until judgment paid and proof given.

Such license, registration and nonresident's operating privilege shall remain so suspended and

shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 40-460, 40-461, and 40-466. (May 25, 1954, 68 Stat. 132, ch. 222, § 47.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-464. Discharge in bankruptcy.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this chapter. (May 25, 1954, 68 Stat. 132, ch. 222, § 48.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-465. Required payments—Amounts—Settlements.

(a) Judgments herein referred to shall, for the purpose of this chapter only, be deemed satisfied—

(1) when \$10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) when, subject to such limit of \$10,000 because of bodily injury to or death of one person, the sum of \$20,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) when \$5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(b) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section. (May 25, 1954, 68 Stat. 132, ch. 222, § 49.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-466. Installment payment of judgments—Default.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Commissioners shall not suspend a license, registration, or nonresident's operating privilege, and shall restore any license, registration, or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and

obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installments is not in default. (May 25, 1954, 68 Stat. 132, ch. 222, § 50.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-467. Breach of agreement to pay in installments.

In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Commissioners shall forthwith suspend the license, registration, or non-resident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter. (May 25, 1954, 68 Stat. 133, ch. 222, § 51.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-468. Proof required for each registered vehicle.

No vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility for the future unless such proof shall be furnished for such vehicle. (May 25, 1954, 68 Stat. 133, ch. 133, § 52.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-469. Alternate methods of giving proof.

Proof of financial responsibility when required under this chapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle, may be given by filing—

- (1) a certificate of insurance as provided in section 40-470 or section 40-471; or
- (2) a bond as provided in section 40-476; or
- (3) a certificate of deposit of money or securities as provided in section 40-479; or
- (4) a certificate of self-insurance, as provided in section 40-494; supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

(May 25, 1954, 68 Stat. 133, ch. 222, § 53.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-470. Certificate of insurance as proof.

Proof of financial responsibility for the future may be furnished by filing with the Commissioners the written certificate of any insurance carrier duly authorized to do business in the District of Columbia certifying that there is in effect a motor-vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor-vehicle liability policy, which date shall be the same

as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all vehicles covered thereby unless the policy is issued to a person who is not the owner of a motor vehicle. (May 25, 1954, 68 Stat. 133, ch. 222, § 54.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-471. Certificate filed by nonresident as proof of financial responsibility.

A nonresident may give proof of financial responsibility by filing with the Commissioners a written certificate or certificates of an insurance carrier authorized to transact business in the State in which the vehicle, or vehicles, owned by such nonresident is registered, or in the State in which such nonresident resides, if he does not own a vehicle, provided such certificate otherwise conforms with the provisions of this chapter, and the Commissioners shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

- (1) Said insurance carrier shall execute a power of attorney authorizing the Commissioners to accept service on its behalf of notice or process in any action arising out of a motor-vehicle accident in the District of Columbia;
- (2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of the District of Columbia relating to the terms of motor-vehicle liability policies issued therein.

(May 25, 1954, 68 Stat. 133, ch. 222, § 55.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. Power of attorney construed

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-472. Default by nonresident insurance carrier.

If any insurance carrier not authorized to transact business in the District of Columbia, which has qualified to furnish proof of financial responsibility defaults in any said undertakings or agreements, the Commissioners shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues. (May 25, 1954, 68 Stat. 134, ch. 222, § 56.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-473. "Motor-vehicle liability policy" defined.

(a) **CERTIFICATION.**—A "motor-vehicle liability policy" as said term is used in this chapter shall mean an "owner's policy" or an "operator's policy" of liability insurance, certified as provided in section 40-470 or section 40-471 as proof of financial responsibility for the future, and issued, except as otherwise provided in section 40-471, by an insurance carrier duly authorized to transact business in the District of Columbia to or for the benefit of the person named therein as insured.

(b) **OWNER'S POLICY.**—Such owner's policy of liability insurance—

1. shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is thereby to be granted; and

2. shall insure the person named therein and any other person as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle, as follows: \$10,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, \$20,000 because of bodily injury to or death of two or more persons in any one accident, and \$5,000 because of injury to or destruction of property of others in any one accident.

(c) **OPERATOR'S POLICY.**—Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) **REQUIRED STATEMENTS IN POLICIES.**—Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(e) **POLICY NEED NOT INSURE WORKMEN'S COMPENSATION, ETC.**—Such motor-vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(f) **PROVISIONS INCORPORATED IN POLICY.**—Every motor vehicle liability policy shall be subject to the

following provisions which need not be contained therein:

1. The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor-vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

2. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

3. The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section.

4. The policy, the written application therefor, if any and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

(g) **EXCESS OR ADDITIONAL COVERAGE.**—Any policy which grants the coverage required for a motor-vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor-vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor-vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) **REIMBURSEMENT PROVISION PERMITTED.**—Any motor-vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(i) **PRORATION OF INSURANCE PERMITTED.**—Any motor-vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) **MULTIPLE POLICIES.**—The requirements for a motor-vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) **BINDERS.**—Any binder issued pending the issuance of a motor-vehicle liability policy shall be deemed to fulfill the requirements for such a policy. (May 25, 1954, 68 Stat. 134, ch. 222, § 57.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS**1. In general**

Where policy of liability insurance by its own terms "does not cover any liability for death sustained by

named insured" the financial responsibility act was applicable, where the insured was killed in her own automobile driven by another and the administratrix of named insured could not recover. *Hepburn v. Pennsylvania Indem. Corp.* (1940, 109 F.2d 833).

§ 40-474. Notice of cancellation or termination of certified policy.

The Commissioners shall be notified of the cancellation of any motor-vehicle liability policy of insurance certified under the provisions of sections 40-450 to 40-484 or of any surety or real estate bond at least ten days before the effective date of such cancellation. In the absence of such notice of cancellation said policy of insurance shall remain in full force and effect that any policy subsequently procured and certified shall on the effective date of its certification terminate the insurance previously certified with respect to any vehicle designated in both certificates. Upon receipt of such notice of cancellation the said Commissioners shall require other evidence of ability to respond in damages and upon failure to furnish the same before the effective date of such cancellation, the license and all of the registration certificates of the person failing to comply herewith shall be suspended by the Commissioners and shall remain so suspended until such other evidence of ability to respond in damages shall have been given. (May 25, 1954, 68 Stat. 135, ch. 222, § 58; Sept. 8, 1960, 74 Stat. 86, Pub. L. 86-730, § 6.)

AMENDMENT

1960—Act Sept. 8, 1960, eliminated words "or expiration" which followed "cancellation" in five instances.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-475. Provisions of chapter not to affect other policies.

(a) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of the District of Columbia, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter may be certified as proof of financial responsibility under this chapter.

(b) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured. (May 25, 1954, 68 Stat. 136, ch. 222, § 59.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-476. Surety bond as proof of financial responsibility.

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within the District of Columbia, or a bond with at least two individual sureties each owning unencumbered real estate within the District of Columbia, and together having equities equal in value to at least twice the amount of the bond

which real estate shall be scheduled in the bond approved by a judge of a court of record, which said bond shall be conditioned for payment of the amounts specified in section 40-451. Such bond shall be filed with the Commissioners and shall not be cancelable except after ten days' written notice to the Commissioners. (May 25, 1954, 68 Stat. 136, ch. 222, § 60.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-477. Bond a lien against scheduled real estate—Recording—Notice.

Such bond shall constitute a lien in favor of the District of Columbia upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of service because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a vehicle of a type subject to registration under the laws of the District of Columbia after such bond was filed. Said bond shall be recorded by the principal named therein among the land records of the District of Columbia before the same is filed with the Commissioners. Recordation shall constitute notice as provided by statutes governing the recordation of liens on real estate. (May 25, 1954, 68 Stat. 136, ch. 222, § 61.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-478. Action on bond.

If such a judgment, rendered against the principal on such bond, shall not be satisfied within thirty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense bring an action or actions in the name of the District of Columbia against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond, which foreclosure action shall be brought in like manner and subject to all the provisions of law applicable to an action to foreclose a mortgage on real estate. (May 25, 1954, 68 Stat. 136, ch. 222, § 62.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. Power of attorney construed

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing

same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-479. Deposit of money with Commissioners—Certificate—Evidence of no unsatisfied judgments.

(a) Proof of financial responsibility may be evidenced by the certificate of the Commissioners that the person named therein has deposited with them the sum of \$25,000 in cash. The Commissioners shall not accept any such deposit and issue a certificate therefor unless such deposit is accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the locality where the depositor resides.

(b) The Commissioners may accept as a substitute for a deposit of money required herein other security under such conditions as they may establish. (May 25, 1954, 68 Stat. 136, ch. 222, § 63.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-480. Application of money deposit—Limits.

Such deposit shall be used to satisfy in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of the District of Columbia after such deposit was made. Money so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. (May 25, 1954, 68 Stat. 137, ch. 222, § 64.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-481. Owner of a motor vehicle may give proof for others.

The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The Commissioners shall endorse appropriate restrictions on the face of the license held by such person, or may issue a new license containing such restrictions. (May 25, 1954, 68 Stat. 137, ch. 222, § 65.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-482. Substitution of proof.

The Commissioners shall consent to the cancellation of any bond or certificate of insurance or return any money to the person entitled thereto upon the substitution and acceptance of other adequate

proof of financial responsibility pursuant to this chapter. (May 25, 1954, 68 Stat. 137, ch. 222, § 66.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-483. Requirement of other proof of financial responsibility—Prior proof—Suspension.

Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the Commissioners shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration pending the filing of such other proof. (May 25, 1954, 68 Stat. 137, ch. 222, § 67.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-484. Duration of proof—Cancellation or return of proof.

(a) The Commissioners shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the Commissioners shall return to the person entitled thereto any money deposited pursuant to this chapter as proof of financial responsibility, or the Commissioners shall waive the requirement of filing proof, in any of the following events:

(1) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the Commissioners have not received the record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or registration of the person by or for whom such proof was furnished; or

(2) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(3) In the event the person who has given proof surrenders his license and registration to the Commissioners.

(b) The Commissioners shall not consent to the cancellation of any bond or the return of any money in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money has within one year immediately preceding such request been involved as a driver or owner in any motor-vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Commissioners.

(c) Whenever any person whose proof has been canceled or returned under subsection (a) (3) of this section applies for a license or registration within a period of three years from the date proof

was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such three-year period. (May 25, 1954, 68 Stat. 137, ch. 222, § 68.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-485. Transfer of registration to defeat purpose of chapter.

(a) If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the vehicle in respect to which such registration was issued registered in any other name until the Commissioners are satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

(b) Nothing in this section shall in anywise affect the rights of any conditional vendor, chattel,¹ mortgagee or lessor of such a vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter.

(c) The Commissioners shall suspend the registration of any vehicle transferred in violation of the provisions of this section. (May 25, 1954, 68 Stat. 138, ch. 222, § 69.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-486. Surrender of license and registration.

Any person whose license or registration shall have been suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, shall immediately return his license and registration to the Commissioners. If any person shall fail to return to the Commissioners the license or registration as provided herein, the Commissioners shall forthwith direct any police officer to secure possession thereof and to return the same to the Commissioners. (May 25, 1954, 68 Stat. 138, ch. 222, § 70.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-487. Failure to report accident—Penalty.

Failure to report a motor-vehicle accident or to furnish additional information as required under section 40-426, 40-428, or 40-429 shall be punished by a fine not in excess of \$100. (May 25, 1954, 68 Stat. 138, ch. 222, § 71.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-488. Erroneous report—Forged signature—Filing forged evidence of proof of financial responsibility—Penalty—False swearing.

(a) Any person who gives information required in such report or otherwise required for such purpose knowing or having reason to believe that such

¹ So in original. Comma should probably be omitted.

information is false, or who shall forge, or, without authority, sign any evidence of proof of financial responsibility for the future, or who files or offers for filing any such evidence or proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than \$1,000 or imprisoned for not more than one year or both.

(b) No person shall swear falsely to any affidavit required by the Commissioners under the authority of this chapter. (May 25, 1954, 68 Stat. 138, ch. 222, § 72; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 13.)

AMENDMENT

1958—Act Aug. 28, 1958, amended the section by designating the first paragraph as (a) and adding subparagraph (b) thereto.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act of May 25, 1954, set out as a note under § 40-417.

§ 40-489. Operating motor vehicle when license suspended or revoked.

Any person whose license has been suspended or revoked under this chapter and who, during such suspension or revocation, drives any motor vehicle upon any highway, except as permitted under this chapter, shall be fined not more than \$500 or imprisoned not exceeding six months, or both. (May 25, 1954, 68 Stat. 138, ch. 222, § 73; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 14.)

AMENDMENT

1958—Act Aug. 28, 1958, struck reference to "registration" following "license" and the phrase beginning with "or knowingly permits" and ending "upon any highway" following "highway" and preceding "except".

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-490. Failure to return license or registration—Penalty.

Any person willfully failing to return license or registration as required in section 40-486 shall be fined not more than \$500 or imprisoned not to exceed thirty days, or both. (May 25, 1954, 68 Stat. 139, ch. 222, § 74.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-491. Penalty for violations of chapter.

Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than \$500 or imprisoned not more than ninety days, or both. (May 25, 1954, 68 Stat. 139, ch. 222, § 75.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-492. Jurisdiction of the Municipal Court for the District of Columbia as to prosecutions for violations of provisions of chapter.

All prosecutions for violations of this chapter shall be in the Municipal Court for the District of Columbia, in the name of the District of Columbia,

by the corporation counsel or any of his assistants. (May 25, 1954, 68 Stat. 139, ch. 222, § 76.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-493. Vehicles insured under other laws—Exception.

Except for sections 40-423, 40-424, 40-426 to 40-431, this chapter shall not apply to any vehicle the owner of which has complied with the requirements of existing laws of the District of Columbia requiring insurance or other security on motor vehicles. (May 25, 1954, 68 Stat. 139, ch. 222, § 78; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 15.)

AMENDMENT

1958—Act Aug. 28, 1958, amended the section by adding references to sections 40-423, 40-424, 40-426 to 40-431, and eliminating a reference to section 40-481.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-494. Self-insurers.

(a) Any person in whose name more than twenty-five vehicles are registered in the District of Columbia may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioners as provided in subsection (b) of this section.

(b) The Commissioners may, in their discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person. Such certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both.

(c) Upon not less than five days' notice and a hearing pursuant to such notice, the Commissioners may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. (May 25, 1954, 68 Stat. 139, ch. 222, § 79.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-495. Appropriations authorized.

There is hereby authorized to be appropriated out of the general fund of the District of Columbia such sums as may be necessary to carry out the provisions of this chapter. (May 25, 1954, 68 Stat. 139, ch. 222, § 80.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-496. Retroactive application of chapter.

This chapter shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor-vehicle laws of the District of

Columbia, occurring prior to May 25, 1955. (May 25, 1954, 68 Stat. 140, ch. 222, § 83.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

NOTES TO DECISIONS

1. Power of attorney construed

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was considered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. *Orban v. The State Automobile Association* (D. C. Mun. App. 1956, 127 A. 2d 143).

§ 40-497. Provisions of chapter not to prevent other processes provided by law.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (May 25, 1954, 68 Stat. 140, ch. 222, § 84.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-498. Interpretation of provisions of chapter.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make it uniform with similar laws enacted by the several States. (May 25, 1954, 68 Stat. 140, ch. 222, § 85.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-498a. Effect of Reorganization Plan Number 5 of 1952.

Where any provision of this chapter, or any amendment made by this chapter, refers to an office or agency abolished by Reorganization Plan Number 5 of 1952, such reference shall be deemed to be the office, agency, or officer exercising the functions of the office or agency so abolished. (May 25, 1954, 68 Stat. 139, ch. 222, § 81.)

REFERENCE IN TEXT

Reorganization Plan No. 5 of 1952 is set out in the Appendix to title I, Administration.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-498b. Separability of provisions.

If any part or parts of this chapter shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this chapter. (May 25, 1954, 68 Stat. 140, ch. 222, § 86.)

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40-417.

§ 40-498c. Effect of prior law—Repeal.

This chapter shall in no respect be considered as a repeal of the Traffic Acts of the District of Columbia, except as specifically provided herein, but shall be construed as supplemental thereto.

The Owners' Financial Responsibility Act of the District of Columbia, is hereby repealed except with respect to any accident or judgment arising therefrom occurring prior to the effective date of this chapter. Section 40-484 shall govern as to the duration of proof of financial responsibility in all cases arising under the aforementioned Act. (May 25, 1954, 68 Stat. 139, ch. 222, § 82; Sept. 8, 1960, 74 Stat. 863, Pub. L. 86-730, § 7.)

REFERENCE IN TEXT

The Owners' Financial Responsibility Act of the District of Columbia, act May 3, 1935, 49 Stat. 166, ch. 89, §§ 1-17, was previously set out as sections 40-401 to 40-416 of this chapter.

AMENDMENT

1960—Act Sept. 8, 1960 inserted provisions requiring section 40-484 to govern as to the duration of proof of financial responsibility in all cases arising under the Owners' Financial Responsibility Act.

Chapter 5.—PUBLIC-OWNED VEHICLES**Sec.**

- 40-501. Motor vehicles to be marked.
- 40-502. Restrictions on payment of expenses of carriages or vehicles for personal or official use.
- 40-503. Section 40-502 made applicable to District of Columbia.
- 40-504. Police and fire departments—Transfer of vehicles.

§ 40-501. Motor vehicles to be marked.

All motor vehicles and all horse-drawn carriages and buggies owned by the District of Columbia shall be of uniform color and have painted conspicuously thereon, in letters not less than three inches high and markedly contrasting in color with the body color of the vehicle, the words, "District of Columbia." (Mar. 3, 1917, 39 Stat. 1010, ch. 160.)

CROSS REFERENCES

Inspection, exemption from fees, see § 40-204.
Licensing and registration of publicly owned vehicles, see § 40-192.
Operators' permits for operation of publicly owned vehicles, see § 40-301.

§ 40-502. Restrictions on payment of expenses of carriages or vehicles for personal or official use.

No part of any money appropriated by any Act shall be used for purchasing, maintaining, driving, or operating any carriage or vehicle (other than those for the use of the President of the United States, the heads of the Executive Departments, and the Secretary to the President, and other than those used for transportation of property belonging to or in the custody of the United States), for the personal or official use of any officer or employee of any of the Executive Departments or other government establishments at Washington, District of Columbia, unless the same shall be specifically authorized by law or provided for in terms by appropriation of money, and all such carriages and vehicles so procured and used for official purposes shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used. (Feb. 3, 1905, 33 Stat. 687, ch. 297, § 4.)

§ 40-503. Section 40-502 made applicable to District of Columbia.

Section 40-502 shall apply to carriages, motor, and other vehicles owned by and used in the several branches of the government of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, § 1.)

USE OF VEHICLES FOR OFFICIAL PURPOSES ONLY

"All motor-propelled passenger-carrying vehicles owned by the District of Columbia shall be used exclusively for 'official purposes' directly pertaining to the public services of said District, and shall be under the direction and control of the commissioners, who may from time to time alter or change the assignment for use thereof or direct the joint or interchangeable use of any of the same by officials and employees of the District, except as otherwise provided in this act; and 'official purposes' shall not include the transportation of officers and employees between their domiciles and places of employment, except as to the commissioners of the District of Columbia and in cases of officers and employees the character of whose duties makes such transportation necessary, and then only as to such latter cases when the same is approved by the commissioners: *Provided*, That no passenger-carrying automobile, except busses, station wagons, patrol wagons, and ambulances, and except as otherwise specifically authorized in this act, shall be acquired under any provision of this act, by purchase or exchange, at a cost, including the value of a vehicle exchanged, exceeding \$650." (July 15, 1939, 53 Stat. 1009, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)

§ 40-504. Police and fire departments—Transfer of vehicles.

No motor vehicles shall be transferred from the police and fire departments to any other branch of the government of the District of Columbia. (July 15, 1939, 53 Stat. 1010, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)

Chapter 6.—REGULATION OF TRAFFIC**Sec.**

- 40-601. Short title.
- 40-602. Definitions.
- 40-603. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates.
- 40-603-1. Appeal from assessment of excise tax for issuance of motor vehicle title certificates—Election of remedies.
- 40-603a. Office of Registrar of Titles and Tags.
- 40-603b. Issuance of congressional tags.
- 40-604. Parking space for Members of Congress.
- 40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.
- 40-605. Speeding and reckless driving.
- 40-606. Negligent homicide.
- 40-607. Negligent homicide included in manslaughter where death due to operation of vehicle.
- 40-608. Immoderate speed not dependent on legal rate of speed.
- 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.
- 40-609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor—Results of tests available to tested person—Blood test—Only physician at request of police may withdraw blood—Tested person may have private physician make added test—Test not compulsory.
- 40-610. Smoke screens.

Sec.

- 40-611. Reporting by garage keeper of cars damaged in accidents.
- 40-612. Convictions to be reported.
- 40-613. Control over park system not affected by this chapter.
- 40-614. Repeal and saving clauses.
- 40-615. Separability of provisions.
- 40-616. Parking meters.
- 40-617. Loitering by public cabs.

§ 40-601. Short title.

This chapter may be cited as the "District of Columbia Traffic Act, 1925." (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 1.)

§ 40-602. Definitions.

When used in this chapter—

(a) The term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam, except traction engines, road rollers, and vehicles propelled only upon rails and tracks;

(b) The term "court" means the municipal court for the District of Columbia;

(c) The term "District" means the District of Columbia;

(d) The term "Commissioners" means the Board of Commissioners of the District of Columbia;

(e) [Repealed].

(f) The term "person" means individual, partnership, corporation, or association;

(g) The term "park" means to leave any motor vehicle standing on a public highway, whether or not attended;

(h) The term "public highway" means any street, road, or public thoroughfare; and

(i) The term "this chapter" includes all lawful regulations issued thereunder by the commissioners.

(j) The term "vehicle" shall apply to any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(k) Traffic shall be deemed to include not only motor vehicles but also all vehicles, pedestrians, and animals, of every description. (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 2; July 3, 1926, 44 Stat. 812, ch. 739, § 1; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

AMENDMENTS

1931—Act Feb. 27, 1931, repealed paragraph (e) which provided: "(e) The term 'director' means the director of traffic of the District of Columbia."

1926—Act July 3, 1926, added paragraphs (i) and (j).

EFFECTIVE DATE OF 1931 AMENDMENT

Amendment of section by act July 1, 1931, effective July 1, 1931, see section 6 of act Feb. 27, 1931, set out as a note under § 40-302.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

District of Columbia Motor Vehicle Parking Facility Act of 1942, see §§ 40-801 to 40-809.

NOTES TO DECISIONS

Construction 1
Horse-drawn vehicles 2
Vehicles included 3

1. Construction

Term "this act" includes all lawful regulations issued thereunder by the commissioners. *Smallwood v. District of Columbia* (1927, 17 F. 2d 210, 57 App. D.C. 58).

This chapter is not limited in its scope and purpose to motor vehicle traffic only. *Id.*

2. Horse-drawn vehicles

The director of traffic is authorized to exclude horse-drawn vehicles from arterial highways or boulevards. *District of Columbia v. Wheeler* (1927, 17 F. 2d 953, 57 App. D. C. 106).

3. Vehicles included

Vehicles are limited to those that run on the land. *McBoyle v. United States* (1931, 51 S. Ct. 340, 283 U.S. 25, 75 L. Ed. 816).

Commercial vehicles with solid tires. *Smallwood v. District of Columbia* (1927, 17 F. 2d 210, 57 App. D. C. 58).

§ 40-603. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates.

(a) The Commissioners of the District of Columbia are authorized and empowered to make, modify, repeal, and enforce usual and reasonable traffic rules and regulations relating to vehicles, and rules and regulations concerning the control of traffic, the registration of motor vehicles, and the issuance and revocation of operators' permits; and to exercise any power or perform any duty imposed on the director of traffic, which office is hereby abolished; and in the administration of the above powers and authority the commissioners may exercise the same through such officers or agents of the District as the commissioners may designate: *Provided*, That no member of the Metropolitan Police Department may be empowered to perform any function under this chapter other than in the enforcement thereof.

(b) There is established in the government of the District of Columbia a department of vehicles and traffic, which, under the direction of the commissioners, shall have charge of the issuance and revocation of operators' permits, the registration and titling of motor vehicles, the making of traffic studies and plans, the installation and maintenance of traffic signs, signals, and markers, and of such other matters as may be determined by the commissioners. The commissioners shall appoint a director of vehicles and traffic, who shall be in charge of said department, and such other personnel as they may deem necessary to perform the duties thereof and as may be appropriated for by Congress. The salaries of such director of vehicles and traffic and other personnel shall be fixed in accordance with the Classification Act of 1949. The director of vehicles and traffic shall be responsible directly to the commissioners for the faithful performance of his duties and shall be subject to removal by the commissioners for cause.

(c) The Commissioners of the District of Columbia are authorized and empowered to make, modify, and enforce reasonable regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles

and trailers: *Provided*, That congressional tags shall be issued by the commissioners under consecutive numbers, one to each Senator and Representative in Congress, to the elective officers and disbursing clerks of the Senate and the House of Representatives, the chief clerk of the Senate, the Parliamentarian of the Senate, the Parliamentarian of the House of Representatives, the attending physician of the Capitol, and the assistant secretaries (one for the majority and one for the minority of the Senate), for their official use, which, when used by them individually while on official business, shall authorize them to park their automobiles in any available curb space in the District of Columbia, except within fire plug, fire house, loading station, and loading platform limitations, and such congressional tags shall not be assigned to or used by others: *Provided further*, That such congressional tags shall be valid only for the Congress in which such tags are so issued, and it shall be unlawful to display such congressional tags for a period longer than thirty days after the opening of the next Congress.

Any person violating this section shall be fined not more than \$300 or imprisoned not more than ninety days, or both.

(d) The commissioners shall cause to be levied, collected, and paid such fees for titling and retitling as they deem necessary, not to exceed the sum of \$1 for each such titling or retitling, and they shall not, after the 1st day of January, 1932, register or renew the registration of any motor vehicle or trailer unless and until the owner thereof shall make application in the form prescribed by the commissioners, under oath, and be granted an official certificate of title for such vehicle. No registration or other fee shall be charged to vehicles owned by the federal or District government or any duly accredited representative of a foreign government. The owner of a motor vehicle or trailer registered in the District of Columbia shall not, after the 1st day of January, 1932, operate or permit or cause to be operated any such vehicle upon any public highway in the District without first obtaining a certificate of title therefor, nor shall any individual knowingly permit any certificate of title to be obtained in his name for any vehicle not in fact owned by him, and any individual violating any provision of this subsection or any regulations promulgated thereunder shall be fined not more than \$1,000 or imprisoned not more than one year, or both. If the properly designated agent of the commissioners shall determine that an applicant for a certificate of title is not entitled thereto, such certificate of title may be refused, and in that event unless such determination is reversed upon written application to the commissioners by the individual affected, such individual shall be entitled to proceed further as provided under section 40-302 (a), and jurisdiction is conferred upon the United States Court of Appeals for the District of Columbia for this purpose: *Provided*, That reasonable time for hearing be given the applicant in the first instance.

(e) The commissioners may in the administration of this chapter, section or any provision of the Traffic Acts for the District, exercise any power or perform any duty conferred on them by this chap-

ter through such officers and agents of the District as the commissioners may designate. The commissioners are further authorized and empowered to make, modify, repeal, and enforce reasonable rules and regulations in respect to the movement of traffic, speed, length, weight, height, width, routing, and parking of vehicles, and the establishment and location of hack stands: *Provided*, That the commissioners shall establish and locate parking areas in the vicinity of governmental establishments for use only by members of Congress and governmental officials when on official business: *Provided further*, That as to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this chapter, to regulate their schedules and their loading and unloading, to locate their stops, and all platforms and loading zones and to require the appropriate marking thereof, is vested in the Public Utilities Commission of the District of Columbia: *Provided further*, That whenever any order, rule, or regulation of the Public Utilities Commission shall be made relative to the routing of common carrier vehicles, to the location of their stops, to the establishment or change in location of platforms, loading zones, or other spaces on the public highway to be reserved for any purpose whatsoever, or to the appropriate marking thereof, or whenever any order, rule, or regulation of the District commissioners shall be made which affects such routing, stops, platforms, zones, or spaces, said order, rule, or regulation shall, prior to promulgation, be referred to a joint board to be composed of the commissioners of the District of Columbia and the members of the Public Utilities Commission, which is hereby authorized and created. Such joint board may, by the affirmative action of any three members thereof, adopt rules and regulations which, when promulgated, shall be binding and shall have the full force and effect of law, and the engineer commissioner shall be the chairman of such joint board, and shall have but one vote. Any of said rules and regulations, after reasonable trial and within a reasonable time, may be changed by the joint board upon the request of the commissioners of the District of Columbia or of the Public Utilities Commission.

(f) The commissioners may establish and designate arterial and boulevard highways, regulate the speed of vehicles thereon, and provide for the equipment of any street, road, or highway, with control lights and/or other devices for the regulation of traffic, and make such other regulations with respect to the control of traffic as are deemed advisable.

(g) The District Commissioners are authorized to prescribe within the limitations of this chapter reasonable penalties of fine, or imprisonments not to exceed ten days in lieu of or in addition to any fine, for the violation of any rule or regulation promulgated under the authority of this chapter not otherwise herein provided for. All traffic, motor vehicle, and vehicle regulations not inconsistent herewith adopted and promulgated prior to July 1, 1931, are continued and shall remain in full force and effect until amended, altered, or revoked.

(h) All regulations promulgated under the authority of this chapter, except those made by the Public Utilities Commission under powers given it by Title 43 of this Code, shall, when adopted, be printed in one or more of the daily newspapers published in the District, and no penalty shall be enforced for any violation of any such regulation which occurs within ten days after such publication, except that whenever the commissioners of the District of Columbia deem it advisable to make effective immediately any regulation relating to parking, diverting of vehicular traffic, or the closing of streets to such traffic, the regulation shall be effective immediately upon placing at the point where it is to be in force conspicuous signs containing a notice of the regulation. The placing at or upon the public highway of any sign relating to parking or regulation of traffic, except by the authority of the commissioners of the District of Columbia or their designated agent, or of the joint board, is prohibited: *Provided*, That this restriction shall not apply to any such signs which do not purport to reserve space on the public highways and which the Public Utilities Commission may authorize under the provision of this chapter.

(i) All prosecutions for violations of this chapter, excepting section 40-610, and this act or regulations made and promulgated under the authority of this chapter shall be in the municipal court for the District of Columbia upon information filed by the corporation council of the District of Columbia or any of his assistants.

(j) In addition to the fees and charges levied under other provisions of this Act, there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer in the District, and for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case of sale or resale thereof, at the rate of 2 per centum of the fair market value of such motor vehicle or trailer at the time such certificate is issued, as determined by the Assessor of the District of Columbia or his duly authorized representatives. As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued. The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(1) Motor vehicles and trailers owned by the United States or the District of Columbia.

(2) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District.

(3) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining a business or businesses in the District. Except as hereinafter provided, it is not intended to exempt from the tax the issuance of certificates of title for motor vehicles and trailers owned by nonresidents who are engaged in business in the District at the time of their purchase or acquisition of such vehicles and trailers and who use such vehicles and trailers in the conduct of their District business or businesses.

(4) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service: *Provided*, That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued.

(5) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than sixty days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, then the tax imposed by this section shall be paid on such difference in value. If the fair market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Commissioners or their designated agent are authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise tax paid on the defective vehicle and the excise tax paid on the replacement vehicle.

(Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 6; July 3, 1926, 44 Stat. 814, ch. 739, § 4; Feb. 27, 1931, 46 Stat. 1424, ch. 317, §§ 3, 4; Dec. 19, 1932, 47 Stat. 750, ch. 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 2, 1945, 59 Stat. 313, ch. 222; May 27, 1949, 63 Stat. 128, ch. 146 title III, § 301; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); July 24, 1956, 70 Stat. 633, ch. 695, § 1; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, § 3.)

REFERENCE IN TEXT

"This chapter" referred to in the text is classified to sections 11-601, 11-616, 11-621, 11-623, 11-1407, 40-301 to 40-303, 40-601 to 40-603, 40-605, and 40-609 to 40-615.

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENTS

1926—Act July 3, 1926, added a paragraph substantially the same as present paragraph (i) but contained the additional proviso "That nothing herein contained shall deprive any person of the right of trial by jury."

1931—Act Feb. 27, 1931, adopted this section in the form it now exists.

1932—Act Dec. 19, 1932, added that part of the proviso in paragraph (c) following "Representative in Congress" and preceding "for their official use."

1945—Act July 2, 1945, amended subsec. (c) by adding the last proviso and second par.

1949—Act May 27, 1949, added subsection (j).

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

1956—Act July 24, 1956, amended subsection (j) by adding paragraph (5) thereto.

1957—Act Sept. 2, 1957, amended subsection (c) by inserting into the first proviso clause the words, "The

Chief Clerk of the Senate, the Parliamentarian of Senate," extending congressional tag privileges to said officials.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act July 24, 1956, effective 30 days after July 24, 1956, see section 3 of act July 24, 1956, set out as a note under § 40-301.

EFFECTIVE DATE OF 1949 AMENDMENT

Section 302 of act May 27, 1949, provided that: "The provisions of this title [adding § 40-603-1 and amending this section] shall be applicable with respect to all certificates of title issued on or after the first day of the first month succeeding the sixtieth day after the approval of his Act [May 27, 1949]".

EFFECTIVE DATE OF 1931 AMENDMENT

Amendment of section by act July 1, 1931, effective July 1, 1931, see section 6 of act Feb. 27, 1931, set out as a note under § 40-302.

TRANSFER OF FUNCTIONS

See note under section 40-101 concerning Department of Motor Vehicles.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Authority of commissioner to make rules and regulations concerning public utilities until altered by Public Utilities Commission, see § 43-209.

Commissioners may designate portions of streets and sidewalks to be used for business purposes including parking, see § 7-1205.

Commissioners' power to make rules and regulations not inconsistent with chapter 1 of this title, see § 40-105. Convictions to be reported, see § 40-612.

Funds for expenses of office of director, see § 40-103.

Inspection of motor vehicles, see § 40-201 et seq.

Jurisdiction and control over public ways, generally, see § 7-102.

Parking meters; rules and regulations, see § 40-616.

Power of Commissioners to locate hack stands, see §§ 1-221, 1-222.

Regulating traffic in public parks and playgrounds, see §§ 8-109, 40-613.

Rules and regulations for registration and licensing of motor vehicles, see § 40-102.

Rules and regulations for the inspection of motor vehicles, see § 40-207.

Rules and regulations for protection of life, health, and property, generally, see § 1-226.

NOTES TO DECISIONS

In general 1

Authority to revoke permit 2

Constitutionality 3

Duplicate certificates 4

Effect on contracts of purchase 5

Government-owned vehicles 6

Pedestrians' right of way 7

"Pick-up and delivery" of railroads 8

Prosecution 9

Residence 10

Sale without certificate of title 11

Suspension of sentence 12

Validity and reasonableness 13

Violation as negligence 14

1. In general

Traffic Act, as amended, delegates to the commissioners authority to make rules and regulations in relation to traffic on the public highways, and to the Director of Parks authority to make regulations in relation to traffic on the roads in the public parks within the District; and to provide for punishment for violations by proceedings in the police court at instance of corporation counsel and to exclude United States Attorney from any prosecutions except provision involving smoke-screen felony. *Persham v. United States* (1939, 104 F. 2d 249, 70 App. D.C. 116).

2. Authority to revoke permit

Traffic hearing officer did not exceed his authority in revoking operator's permit of a motorist convicted of speeding in a school zone even though under the "point system" used in the District, only three points could be assessed for such violation, since notwithstanding such point system Director of Vehicles and Traffic was authorized to revoke operator's permit when, following lawful hearing, he concluded that motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. *Tillman v. Director of Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1958, 144 A. 2d 922).

3. Constitutionality

This section is not unconstitutional as vesting legislative power and unregulated discretion in administrative officers. *La Forest v. Board of Comrs. of District of Columbia* (1937, 92 F. 2d 547, 67 App. D. C. 396).

4. Duplicate certificates

The requirements of this section for registration of a motor vehicle do not apply to duplicate certificates of title, and the oath required for registration is not required for issuance of a duplicate certificate. *Shelton v. U. S.* (1948, 165 F. 2d 241, 83 U. S. App. D. C. 32).

5. Effect on contracts of purchase

Subsection (d) of this section providing that the owner of a motor vehicle shall not operate it upon any public highway in the District of Columbia without first obtaining a certificate of title therefor does not void an otherwise valid contract for purchase of an automobile. *Associates Discount Corporation v. Hardesty* (1941, 122 F. 2d 18, 74 App. D. C. 44).

6. Government-owned vehicles

Traffic laws of District govern as to mail trucks over orders of Post Office Department. *White v. District of Columbia* (1925, 4 F. 2d 163, 55 App. D. C. 197).

7. Pedestrians' right of way

Under the regulations of this act pedestrians are given the right of way at all crosswalks except at controlled crossings. *Griffith v. Slaybaugh* (1929, 29 F. 2d 437, 58 App. D. C. 237).

8. "Pick-up and delivery" of railroads

In a mandamus action brought by a railroad company to compel the Public Utilities Commission to act on the railroad company's petition for designation of a route for alleged "pick-up and delivery service," relief was denied until the railroad company obtained a certificate of convenience and necessity from the Interstate Commerce Commission. *United States ex rel. Arlington & F. Auto R. Co. v. Elgen* (1938, 98 F. 2d 264, 68 App. D. C. 392).

The question of what constitutes a terminal district is so largely one of fact and so far involves considerations calling for the expert knowledge in technical matters of transportation, that a railroad company seeking by mandamus to require the Public Utilities Commission to designate a route for alleged "pick-up and delivery service" within railroad terminal districts, should pursue its remedy before the Commerce Commission rather than the courts. *Id.*

9. Prosecution

By (1) last paragraph Congress intended that all prosecutions for violations of the traffic act, except for the violation of the smoke-screen provision in section eleven should be at the instance of the corporation counsel and in the name of the District of Columbia. *District of Columbia v. Moyer* (1938, 93 F. 2d 527, 68 App. D. C. 98).

10. Residence

A long-continued physical presence, without more, does not constitute "residence" within meaning of statutory provision exempting from excise tax levied for issuance of every original certificate of title for a motor vehicle or trailer in the District of Columbia those motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District and establishing or maintaining "residences" in the District. *District of Columbia v. Fleming* (1954, 217 F. 2d 18, 95 U. S. App. D.C. 4).

Where government employee, who lived at mother's home in District of Columbia, purchased automobile in District and drove it immediately to Connecticut where he had maintained a home for seven years, and left automobile in Connecticut for use of his wife and their two daughters, and he spent every other week end in Connecticut with his family, and it was not until a year later that his wife joined him in District, he was not subject to excise tax in District under statute levying an excise tax for issuance of every original certificate of title for a motor vehicle in District but exempting from tax motor vehicles purchased or acquired by nonresidents prior to coming into District and "establishing" or denied 69 S. Ct. 168, 335 U. S. 871, 93 L. Ed. 415).

11. Sale without certificate of title

The registration regulation requiring that certificate of title be assigned at time ownership of motor vehicle is transferred, and the regulation requiring that a dealer acquire a certificate of origin with a new motor vehicle should be construed consistently with reference to the effect of a failure to assign and deliver required certificate at time of transfer. *Fogle v. General Credit* (1941, 122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

The sale of used automobile by dealer who had possession thereof with authority from finance company to offer it for sale in regular course of business was not void because certificate of title held by finance company was not assigned to buyer by dealer at time of transfer, as required by registration regulations. *Id.*

The purpose of registration regulation that no dealer shall have any used motor vehicle or trailer in his possession unless he shall have a certificate of title for it issued or assigned to him is apparently to prevent persons holding certificate from giving possession of vehicle to a dealer without also delivering certificate to him. *Id.*

12. Suspension of sentence

Where defendant was convicted for violation of a traffic regulation, and execution of sentence was suspended, such suspension must be vacated because such power is derived from the Federal Probation Act, and though under the District of Columbia Probation Act, the court is authorized to suspend execution, clearly the suspension in this case was not and did not purport to be exercised under the authority of the probation law and was beyond the power of the court. *Ziegler v. District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 618).

13. Validity and reasonableness

Regulations prohibiting use of vehicles with solid tires on certain arterial streets were valid and reasonable. *Smallwood v. District of Columbia* (1927, 17 F. 2d 210, 57 App. D. C. 58).

Regulations prohibiting speed in excess of 15 miles an hour on certain bridges were valid and reasonable. *District of Columbia v. Bailey* (1927, 18 F. 2d 367, 57 App. D. C. 151).

Regulations which prevent parking of automobiles on certain streets between 2 a. m. and 8 a. m. to enable the snow-removal machinery of the city to function is a reasonable and proper regulation. *District of Columbia v. Smith* (1938, 93 F. 2d 650, 68 App. D. C. 104).

14. Violation as negligence

Violation of an ordinance intended to promote safety is negligence, and if by creating hazard which ordinance was intended to avoid it brings about harm which ordinance was intended to prevent, it is a legal cause of the harm. *Ross v. Hartman* (1944, 139 F. 2d 14, 78 U. S. App. D. C. 217, 158 A. L. R. 1370, certiorari denied 64 S. Ct. 790, 321 U. S. 790, 88 L. Ed. 1080).

An ordinance requiring motor vehicles, left unattended in public place, to be locked is a safety measure, and its violation is negligence. *Id.*

Where truck owner's agent violated traffic ordinance by leaving truck unattended, in a public alley, with ignition unlocked and key in switch, and an unknown person drove truck away and negligently ran over plaintiff, the violation of the ordinance was negligence and constituted the "proximate cause" of the injury rendering owner liable therefor. *Id.*

Where defendant's driver was negligent in leaving motor vehicle unlocked and such negligence was proximate cause of accident in which plaintiffs were injured, defend-

ant was liable for damages. *R. W. Claxton, Inc. v. Schaff* (1948, 169 F. 2d 303, 83 U. S. App. D. C. 271, certiorari denied 69 S. Ct. 168, 335 U. S. 871, 93 L. Ed. 415.)

Violation of a traffic regulation constitutes negligence per se. *Rogers v. Cox* (D. C. Mun. App. 1950, 75 A. 2d 776).

§ 40-603-1. Appeal from assessment of excise tax for issuance of motor vehicle title certificates—Election of remedies.

Any person aggrieved by the assessment of any tax imposed by subsection 40-603 (j) may, within ninety days from the date the person entitled to a certificate of title was notified of the amount of such tax, appeal to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47-2403, 47-2404, 47-2407, 47-2408, 47-2409, 47-2410 and 47-2411, and as the same may hereafter be amended. The remedy provided in this section shall not be deemed to take away from the person entitled to such certificate of title any remedy which he might have under any other provisions of law, but no suit by such person for the recovery of a tax, or any part thereof, imposed by subsection 40-603 (j) shall be instituted in any court if such person has elected to file an appeal with respect to such tax with the Board of Tax Appeals for the District of Columbia. (May 27, 1949, 63 Stat. 129, ch. 146, title III, § 303.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47-2402.

§ 40-603a. Office of Registrar of Titles and Tags.

The employee of the Department of Vehicles and Traffic who is charged with the immediate responsibility for, and exercises supervision over, the issuance of tags and certificates of title and the registration of motor vehicles and trailers shall be known as the Registrar of Titles and Tags. (June 28, 1944, 58 Stat. 527, ch. 300, § 1.)

TRANSFER OF FUNCTIONS

See note under section 40-401 concerning Department of Motor Vehicles.

§ 40-603b. Issuance of congressional tags.

No part of any District of Columbia appropriations shall be available for any expense for or incident to the issuance of congressional tags except to those persons set out in section 40-603, including the Speaker and the Vice President. (June 28, 1944, 58 Stat. 532, ch. 300, § 8.)

SIMILAR PROVISIONS

- 1944—July 1, 1943, ch. 184, § 8, 57 Stat. 346.
- 1943—June 27, 1942, ch. 452, § 8, 56 Stat. 460.
- 1942—July 1, 1941, ch. 271, § 8, 55 Stat. 539.
- 1941—June 12, 1940, ch. 333, § 9, 54 Stat. 343.

§ 40-604. Parking space for Members of Congress.

The Commissioners of the District of Columbia are authorized and directed to designate, reserve, and properly mark appropriate and sufficient parking spaces on the streets adjacent to all public buildings in such district for the use of Members of Congress engaged on public business. (June 29, 1956, 70 Stat. 447, ch. 479, § 1.)

CODIFICATION

This section taken from the Appropriation Act of 1939, was repeated in the Appropriation Act of 1940, and is not part of the Traffic Acts of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443) and is therefore not included in the term "this chapter" as used elsewhere herein.

SIMILAR PROVISIONS

1955—July 5, 1955, 69 Stat. 254, ch. 272, § 1.
 1954—July 1, 1954, 68 Stat. 386, ch. 449, § 1.
 1953—July 31, 1953, 67 Stat. 290, ch. 299, § 1.
 1952—July 5, 1952, 66 Stat. 385, ch. 576, § 1.
 1951—Aug. 3, 1951, 65 Stat. 167, ch. 292, § 1.
 1950—July 18, 1950, 64 Stat. 347, ch. 467, § 1.
 1949—June 29, 1949, 63 Stat. 303, ch. 729, § 1.
 1948—June 19, 1948, 62 Stat. 553, ch. 555, § 1.
 1946—July 9, 1946, 60 Stat. 518, ch. 544, § 1.
 1945—June 30, 1945, 59 Stat. 289, ch. 209, § 1.
 1944—June 28, 1944, 58 Stat. 526, ch. 300, § 1.
 1943—July 1, 1943, 57 Stat. 338, ch. 184, § 1.
 1942—June 27, 1942, 56 Stat. 451, ch. 452, § 1.

CROSS REFERENCES

Congressional tags, issuance by Commissioners, see § 40-603 (c).

Parking restrictions on public and private property, see §§ 40-810 and 40-811.

Regulation of public off-street parking facilities, see §§ 40-801 to 40-809.

§ 40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.

(a) The Commissioners of the District of Columbia are authorized, in their discretion, to permit such officers and employees of the District of Columbia Government as the Commissioners may select to park motor vehicles in any building or buildings now or hereafter erected upon squares numbered 490, 491, and 533, and reservation numbered 10, in the District of Columbia, known as the Municipal Center, and to make and enforce regulations for the control of the parking of such vehicles, including the authority to prescribe and collect fees and charges for the privilege of parking of such vehicles.

(b) The Commissioners of the District of Columbia are further authorized, in their discretion, to permit the public to park motor vehicles in such portion or portions of squares numbered 490, 491, and 533, and reservation 10, in the District of Columbia, known as the Municipal Center, as may be set apart by the said Commissioners for such purpose, and to make and enforce such regulations as the Commissioners may deem advisable for the control of parking in such portion or portions of the Municipal Center as they may set apart for such purpose, including authority to restrict the privilege of parking therein to persons having business in the Municipal Center, and to make and enforce regulations to prohibit parking in all portions of the Municipal Center not set apart by the Commissioners for such purpose. The Commissioners are further authorized in their discretion, to prescribe and collect fees and charges for the privilege of parking motor vehicles in such portion or portions of the Municipal Center as may be set apart for such purpose, and, to aid in the collection of such fees and charges and the enforcement of such regulations, the Commissioners may install mechanical parking meters or devices.

(c) The Commissioners of the District of Columbia are further authorized to prescribe reasonable penalties of fine not to exceed \$25 or imprisonment

not to exceed ten days for the violation of any regulation promulgated under the authority of this section. (June 6, 1940, 54 Stat. 241, ch. 253, §§ 1, 2, 3.)

CODIFICATION

Section is comprised of §§ 1, 2, and 3 of act June 6, 1940.

ADMINISTRATIVE SERVICES OFFICE

Reorganization Order No. 18, created in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, an "Administrative Services Office". This office was assigned the duties of maintaining records of space allotted to District employees for parking privately owned motor vehicles on District or Federal property, also to review requests for and make recommendations for assignments and execute control of approved assignments.

§ 40-605. Speeding and reckless driving.

(a) No vehicle shall be operated at a greater rate of speed than permitted by the regulations adopted under the authority of this chapter.

(b) Any person who drives any vehicle upon a highway carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall upon conviction for the first offense be fined not more than \$250 or imprisoned not more than three months, or both; and upon conviction for the second or any subsequent offense committed within two years from the date of any such previous offense such individual shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving, shall upon conviction thereof be fined not more than \$300 or be imprisoned not more than ninety days. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 9; July 3, 1926, 44 Stat. 814, ch. 739, § 5; Feb. 27, 1931, 46 Stat. 1427, ch. 317; June 24, 1936, 49 Stat. 1901, ch. 749; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 1.)

REFERENCE IN TEXT

"This chapter" referred to in the text is classified to sections 11-601, 11-616, 11-621, 11-623, 11-1407, 40-301 to 40-303, 40-601 to 40-603, 40-605, and 40-609 to 40-615.

AMENDMENTS

1926—Act July 3, 1926, provided for the regulation of speed in outlying districts.

1931—Act Feb. 27, 1931, amended paragraph (a) as it now exists, and also changed the definition of reckless driving in paragraph (b). The penalties for reckless driving were originally a fine of \$25 to \$100 and imprisonment of 10 to 30 days for first offense; and a fine of \$100 to \$1,000 and imprisonment of 30 days to 1 year for a subsequent offense. The 1931 act removed the lower limits on the fines and imprisonment permitted and included the provision that the subsequent offense must be committed within two years, removed the lower limits on the fines and imprisonments and changed the upper limits on third and subsequent offenses as now provided in this section. The 1931 act also included the provisions that subsequent offenses must be committed within one year of the first offense.

1936—Act June 24, 1936, raised the upper limits for a first offense to those now provided in this section. The penalties for other offenses provided by this section were

originally a fine of from \$5 to \$25 for a first offense; a fine of from \$25 to \$100 for a second offense; and a fine of from \$100 to \$500 and imprisonment of 30 days to one year for subsequent offenses.

1942—Act Nov. 25, 1942, amended subsec. (d) of section by deleting provisions making first offense punishable with \$25 fine, second offense within one year punishable with \$100 fine, and third offense within one year punishable with \$300 fine and/or imprisonment not more than ninety days or both.

EFFECTIVE DATE OF 1931 AMENDMENT

Amendment of section by act July 1, 1931, effective July 1, 1931, see section 6 of act Feb. 27, 1931, set out as a note under § 40-302.

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Convictions to be reported, see § 40-612.

Definition of "this act" and other terms used, see § 40-602.

Power of commissioners to make rules and regulations, see § 40-603.

NOTES TO DECISIONS

Evidence 1
Jury trial 2
Regulations of director of traffic 3
Review 4

1. Evidence

Where arresting officer testified that he had paced defendant for about two blocks at a speed varying from thirty-three to thirty-eight miles per hour, it cannot be said that the trial judge was wrong in making a finding of guilt. *Seidenberg v. District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 607).

2. Jury trial

One charged with driving an automobile recklessly, and so as to endanger property and individuals, has a right to a jury trial. *District of Columbia v. Colts* (1930, 51 S. Ct. 52, 282 U. S. 63, 75 L. Ed. 177).

3. Regulations of director of traffic

Provisions of this act are not in conflict with regulations of director of traffic, as to speed of vehicles on certain bridges and highways. *District of Columbia v. Bailey*, (1927, 18 F. 2d 367, 57 App. D. C. 151).

Section 40-603 authorized regulation excluding commercial vehicles equipped with solid tires on certain streets, in view of paragraph (a) of this section and act Mar. 3, 1925, ch. 443, § 14, 43 Stat. 1123, 1125. *Smallwood v. District of Columbia* (1927, 17 F. 2d 210, 57 App. D. C. 58).

Regulation, excluding commercial vehicles equipped with solid tires from certain streets, was reasonable. *Id.*

4. Review

Where fine was imposed for speeding and was within the statutory limitation, appellate court has no right to disturb it. *Seidenberg v. District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 607).

§ 40-606. Negligent homicide.

Any person who, by the operation of any vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000 or both.

It shall be the duty of the coroner of the District of Columbia, upon any inquisition taken before him which results in the jury finding that negligent homicide, as defined herein, has been committed on the deceased, to require such witnesses as he thinks proper to give recognizance to appear and testify, or in default thereof to be committed to jail for appearance, in either the United States Dis-

trict Court for the District of Columbia or the municipal court for the District of Columbia, and the coroner shall return to either said court the said inquisition, testimony, and recognizance or order by him taken or given. (Mar. 3, 1901, ch. 854, § 802 (a), as added June 17, 1935, 49 Stat. 385, ch. 266, and amended June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

NOTES TO DECISIONS

Concurring negligence 1
Constitutionality 2
Crime, elements of 3
Double jeopardy 4
Evidence 5
Instructions 6
Joint trial 8
Judicial comment 7
Res judicata 9

1. Concurring negligence

Where, as a consequence of collision of bus and an automobile, deceased motorist was struck by bus or such automobile, or both, joinder of both bus driver and driver of automobile in the same information in prosecution for statutory negligent homicide was proper, and refusal of separate trials was not an abuse of discretion. *Miciotto v. United States* (1952, 198 F. 2d 951, 91 U. S. App. D. C. 102.)

Where driver of first automobile collided with bus at intersection, and either the automobile or the bus or both struck second automobile with such force that the driver was thrown from it and killed, bus driver and driver of first automobile would be deemed in prosecution under Negligent Homicide Statute to have participated in the same act or transaction or in the same series of acts or transactions constituting the offense charged within meaning of rule that two or more defendants may be charged in an information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. *Simcic v. United States* (D.C. Mun. App. 1952, 86 A. 2d 98).

If defendant drove bus at an immoderate rate of speed and such act was proximate or direct cause of death of deceased who was riding in another automobile with which the bus collided, defendant was not relieved from guilt of negligent homicide, because negligence of the driver of the automobile concurred in producing the result though acts of other drivers were to be considered so far as they shed light on question of defendant's negligence, but if negligence of other driver was sole cause of decedent's death, defendant was entitled to an acquittal. *Prezzi v. U. S.* (D. C. Mun. App. 1948, 62 A. 2d 196).

2. Constitutionality

This section specifies with sufficient certainty the conduct which it is intended to proscribe and punish and hence comes within the requirements of constitutionality. *U. S. v. Henderson* (1941, 121 F. 2d 75, 73 App. D.C. 369).

3. Crime, elements of

In prosecution for negligent homicide based on death caused by motortruck, the "corpus delicti" consisted of the death of a human being by the instrumentality of a motortruck operated at an immoderate rate of speed or

in a careless, reckless or negligent manner but not willfully or wantonly. *Ercoli v. U.S.* (1943, 131 F. 2d 354, 76 U. S. App. D. C. 360).

The elements of the corpus delicti of negligent homicide by motor vehicle are the death of a human being, by the instrumentality of a motor vehicle, operated at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not willfully or wantonly. *Solar v. United States* (D. C. Mun. App. 1953, 94 A. 2d 34).

In negligent homicide prosecution against motorist whose automobile entered intersection and struck taxicab which crushed child on curb, corroborating evidence independent of motorist's extrajudicial confessions was sufficiently substantial to establish the element of the corpus delicti that motorist operated his automobile in a careless, reckless or negligent manner in failing to observe and obey stop sign. *Id.*

4. Double jeopardy

Where defendant was charged with negligent homicide by motor vehicle, an offense against United States, and with violation of traffic regulation making it offense against District of Columbia for operator of motor vehicle to fail to give his full time and attention to operation of vehicle, principle of double jeopardy did not preclude prosecution of defendant on the traffic charge after he had been acquitted of charge of negligent homicide. *Randolph v. District of Columbia*, (D. C. Mun. App. 1959, 156 A. 2d 686).

5. Evidence

In prosecution for negligent homicide based on death caused by motortruck, evidence that the motortruck under defendant's control was of tremendous size and weight, that it was being driven on busy city street at speed that made it impossible to stop when defendant first saw pedestrian approximately 25 to 30 feet away, and that automobile in traffic lane to defendant's right obstructed his view of pedestrian until it was too late to stop truck, tended to prove the "corpus delicti", so that defendant's extrajudicial admissions were properly received in evidence. *Ercoli v. U.S.* (1943, 131 F. 2d 354, 76 U. S. App. D. C. 360).

In prosecution for negligent homicide, there was sufficient substantial independent evidence to corroborate extrajudicial admissions made by defendant to police officers after accident in which his automobile allegedly collided with pedestrian in crosswalk. *Sanderson v. United States* (D. C. Mun. App. 1956, 125 A. 2d 70).

Circumstantial, as well as direct evidence, may supply sufficient corroboration of the corpus delicti in cases of negligent homicide. *Solar v. United States* (D. C. Mun. App. 1953, 94 A. 2d 34).

6. Instructions

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, wherein driver of automobile testified that the first thing he knew, he heard a tremendous noise to his left and his automobile was then hit by the bus, driver of automobile was not entitled to instruction on theory of imminent or unexpected danger. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, court sufficiently charged with respect to element of causation as to automobile driver, where at outset of instruction court carefully told jury that charge was that defendants operated bus and automobile at an immoderate rate of speed and in such a careless, reckless, and negligent manner as to cause the death of the deceased, and that in order to convict driver of automobile, jury was required first to find that in operation of automobile he violated the law in one of the particulars charged and that such operation was a proximate cause of the death of the deceased. *Id.*

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, court properly refused to give requested instruction of driver of automobile that to justify finding of guilt, jury must find beyond reasonable doubt not only that driver of automobile drove automobile at an immoderate rate of speed or negligently, but also that such immoderate rate of speed or such negligence directly and proximately caused

death of deceased, since instruction was an erroneous and incomplete statement. *Id.*

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, instruction that if jury found beyond reasonable doubt that bus driver operated bus in a negligent, careless, or reckless manner or at an immoderate rate of speed, and that such operation by bus driver was cause of collision, and that driver of automobile also operated automobile in negligent, careless, or reckless manner or at immoderate rate of speed and that such operation was also a cause of the collision, and collision was proximate cause of death of deceased, it was duty of jury to find both bus driver and driver of automobile guilty, was not subject to objection that it was confusing and did not properly explain theory of causation. *Id.*

Refusal of defendant's instructions precluding conviction of negligent homicide unless death of deceased was the proximate result of operation of the bus by defendant was not error in view of instruction by the court on same subject matter though nowhere therein did the court use the expression "proximate cause." *Prezzi v. U.S.* (D.C. Mun. App. 1948, 62 A. 2d 196).

In prosecution for negligent homicide by driver of bus which collided with automobile in which decedent was riding instructions not to ignore other drivers' action because whether defendant was driving at an immoderate rate of speed depended upon all other circumstances, and that if defendant was driving at such speed, then he was one of the causes of the accident, and that if driver of other automobile also caused the accident would make no difference but that defendant was not responsible for acts of the other drivers, were sufficient. *Id.*

7. Judicial comment

In prosecution for negligent homicide by driving a bus at an immoderate rate of speed and colliding with an automobile in which decedent was riding, trial court's comment that in its opinion, and as a matter of common sense, if immoderate speed was established, such speed caused the death, which contradicted or at least materially weakened, previous instruction respecting immoderate speed, and which had a strong tendency to eliminate from the jury, the question whether the acts of the driver of the other automobile were the sole cause of the collision, was reversible error. *Prezzi v. U.S.* (D.C. Mun. App. 1948, 62 A. 2d 196).

8. Joint trial

Where driver of first automobile collided with bus at intersection, and either the automobile or the bus or both struck second automobile with such force that the driver was thrown from it and killed, the case was a proper one in which to order a joint trial of bus driver and driver of first automobile for negligent homicide. *Simcic v. United States* (D. C. Mun. App. 1952, 86 A. 2d 98).

9. Res judicata

Judgment of acquittal of defendant charged with negligent homicide, a crime against United States, was not res judicata of charge of failing to give full time and attention to operation of motor vehicle in violation of traffic and motor vehicle regulations of District of Columbia although both charges arose out of same accident. *Randolph v. District of Columbia* (D.C. Mun. App. 1959, 156 A. 2d 686).

§ 40-607. Negligent homicide included in manslaughter where death due to operation of vehicle.

The crime of negligent homicide defined in section 40-606 shall be deemed to be included within every crime of manslaughter charged to have been committed in the operation of any vehicle, and in any case where a defendant is charged with manslaughter committed in the operation of any vehicle, if the jury shall find the defendant not guilty of the crime of manslaughter such jury may, in its discretion, render a verdict of guilty of negligent homicide. (Mar. 3, 1901, ch. 854, § 802 (b), as added June 17, 1935, 49 Stat. 385, ch. 266.)

NOTES TO DECISIONS

1. Evidence

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, excluding evidence of accused's reputation for tenderness and mercy was not shown to be error where record did not disclose the evidence concerning flight. *Morris v. District of Columbia* (1942, 124 F. 2d 284, 75 U. S. App. D. C. 82).

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, where accused asked for a subpoena duces tecum requiring production of statements which record implied were obtained by counsel for the person injured, but where there was nothing in the record to show that, at the trial, a foundation was or could have been laid for admitting the statements in evidence, either to impeach their authors or for any other purpose, there was no basis in the record for an inference that the error, if any, in refusing the subpoena was prejudicial. *Id.*

In prosecution for injuring a person with a motor vehicle and failing to stop and give assistance and report to police, excluding evidence that accused carried \$100,000 of liability insurance was not prejudicial error where record did not show what testimony concerning flight there may or may not have been. *Id.*

§ 40-608. Immoderate speed not dependent on legal rate of speed.

In any prosecution under sections 40-606 or 40-607, whether the defendant was driving at an immoderate rate of speed shall not depend upon the rate of speed fixed by law for operating such vehicle. (Mar. 3, 1901, ch. 854, § 802(c), as added June 17, 1935, 49 Stat. 385, ch. 266.)

NOTES TO DECISIONS

1. Evidence

This section providing that in any prosecution for negligent homicide whether defendant was driving at an immoderate rate of speed shall not depend upon rate fixed by law for operating the vehicle manifests intent that speed shall be determined as a fact from all surrounding circumstances and this section does not expressly prohibit evidence of speed regulations which are admissible as one of the circumstances for the jury, in determining the question of immoderate speed. *Prezzi v. U.S.* (D.C. Mun. App. 1948, 62 A. 2d 196).

§ 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.

(a) Any person operating a vehicle, who shall injure any person therewith, or who shall do substantial damage to property therewith and fail to stop and give assistance, together with his name, place of residence, including street and number, and the name and address of the owner of the vehicle so operated, to the person so injured, or to the owner of such property so damaged, or to the operator of such other vehicle, or to any bystander who shall request such information on behalf of the injured person, or, if such owner or operator is not present, then he shall report the information above required to a police station or to any police officer within the District immediately. In all cases of accidents resulting in injury to any person, the operator of the vehicle causing such injury shall also report the same to any police station or police officer within the District immediately.

Any operator whose vehicle causes personal injury to an individual and who fails to conform to the above requirements shall, upon conviction of the first offense, be fined not more than \$500, or shall be imprisoned not more than six months, or both; and upon the conviction of his second or subsequent offense, shall be fined not more than

\$1,000, or shall be imprisoned not more than one year, or both.

Any operator whose vehicle causes substantial damage to any other vehicle or property and fails to conform to the above requirements, shall, upon conviction of the first offense, be fined not more than \$100, or be imprisoned not more than thirty days, or both; and for the second or any subsequent offense, be fined not more than \$300, or be imprisoned not more than ninety days, or both.

(b) No individual shall, while under the influence of any intoxicating liquor or narcotic drug, operate any vehicle in the District. Any individual violating any provision of this subdivision shall upon conviction for the first offense be fined not more than \$500 or imprisoned not more than six months, or both; and upon conviction for the second or any subsequent offense be fined not more than \$1,000 or imprisoned not more than one year, or both.

(c) Any violation of any provision of law or regulation issued thereunder which is repealed or amended by this Act, and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal or amendment, be prosecuted to the same extent as if this Act had not been enacted.

(d) The Commissioners or their designated agent shall revoke the operator's permit or the privilege to drive a motor vehicle in the District of Columbia, or revoke both such permit and privilege, of any person who is convicted in the District of any of the following offenses:

(1) Operating a motor vehicle while under the influence of any intoxicating liquor or narcotic drug.

(2) Any homicide committed by means of a motor vehicle.

(3) Leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is bodily injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle.

(4) Reckless driving involving bodily injury.

(5) Any felony in the commission of which a motor vehicle is involved.

(e) Whenever a judgment of conviction of any offense set forth in subsection (d) has become final, the clerk of the court in which the judgment was entered shall certify such conviction to the Commissioners or their designated agent, who shall thereupon take the action required by subsection (d) of this section. A judgment of conviction shall be deemed to have become final for the purposes of this subsection—

(1) if no appeal is taken from the judgment, upon the expiration of the time within which an appeal could have been taken, or

(2) if an appeal is taken from the judgment, the date upon which the judgment, having been sustained, can no longer be appealed from or reviewed on a writ of certiorari.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; Dec. 15, 1944, 58 Stat. 805, ch. 588; Aug. 16, 1954, 68 Stat. 732, ch. 741, § 7, 8.)

AMENDMENT

1954—Act Aug. 16, 1954, amended section by striking the third sentence from subsection (b) which sentence concerned revocation of an operator's permit upon conviction of a violation of the paragraph, and the manner of certification of a conviction. These matters are covered by new subsections (d) and (e) added to the section by the act.

Subsection (d) adds to the traffic offenses calling for mandatory revocation of an operator's permit homicide committed by an automobile, a person's leaving the scene of an accident involving bodily injury without giving assistance or making his identity or the identity of the vehicle's owner known, reckless driving involving bodily injury, and any felony in the commission of which a motor vehicle is involved.

Subsection (e) requires a court to certify to the Commissioners convictions of the offenses included in subsection (d) just as was previously required on convictions of drunken driving.

1944—Act Dec. 15, 1944, amended section generally by omitting word "motor" preceding "vehicle" whenever appearing in subsection (a), by inserting "involving the operator of a motor vehicle" following "of this paragraph" in subsection (b), and reenacting subsection (c).

1931—Act Feb. 27, 1931, amended section generally. Prior to such amendment, subsection (a) of this section provided for the giving of the information upon striking "any individual or any vehicle" or where the vehicle has been struck by another vehicle and provided only for the giving of information concerning the driver including the registration and operators permit numbers. The act also added all that part of the first paragraph of subsection (a) beginning with "if such owner or operator is not present."

The penalties provided for in subsection (a) were originally, for personal injury, a fine of \$100 to \$500 and imprisonment of 60 days to 6 months for a first offense, and a fine of \$500 to \$1,000 and imprisonment of 6 months to 1 year for a subsequent offense. The 1931 act removed the lower limits of fines and imprisonment. The penalties for damage to a vehicle prior to the 1931 amendment were a fine of not more than \$500 or imprisonment of not more than six months for a first offense and a fine of not more than \$1,000 or imprisonment of not more than one year for a subsequent offense.

The penalties provided for in subsection (b) were originally a fine of from \$100 to \$500 and imprisonment of 60 days to 6 months for a first offense, and a fine of \$200 to \$1,000 and imprisonment of 6 months to 1 year for a subsequent offense. The 1931 act removed the lower limits of fines and imprisonment and also added the present subsection (c) and included former paragraph (c) as the last sentence in present paragraph (b).

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 16, 1954, effective 30 days after Aug. 16, 1954, see section 9 of act Aug. 16, 1954, set out as a note under section 40-301.

EFFECTIVE DATE OF 1931 AMENDMENT

Amendment of section by act July 1, 1931, effective July 1, 1931, see section 6 of act Feb. 27, 1931, set out as a note under § 40-302.

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Convictions to be reported, see § 40-612.

NOTES TO DECISIONS

- Agreement not to prosecute 1
- Arrest without warrant 2
- Constitutionality 3
- Evidence 4
- Failure to
 - Report accident 5
 - Stop and give assistance 6
- Former jeopardy 7
- Hearing 15
- Instructions 8
- Proof of damage 9
- Purpose 10
- Questions for jury 11
- Specimen analysis, proof 12
- Substantial damage 13
- Violations in foreign jurisdictions 14

1. Agreement not to prosecute

The entry of a nolle prosequi, without more, to an information charging operation of a motor vehicle while intoxicated, would not warrant a holding that there was an implied agreement by assistant corporation counsel to withdraw information in consideration of a plea of guilty to less serious charge in another information of operating a motor vehicle on wrong side of street. *District of Columbia v. Buckley* (1942, 128 F. 2d 17, 75 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 57, 317 U. S. 658, 87 L. Ed. 529).

An agreement between assistant corporation counsel and a defendant for withdrawal of an information, to which a nolle prosequi was entered, charging operation of a motor vehicle while intoxicated, in consideration of a plea of guilty to less serious charge in another information of operating a motor vehicle on wrong side of street, would not be binding. *Id.*

2. Arrest without warrant

Where police officer, in early hours of morning, heard a crash and subsequently received certain information from a citizen, he was justified in stopping defendant's automobile and making inquiries and when, after observing defendant, officer believed him to be intoxicated, he was justified in arresting defendant, without warrant, for driving while under influence of intoxicating liquor. *Johnson v. District of Columbia* (D. C. Mun. App. 1956, 119 A. 2d 444).

3. Constitutionality

Subsection (a) of this section making it an offense for a motorist to leave the scene of an accident, without making his identity known, where he has caused substantial damage to property, is not invalid on ground that it is indefinite because it provides no guide to a motorist for determination of what constitutes substantial damage. *Scott v. District of Columbia* (D.C. Mun. App. 1947, 55 A. 2d 854).

4. Evidence

In view of fact that District of Columbia sobriety test statute gives a right to refuse the test, accused's refusal to take test was explained and justified, and refusal was not admissible in prosecution for driving under the influence of intoxicating liquor. *Stuart v. District of Columbia* (D.C. Mun. App. 1960, 157 A. 2d 294).

Evidence sustained conviction of operating a motor vehicle while under the influence of intoxicating liquor, where defendant's intoxication was conceded, on the ground that the government's proof was sufficient to establish that defendant operated the vehicle, where the circumstantial evidence in support of the admission by the defendant had the effect of placing him in the driver's position immediately following the accident. *McKnight v. District of Columbia* (D. C. Mun. App. 1958, 141 A. 2d 922).

Evidence sustained conviction for operating automobile while under influence of intoxicating liquor and making an improper turn resulting in collision against a defendant who contended that he had not drunk but was suffering from kidney trouble, low blood pressure, ulcers and shock brought about by collision and that alleged smell of alcohol was caused by medicine. *Idler v. District of Columbia* (D. C. Mun. App. 1957, 134 A. 2d 104).

Evidence warranted conviction for drunken driving and for driving through safety zone. *Williams v. District of Columbia* (D. C. Mun. App. 1957, 130 A. 2d 596).

In drunken driving prosecution, where government introduced evidence of intoxication and defendant offered medical testimony that his behavior was caused by a blackout and not by intoxication, there was an issue of fact for trier of fact, who was not compelled to give controlling weight to such medical testimony even though no rebutting medical testimony was offered by government. *Id.*

In prosecution for driving without permit and leaving scene of collision, tried by court, erroneous admission of officer's testimony that persons who witnessed collision identified accused, in his presence, as driver of automobile involved in collision, was not cured by court's recognition of error and statement that such testimony was disregarded, where competent evidence of accused's guilt was far from conclusive. *Penwell v. District of Columbia* (1943, 31 A. 2d 891).

Testimony as to manner in which defendant's automobile was driven, identification of defendant as driver, and condition of defendant a short time thereafter, as reported by officers, was sufficient evidence, independent of defendant's confession, to support conviction of operating a motor vehicle while intoxicated. *Price v. District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 142).

In prosecution for operating a motor vehicle while intoxicated, proof that defendant, while in such condition, collided with another vehicle and left the scene of the collision without stopping, although disclosing two other offenses, was admissible as proof of the offense charged and as merely incidentally proving other offenses. *Id.*

It was error to exclude testimony of police officers who observed defendant that, in their opinion, defendant was under influence of intoxicating liquor, on ground that an expert may not testify to his conclusion regarding facts from which the jury are capable of drawing their own conclusions. Even though one is not an expert he may give his opinion based on personal observation as to whether a person is intoxicated. *Woolard v. District of Columbia* (D. C. Mun. App. 1949, 62 A. 2d 640).

5. Failure to report accident

Admitted failure of defendant to report automobile accident to police station or officer justified conviction, and failure of prosecution to establish other charge that defendant failed to stop, give name and residence would not invalidate verdict or sentence. *Carpenter v. District of Columbia* (1943, 32 A. 2d 251).

In prosecution for drunken driving, admission of records of analysis of specimen of urine taken from defendant who had been legally arrested and was being detained was not an infringement of defendant's rights under U. S. Code Const. Amend. 4 prohibiting unreasonable searches and seizures. *Novak v. District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed on other grounds 160 F. 2d 588, 82 U. S. App. D. C. 95).

The taking of specimen of urine from defendant who had been arrested and was being detained for drunken driving and the use in evidence of the analysis of the urine was not violative of defendant's rights under U. S. Code Const. Amend. 5 where specimen was given voluntarily, notwithstanding that police officer who requested specimen was in uniform and did not state that defendant had a right to refuse to give the sample, but did state that "if sample were right it would be to the defendant's benefit." *Id.*

6. Failure to stop and give assistance

Fact that defendant stopped and parked her automobile at the nearest available point, when informed of the accident, at a distance not exceeding 150 feet from the point where the collision occurred and furnished all the information, is all that the statute requires. *Oden v. District of Columbia* (1935, 79 F. 2d 175, 65 App. D. C. 50).

While defendant testified that he intended to return and give the assistance and information required, the jury was at liberty to disbelieve him under the circumstances, and to conclude from his conduct, as testified to by the District's witnesses, that he did not so intend. *Seher v. District of Columbia* (1938, 95 F. 2d 118, 68 App. D. C. 207).

7. Former jeopardy

In prosecution for driving a motor vehicle while intoxicated, police judge erroneously sustained defendant's plea of "autrefois convict" alleging that offense of driving on wrong side of street, in respect of which defendant had pleaded guilty, and offense of driving while intoxicated were the outgrowth of one identical act, since the same evidence would not sustain the two charges. *District of Columbia v. Buckley* (1942, 128 F. 2d 17, 75 U. S. App. D. C. 301, certiorari denied 63 S. Ct. 57, 317 U. S. 658, 87 L. Ed. 529).

8. Instructions

Where there was sufficient evidence independent of defendant's statement to authorize conviction of operating a motor vehicle while intoxicated and trial court charged on presumption of innocence, burden of proof and reasonable doubt, requested charge that there could be no conviction upon an uncorroborated confession without first proving the corpus delicti was properly

refused. *Price v. District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 142).

9. Proof of damage

In prosecution of motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence disclosed substantial damage to other vehicle even though there was no proof of cost of repairing the other vehicle. *Russel, Jr. v. District of Columbia* (D. C. Mun. App. 1955, 118 A. 2d 519).

10. Purpose

Subsection (a) of this section making it an offense for a motorist to leave the scene of an accident, without making his identity known, where he has caused substantial damage to property, was intended to discourage and punish "hit and run" drivers. *Scott v. District of Columbia* (D. C. Mun. App. 1947, 55 A. 2d 854).

11. Questions for jury

In prosecution for drunken driving, the weight to be given to results of analysis of specimen of defendant's urine and the medical testimony on the meaning thereof was for the jury. *Novak v. District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed on other grounds 160 F. 2d 588, 82 U. S. App. D. C. 95).

12. Specimen analysis, proof

In prosecution for driving automobile while intoxicated, the government must prove that urine specimen taken from defendant and the specimen analyzed by chemists and reported on in court were the same and were in substantially the same condition when tested as when taken. *Novak v. District of Columbia* (D. C. Mun. App. 1946, 49 A. 2d 88, reversed on other grounds 160 F. 2d 588, 82 U. S. App. D. C. 95).

Where witness for prosecution testified that he made an analysis of defendant's urine, the right of the defendant was properly protected by withdrawing from the jury all consideration of the urine analysis, and the withdrawal of such evidence had the effect of showing the jury that they were to make no inference regarding the test. *Woolard v. District of Columbia* (D. C. Mun. App. 1949, 62 A. 2d 640).

13. Substantial damage

In prosecution of motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence established that motorist struck another vehicle. *Russel, Jr. v. District of Columbia* (D. C. Mun. App. 1955, 118 A. 2d 519).

Motorist who ran into a parked vehicle, mashing in its rear bumper, damaging trunk and skirt, knocking out speedometer, and driving vehicle up and over sidewalk into lamp post caused "substantial damage" within subsection (a) of this section. *Scott v. District of Columbia* (D. C. Mun. App. 1947, 55 A. 2d 854).

In prosecution of motorist for leaving scene of accident, without making his identity known, after causing "substantial damage" to property, motorist was not entitled to have the prosecution dismissed because of government's failure to prove cost of repairing damage, where there was evidence that motorist caused substantial damage. *Id.*

14. Violations in foreign jurisdictions

Where driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under "point system" of regulation exceeded 12 thereby permitting revocation of driver's operator's permit, Director of Motor Vehicles did not abuse his discretion in allowing points to be assessed for conviction outside District, since, if incident had occurred in District of Columbia, it would have meant mandatory revocation of driver's permit without exercise of any discretion by Director, without a hearing and without reference to any point system. *Council v. Director of Motor Vehicles etc.* (D. C. Mun. App. 1960, 159 A. 2d 874).

15. Hearing

Where it was mandatory on the Commissioners to revoke the defendant's operator's permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on

the matter of revocation and administrative review. *Oliver v. Silver* (D.C. Mun. App. 1959, 155 A. 2d 719).

§ 40-609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor—Results of tests available to person tested—Blood test—Only physician at request of police may withdraw blood—Tested person may have private physician make added test—Test not compulsory.

(a) If as a result of the operation of a vehicle, any person is tried in any court of competent jurisdiction within the District of Columbia for (1) operating such vehicle while under the influence of any intoxicating liquor in violation of section 40-609 (2) negligent homicide in violation of section 40-606, or (3) manslaughter committed in the operation of such vehicle in violation of section 22-2405, and in the course of such trial there is received in evidence, based upon a chemical test, competent proof to the effect that at the time of such operation—

(1) defendant's blood contained five one-hundredths of 1 per centum or less, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having 5½ per centum of carbon dioxide), or that defendant's urine contained eight one-hundredths of 1 per centum or less, by weight, of alcohol, such proof shall be deemed prima facie proof that defendant at such time was not under the influence of any intoxicating liquor;

(2) defendant's blood contained more than five one-hundredths of 1 per centum, but less than fifteen one-hundredths of 1 per centum, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having 5½ percentum of carbon dioxide), or that defendant's urine contained more than eight one-hundredths of 1 per centum, but less than twenty one-hundredths of 1 per centum, by weight, of alcohol, such proof shall constitute relevant evidence, but shall not constitute prima facie proof that defendant was or was not at such time under the influence of any intoxicating liquor; and

(3) defendant's blood contained fifteen one-hundredths of 1 per centum or more, by weight, of alcohol, or that an equivalent quantity of alcohol was contained in two thousand cubic centimeters of his breath (true breath or alveolar air having 5½ per centum of carbon dioxide), or that defendant's urine contained twenty one-hundredths of 1 per centum or more, by weight, of alcohol, such proof shall constitute prima facie proof that defendant at such time was under the influence of intoxicating liquor.

(b) Upon the request of the person who was tested, the results of such test shall be made available to him.

(c) Only a physician acting at the request of a police officer can withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a urine specimen or the breath test.

(d) The person tested shall be permitted to have a physician of his own choosing administer a chemical test in addition to the one administered at the direction of the police officer.

(e) Nothing in this section shall be construed to require any person to submit to the withdrawal of blood, the taking of a urine specimen from him, or to a breath test. (Mar. 4, 1958, 72 Stat. 30, 31, Pub. L. 85-338, §§ 1, 2.)

NOTES TO DECISIONS

1. Refusal to take test

In view of fact that District of Columbia sobriety test statute gives a right to refuse the test, accused's, refusal to take test was explained and justified, and refusal was not admissible in prosecution for driving under the influence of intoxicating liquor. *Stuart v. District of Columbia* (D.C. Mun. App. 1960, 157 A. 2d 294).

§ 40-610. Smoke screens.

(a) No individual shall knowingly—

(1) Have in his possession any device designed to cause the emission from a motor vehicle of a defense mass of smoke commonly called a smoke screen;

(2) Use or permit the use of any such device in the operation of any motor vehicle; or

(3) Have in his possession or control any motor vehicle equipped with any such device or specially fitted for the attachment thereto of any such device.

(b) Any individual violating any provision of this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than five years. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 11.)

CROSS REFERENCE

Definitions of terms used, see § 40-602.

NOTES TO DECISIONS

1. In general

Traffic Act, as amended, delegates to the commissioners authority to make rules and regulations in relation to traffic on the public highways, and to the Director of Parks authority to make regulations in relation to traffic on the roads in the public parks within the District; and to provide for punishment for violations by proceedings in the police court at instance of corporation counsel and to exclude United States Attorney from any prosecutions except provision involving smoke-screen felony. *Persham v. United States* (1939, 104 F. 2d 249, 70 App. D.C. 116).

§ 40-611. Reporting by garage keeper of cars damaged in accidents.

The individual in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or struck by bullets shall report to a police station within 24 hours after such motor vehicle is received, giving the make of the motor vehicle, the engine number, the registry number, and the name and address of the owner or operator of such motor vehicle. Any such individual failing so to report shall, upon conviction thereof, be fined not less than \$25 nor more than \$100 for each offense. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 12.)

CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, see § 25-127.

Definitions of terms used, see § 40-602.

§ 40-612. Convictions to be reported.

All convictions under sections 40-302, 40-603, 40-605, and 40-609 shall be reported by the clerk of the court to the commissioners or their designated agent. (Feb. 27, 1931, 46 Stat. 1429, ch. 317, § 5.)

CROSS REFERENCE

Alcoholic Beverage Control Act inapplicable, see § 25-127.

§ 40-613. Control over park system not affected by this chapter.

Nothing contained in this chapter shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this chapter. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 16 (b); July 3, 1926, 44 Stat. 835, ch. 760, § 3.)

REFERENCE IN TEXT

"This chapter" referred to in the text is classified to sections 11-601, 11-616, 11-617, 11-621, 11-623, 11-1407, 40-301 to 40-303, 40-601 to 40-603, 40-605, and 40-609 to 40-615.

TRANSFER OF FUNCTIONS

Act July 3, 1926, amended section by striking out "Chief of Engineers" and inserting in lieu thereof "Director of Public Buildings and Public Parks of the National Capital."

By Executive Order 6166, June 10, 1933, the office was changed to National Parks, Buildings, and Reservations.

Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1, abolished National Parks, Buildings, and Reservations and transferred its powers and duties to the National Park Service.

CROSS REFERENCES

Definition of "this chapter" and other terms used, see § 40-602.

Regulating traffic in public parks and playgrounds, see § 8-109.

Rules and regulations generally, see § 40-603.

§ 40-614. Repeal and saving clauses.

(a) The provisions of the act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906 (34 Stat. 621, ch. 3615), and, in so far as they relate to the regulation of vehicles or vehicle traffic in the District, the provisions of the act entitled "An act to authorize the Commissioners of the District of Columbia to make police regulations for the government of said District," approved January 26, 1887 (24 Stat. 369, ch. 49) and of the joint resolution entitled "Joint resolution to regulate licenses to proprietors of theaters in the city of Washington, District of Columbia, and for other purposes," approved February 26, 1892 (27 Stat. 394, Res. 4, 7) and of the act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March 3, 1917 (39 Stat. 1064, ch. 160), are repealed. The provisions of section 20 of the Act entitled "An Act to prevent the manufacture and

sale of alcoholic liquors in the District of Columbia, and for other purposes," approved March 3, 1917 (39 Stat. 1129, ch. 165), shall not apply to any person operating any motor vehicle in the District.

(b) Any violation of any provision of law or regulation issued thereunder which is repealed by this chapter and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this chapter had not been enacted. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16 (a), (c).)

REFERENCES IN TEXT

"This chapter" referred to in the text is classified to sections 11-601, 11-616, 11-617, 11-621, 11-623, 11-1407, 40-301 to 40-303, 40-601 to 40-603, 40-605, and 40-609 to 40-615.

Section 20 of the act entitled "An act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes" was repealed by act of Jan. 24, 1934, 48 Stat. 334, ch. 4, § 28.

CODIFICATION

Subsections (a) and (b) were respectively subsections (a) and (c) of the act as enacted. The act of 1887 referred to is set forth in §§ 1-224 and 1-225. Subsection (b) of § 16 of the act of 1925 is § 40-613. The act of 1917 referred to has been repealed.

EFFECTIVE DATE

Section 17(a) of act Mar. 3, 1925, provided that this section shall take effect 60 days after Mar. 3, 1925.

§ 40-615. Separability of provisions.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 18.)

REFERENCES IN TEXT

"This chapter" referred to in the text is classified to sections 11-601, 11-616, 11-617, 11-621, 11-623, 11-1407, 40-301 to 40-303, 40-601 to 40-603, 40-605, and 40-609 to 40-615.

§ 40-616. Parking meters.

The Commissioners of the District of Columbia are hereby authorized and empowered, in their discretion, to secure and to install experimentally, at no expense to the said District, mechanical parking meters or devices on the streets, avenues, roads, highways, and other public spaces in the District of Columbia under the jurisdiction and control of said commissioners, such installations to be limited to a linear footage not to exceed the total of the perimeters of four normally sized squares in such District; and said commissioners are authorized and empowered to make and enforce rules and regulations for the control of the parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the commissioners may prescribe fees for the privilege of parking vehicles where said meters or devices are installed.

The Commissioners are further authorized and empowered to pay the purchase-price and cost of installation of the said meters or devices from the fees collected, which are hereby appropriated for such purpose, for the fiscal years 1938 and 1939, and

thereafter such meters or devices shall become the property of said District, and all fees collected shall be paid to the collector of taxes for deposit in the treasury of the United States to the credit of the revenues of said District. (April 4, 1938, 52 Stat. 192, ch. 62, § 11.)

CROSS REFERENCES

Additional parking meters and devices, see § 40-804 (e).
Use of fees collected, see § 40-808.
Rules and regulations generally, see § 40-603.

§ 40-617. Loitering by public cabs.

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who wilfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the municipal court for the District of Columbia by a fine of not less than \$10 nor more than \$40 for such offense. The Commissioners of the District of Columbia are hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and are hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section. (July 11, 1919, 41 Stat. 104, ch. 7, § 12; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCE

Power of Commissioners to locate hackstands, see §§ 1-221, 1-222.

NOTES TO DECISIONS.

Hotels 1
Police regulations 2
Public street 3

1. Hotels

This section does not apply to a taxicab stationed near a hotel which was for the exclusive use of the hotel and its guests, as the cab was under jurisdiction of the Public Utilities Commission and not of the District Commissioners. *Bell v. District of Columbia* (1921, 273 F. 315, 50 App. D. C. 351). See, also, *Parker v. District of Columbia* (1921, 273 F. 320, 50 App. D. C. 356).

2. Police regulations

This section supersedes police regulation, art. 4, § 8, adopted April 1918. *Willis v. District of Columbia* (1924, 295 F. 1012, 54 App. D. C. 191).

3. Public street

As the space upon which the cab was standing at the time of the arrest of its driver is stipulated to have been the private property of the Washington Terminal Company, by whose authority and permission he was there, it follows that he was not then upon any public street or avenue, and consequently his presence there did not fall within the purview of an act directed against the improper use of public streets and avenues. *Reamy v. District of Columbia* (1921, 273 F. 323, 50 App. D. C. 359).

Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

Sec.

40-701. Definitions.

40-702. Lien to appear on certificate of title—Effect of other liens.

Sec.

40-703. Entry of lien—Priority.

40-704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.

40-705. Liens to be kept by recorder in director's office.

40-706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.

40-707. Entry of lien on previously issued certificate.

40-708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.

40-709. Entry of lien or assignment where certificate is not available—Recorder to obtain certificate.

40-710. Possession of certificate—Satisfaction of liens.

40-711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.

40-712. Fees.

40-712a. Fee for releasing liens.

40-713. Recording liens, place and method.

40-714. False statements as to liens, violations of law, penalties.

40-715. Appropriation.

§ 40-701. Definitions.

"Person" shall include one or more individuals, firms or unincorporated associations, or corporations.

"Director" shall mean the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the commissioners.

"Recorder" shall mean the recorder of deeds of the District of Columbia, including assistants or agents duly designated by the recorder.

"Certificate" shall mean a certificate of title for a motor vehicle or trailer issued by the director.

"Owner" shall mean the person to whom such certificate is issued by the director.

"Lien" shall mean any right or interest in or to, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except (1) a sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it, or (2) any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.

"Instrument" shall mean any written instrument signed and acknowledged by an owner creating such lien.

"Lien information" shall mean the amount, kind, date of lien, name and address of holder, and recorder's record number, if any. (July 2, 1940, 54 Stat. 736, ch. 527, § 1.)

EFFECTIVE DATE

Section 16 of act July 2, 1940, provided in part that: "The provisions of this Act [this chapter] shall become effective January 1, 1941".

SAVINGS CLAUSE

Section 16 of act July 2, 1940, provided in part that: "Nothing herein contained shall effect existing liens on motor vehicles and trailers, or any equipment or accessories affixed thereto recorded prior to the effective date of this Act [January 1, 1941]".

§ 40-702. Lien to appear on certificate of title—Effect of other liens.

During the time a certificate is outstanding for any motor vehicle or trailer, no lien against such motor vehicle or trailer or any equipment or accessories affixed or sold to be affixed thereto shall be valid except as between the parties and as to other persons having actual notice, unless and until entered on such

certificate as hereinafter set forth: *Provided*, That the foregoing shall not apply to a lien or liens in existence on January 1, 1940, against a motor vehicle or trailer for which a certificate is outstanding at the effective date of this chapter, or any equipment or accessories affixed thereto. The provisions of §§ 42-101 to 42-103, shall not apply to liens recorded as herein provided and a lien shall have no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with said sections or, in case of a conditional sales contract, that the purchase price of the property does not exceed \$100. (July 2, 1940, 54 Stat. 736, ch. 527, § 2.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

NOTES TO DECISIONS

1. Recording

Where automobile dealer had a "floor plan" arrangement by which plaintiff would advance funds to dealer for purchase of automobiles and would take back chattel mortgages, and dealer had arrangement whereby finance company would purchase the conditional sales contracts executed by buyers of automobiles, and the buyer of an automobile gave conditional sales contract which was assigned to finance company but company never received title certificate because dealer had financial difficulties and never repaid plaintiff, plaintiff was estopped from asserting lien against buyer who had no actual knowledge of plaintiff's recorded chattel mortgage lien, and the buyer, not being in default, was entitled to use and enjoyment of automobile, and finance company was entitled to have its lien recorded on certificate of title. *Smith, Kirkpatrick & Co., Inc. v. Continental Autos, Ltd., et al.* (1960, 184 F. Supp. 764).

A contract, made in District of Columbia, for conditional sale of automobile to resident of Maryland, wherein he used and retained automobile, was not required to be recorded in such District, but was properly recorded in Maryland, law of which requires recordation of such contract where vendee resides. *In re Burton* (1954, 120 F. Supp. 148).

§ 40-703. Entry of lien—Priority.

In the absence of agreement of all parties affected and in the absence of circumstances estopping a lienholder from insisting upon such rights, lien shall be entered on the certificate by the recorder and shall have priority among themselves in the following order:

(a) If the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction, unsatisfied liens shown by the previous certificate, title, registry, or proof of ownership shall be entered in the order in which they appear on such previous certificate, title, registry, or proof of ownership.

(b) Liens for which instruments are presented with the application for the certificate.

(c) Liens, where the instruments are presented for recording, together with the certificate, irrespective of the fact that one or more instruments not entered on the certificate may have been previously presented for recording without such certificate.

(d) As between two or more instruments presented for recording without the certificate, the one first presented for recording shall have priority. (July 2, 1940, 54 Stat. 737, ch. 527, § 3.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.

An instrument shall be in writing; shall show the name and address of the holder, the trade name and engine, serial or identification number of the motor vehicle or the trade name and serial number, if any, of the trailer; shall be signed by the parties and acknowledged by the owner in the manner provided by law for deeds of real estate. A lien shall not be entered upon a certificate unless (1) the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction and the lien is shown upon such previous certificate, title, registry, or proof of ownership; or (2) such an instrument is presented for recording pursuant to the provisions of this chapter; or (3) the lien is shown on the application for a certificate, and was created prior to January 1, 1941, or was created while the motor vehicle or trailer was titled or registered in some other jurisdiction. (July 2, 1940, 54 Stat. 737, ch. 527, § 4; June 4, 1952, 66 Stat. 100, ch. 365, § 1.)

AMENDMENT

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-705. Liens to be kept by recorder in director's office.

The Commissioners of the District of Columbia shall assign to the recorder space in the office of the director, and the recorder shall furnish and maintain the necessary furniture, equipment, cards hereinafter mentioned, and other supplies and the required personnel for the purpose of carrying out the provisions of this chapter. (July 2, 1940, 54 Stat. 737, ch. 527, § 5.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.

Applications for certificates, in addition to all other matters which may be required by law, shall show under oath whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt by the recorder from the director of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the recorder shall compare the statements in the application as to liens with his records and the documents and instruments accompanying the application and if such statements are incorrect or incomplete or if any of the liens shown by the application are not entitled to be entered on the certificate in the same order as they appear on the application the recorder shall return

all of said papers to the director and advise him of the reasons therefor. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered on the certificate in the same order as they appear on the application, the recorder shall stamp on the application the words, "Statements as to liens in accordance with records," a facsimile of his signature, and the date, shall accept all instruments accompanying the application for recording and shall stamp his record number opposite the statement of each lien on the application for certificate. The recorder shall retain the instruments for his permanent file and collect the fees and charges thereon and return the application and all other papers to the director, who shall thereupon deliver same to a representative of the collector of taxes of the District of Columbia, stationed in the office of the director. Said representative shall then collect from the applicant or his representative all fees and charges in connection with the issuance of the certificate and shall return said application and papers to the director. The director shall thereupon issue the certificate and where liens are shown on such an application shall stamp upon each of two cards, the size of which shall be fixed by the director, the information stamped by the director on the face of such certificate and shall deliver such certificate, its application, cards, if any, and the identification-tag application to the recorder. If the application for title shows no liens, the recorder shall stamp on the certificate and on the reverse side of that portion of the application for identification tags known as "Collector's Coupon" the words "No Liens Shown By Records" and the date. If the application shows liens, the recorder shall stamp aforesaid "Collector's Coupon" with the words "Lien Recorded" and shall enter the lien information on certificate and on each of the said cards. The aforesaid stamping and entering shall be made on the face of the certificate in the space provided for the use of the recorder. The recorder shall then deliver both applications and the papers attached and the certificate to the director, who shall retain the application and the papers attached and shall deliver or mail the certificate to the record holder of the first lien shown thereon or his representative; or if there are no liens, then to the owner or his representative. (July 2, 1940, 54 Stat. 737, ch. 527, § 6.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-707. Entry of lien on previously issued certificate.

When it is desired to have a lien entered on a certificate theretofore issued, the instrument and the certificate shall be presented to the recorder in the office of the director and upon the payment of the necessary fees to the representative of the recorder of deeds of the District of Columbia in the office of the director the recorder shall accept the instruments for recording and unless he has cards covering said motor vehicle or trailer the director shall stamp cards in the manner set forth in section 40-706. The recorder shall enter the lien infor-

mation on the certificate in the space hereinbefore mentioned and on each of said cards and shall deliver or mail the certificate to the record holder of the first unsatisfied lien shown thereon or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 7.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine, serial or identification number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the recorder's record number of the instrument, or if none, a brief description sufficient to identify the lien shall be signed by the holder of the lien and acknowledged by him in the manner provided by law for deeds of real estate. Upon presentation of an assignment and a certificate and the payment of the prescribed fee to the representative of the recorder of deeds of the District of Columbia in the office of the director, the recorder shall enter upon the face of the certificate and upon each of the cards hereinbefore described the recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the recorder, and, if not, the assignment shall be given a recorder's record number and filed by the recorder and such number shall be entered on the certificate and on each of the cards opposite the entry of the information relative to the assignment. The certificate shall be delivered to the record holder of the first unsatisfied lien shown thereon, or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 8; June 4, 1952, 66 Stat. 100, ch. 365, § 2.)

AMENDMENT

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-709. Entry of lien or assignment where certificate is not available—Recorder to obtain certificate.

Whenever it is desired to enter a lien or an assignment upon a certificate and such certificate is not available, upon delivery to the recorder of the instrument or assignment the recorder shall demand that the person possessing the certificate surrender it for the purpose of entering thereon the lien or the assignment and upon surrender of the certificate the recorder shall perform the same act as in cases where the certificate was presented with the instrument. This section shall not be deemed to affect the priority given under section 40-703 (c) to a lien where the instrument is presented together with the certificate. (July 2, 1940, 54 Stat. 739, ch. 527, § 9.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-710. Possession of certificate—Satisfaction of liens.

The record holder of the first unsatisfied lien shown upon the certificate shall be entitled to the possession of the certificate and upon satisfaction of his lien he shall, within seventy-two hours, place upon the face of the certificate the recorder's record number of the lien, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "satisfied," or its equivalent, and his signature, swear to it before a notary public, and forward or deliver the certificate to the holder of the lien next in priority, or, if none, to the owner or to the person designated in writing by the owner. Upon the satisfaction of any lien other than the first unsatisfied lien shown on the certificate, the record holder of the lien so satisfied shall, within seventy-two hours, make similar entries upon the face of the certificate, and it shall be the duty of the person in possession of the certificate, upon demand, to permit such holder to make said entries. Any person in possession of a certificate shall, upon demand of the recorder, surrender it to the recorder within seventy-two hours for the purpose of entering the lien or assignment thereon. (July 2, 1940, 54 Stat. 739, ch. 527, § 10.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.

The recorder, upon receipt of a certificate whereon a lien is marked "Satisfied" as set forth in section 40-710, shall enter on the face of the certificate and on each of the cards described in section 40-706, and on the instrument, if any, filed in the recorder's office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "released," a facsimile of his signature and the date. Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the certificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, the aforesaid cards and instrument, if any, as above set forth. Whenever any lien has been released as provided in this section for a period of more than three years, the Recorder of Deeds may destroy the instrument which created such lien and the index cards upon which the lien information was entered: *Provided*, That no other unsatisfied lien is shown on any such index card. (July 2, 1940, 54 Stat. 739, ch. 527, § 11; June 5, 1952, 66 Stat. 126, ch. 370, § 4.)

AMENDMENT

1952—Act June 5, 1952, added the last sentence providing for destruction by the Recorder of Deeds of instrument creating lien and the index cards with the lien information on release of lien.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act June 5, 1952, effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42-102.

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-712. Fees.

The fee for recording liens or assignments of liens upon a certificate shall be the sum of \$1 for each lien or assignment of lien on each motor vehicle or trailer contained in the instrument, which fee shall include the charge for recording the release of such lien. (July 2, 1940, 54 Stat. 739, ch. 527, § 12; Dec. 15, 1945, 59 Stat. 610, ch. 578; June 19, 1948, 62 Stat. 493, ch. 522, § 1.)

AMENDMENTS

1948—Act June 19, 1948, increased the recording fee of liens and assignments from 50 cents to \$1 on "each motor vehicle or trailer" rather than each "automobile", and deleted the words "there shall be no fee for releasing".

1945—Act Dec. 15, 1945, amended section by inserting "or assignment or release of lien" following "for each lien" and by deleting second sentence which read "There shall be no fee for releasing."

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-712a. Fee for releasing liens.

Notwithstanding the provisions of section 40-712, there shall be a fee of 50 cents for recording the release of a lien which is recorded under the provisions of this chapter, prior to June 19, 1948, and no assignment of which is recorded under the provisions of this chapter after June 19, 1948. (June 19, 1948, 62 Stat. 493, ch. 522, § 2.)

§ 40-713. Recording liens, place and method.

The recorder shall maintain, in the space assigned to him in the office of the director, files wherein he shall file one set of the cards hereinbefore described alphabetically under the name of owner and the other under the trade name and engine, serial or identification number if it covers a motor vehicle, or the trade name and serial number, if any, if it covers a trailer. The recorder shall file the instruments at his main office. (July 2, 1940, 54 Stat. 739, ch. 527, § 13; June 4, 1952, 66 Stat. 100, ch. 365, § 3.)

AMENDMENT

1952—Act June 4, 1952, added "serial or identification" between the words "engine" and "number".

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

§ 40-714. False statements as to liens, violations of law, penalties.

Any person intentionally making a false statement with respect to liens in an application for a certificate, or wilfully violating any of the provisions of this chapter, shall upon conviction be punished by a fine of not more than \$500 or be imprisoned for not more than one year, or both. Prosecutions for violations of this chapter shall be by the corporation counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia. (July 2, 1940, 54 Stat. 739, ch. 527, § 14.)

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

NOTES TO DECISIONS

In general 1
Duplicate certificates 2
Number of offenses 3
Prosecution by corporation counsel 4

1. In general

Where counts charging perjury were merged and it could not be determined upon which false statement in application for certificate of title the jury rested its general verdict, but verdict if upon statement as to liens would not support sentence, judgment of conviction was subject to reversal. *Shelton v. U. S.* (1948, 165 F. 2d 241, 83 U. S. App. D. C. 32).

2. Duplicate certificates

Section 706 of this title and this section relating to certificates of title apply to duplicate as well as original certificates. *Shelton v. U. S.* (1948, 165 F. 2d 241, 83 U. S. App. D. C. 32.)

3. Number of offenses

One making two false statements, one violating the general perjury statute, § 22-2501, and the other violating this section, commits two offenses, though both statements are under one oath. *Shelton v. U. S.* (1948, 165 F. 2d 241, 83 U. S. App. D. C. 32).

4. Prosecution by corporation counsel

The making of false statement of lien under oath in application for certificate or duplicate certificate of title for motor vehicle in the District of Columbia must be prosecuted by corporation counsel in the name of the District of Columbia, under this section, rather than by the United States attorney in the name of the United States under the general perjury statute, § 22-2501. *Shelton v. U. S.* (1948, 165 F. 2d 241, 83 U. S. App. D. C. 32).

§ 40-715. Appropriation.

Appropriation is hereby authorized to be made to carry out the provisions of this chapter, and the commissioners of the District of Columbia are authorized to include in their annual estimates provision for all the expenses of the office of the director and recorder incident to such purposes, and for personnel subject to the limitations of the Classification Act of 1949. (July 2, 1940, 54 Stat. 740, ch. 527, § 15; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENT

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

EFFECTIVE DATE

Section effective January 1, 1941, see section 16 of act July 2, 1940, set out as a note under section 40-701.

Chapter 8.—REGULATION OF PARKING

Sec.

- 40-801. Short title.
- 40-802. Findings and declaration of necessity.
- 40-803. Definitions.
- 40-804. Commissioners' powers—Acquisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.
- 40-805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.
- 40-806. Establishment of parking facilities.
- 40-807. Records and data available—Additional surveys.
- 40-808. Disposition of fees and moneys collected.

Sec.

- 40-809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.
- 40-810. Parking restrictions—Vehicles impounded—Penalties.
- 40-811. Same—United States public buildings and property—Regulations—Penalties.

§ 40-801. Short title.

This chapter may be cited as the "District of Columbia Motor Vehicle Parking Facility Act of 1942." (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10.)

SEPARABILITY OF PROVISIONS

Section 9 of act Feb. 16, 1942, provided that: "If any provision of this Act [§§ 40-801 to 40-809], or the application thereof to any person or circumstances, shall be held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

CROSS REFERENCE

District of Columbia Traffic Act, see §§ 40-601 to 40-617.

§ 40-802. Findings and declaration of necessity.

It is hereby declared that the free circulation of traffic of all kinds through the highways of the District is necessary to the health, safety, and general welfare of the public, whether residing in said District, or traveling to, through, or from said District in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the highways of the District; that the parking of motor vehicles on the highways of the District has contributed to this congestion to such an extent as to interfere seriously with the primary use of such highways for the movement of traffic; that such parking prevents the free circulation of traffic in, through, and from said District impedes rapid and effective fighting of fires and the disposition of police forces in the District, threatens irreparable loss in valuations of property in the District, which can no longer be readily reached by vehicular traffic, and endangers the health, safety, and welfare of the general public; that this parking nuisance can be reduced by providing sufficient off-street parking facilities conveniently located in the several residential, commercial, industrial, and governmental areas of the District; that adequate off-street parking facilities have not been provided by private enterprise; that it may be necessary to supplement private parking spaces by off-street parking facilities provided by public undertaking; and that the enactment of this chapter, as well as the use of land for the purposes set forth in this chapter, is hereby declared to be a public necessity. (Feb. 16, 1942, 56 Stat. 90, ch. 76, § 1.)

CROSS REFERENCE

Regulations and enforcement for control of vehicles. see § 8-109.

§ 40-803. Definitions.

When used in this chapter, unless the context indicates otherwise—

The term "District" means the District of Columbia.

The term "Commissioners" means the Commissioners of the District of Columbia.

The term "agency" means the Motor Vehicle Parking Agency created in section 40-805.

The term "parking facilities" means one or more public off-street parking areas for motor vehicles, including necessary structures. (Feb. 16, 1942, 56 Stat. 91, ch. 76, § 2.)

§ 40-804. Commissioners' powers—Requisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.

The Commissioners, within the limits of appropriations by Congress therefor, are authorized to exercise all powers necessary and convenient to carry out the purposes of this chapter, the said purposes being hereby declared to be the acquisition, creation, and operation, in any manner hereinafter provided, under public regulation, of public off-street parking facilities in the District as a necessary incident to insuring in the public interest the free circulation of traffic in and through said District. Such powers shall include, but shall not be limited to, the powers hereinafter enumerated:

(a) The power to acquire any property, real or personal, or any interest therein, by purchase, lease, gift, bequest, devise, or grant, or by condemnation under the provisions of sections 16-601, 16-602, 16-604, 16-606 to 16-611 in any area of the District as to which the agency shall have made a determination that public parking facilities are necessary or expedient. Before acquiring any area for parking facilities the Commissioners shall request the National Capital Park and Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within thirty days of such request.

(b) The power to undertake, by contract or otherwise, the clearance and improvement of any such property as well as the construction, establishment, reconstruction, alteration, repair, maintenance, and operation thereon of parking facilities; to contract, by lease or otherwise, with competitive bidding, with any individual, firm, association, or corporation, private or public, for the operation of any parking facilities for such period, not exceeding five years, as the Commissioners shall determine, and to terminate, without prior notice, any contract in the event of any failure or omission of any party thereto to observe or enforce the rules or schedules of rates made under authority of paragraph (d) of this section. The words "such property" in this paragraph shall include, in addition to property acquired under this chapter, any other property, heretofore or hereafter acquired by the District, until needed for the purpose for which it was acquired, or if no longer needed for the purpose for which it was acquired, or upon which parking facilities may be established without impairing its use for the purpose for which it was acquired: *Provided*, That in each case the agency shall have made a determination that parking facilities thereon are necessary or expedient. Before establishing any parking facilities upon the property not acquired under authority of this chapter, the Commissioners shall request the National Capital Park and Planning Commission for its recommendations and it shall be the

duty of said Commission to report thereon within thirty days of such request.

(c) The power to sell, exchange, transfer, or assign any property, real or personal, or any interest therein, acquired under authority of this chapter, whether or not improved: *Provided*, That such action shall be in accordance with the general law covering the disposal of such property by the District of Columbia; *Provided further*, That the agency shall have first determined such property to be no longer necessary for the purposes of this chapter.

(d) The power to establish and from time to time to revise, with or without public hearings, uniform schedules of rates to be charged for use of space in each such parking facility; to provide rate differentials between said parking facilities for such reasons as the amount of space occupied, the location of the facility, and other reasonable differences; and to prescribe and promulgate such rules and regulations for the carrying out of the provisions of this chapter as may be necessary to keep said parking facilities subject at all times to public regulation, and to insure the maintenance and operation of such parking facilities in a clean and orderly manner and in such a manner as to provide efficient and adequate service to the public. The rates to be charged for parking of motor vehicles within said parking facilities shall be fixed at the lowest possible rates, consistent with the achievement of the purposes of this chapter, that will defray the cost of maintaining, operating, and administering the parking facilities; liquidate within such time as the Commissioners shall determine the cost of acquiring and improving the required property for parking-facility purposes; and provide for the acquisition and improvement of other necessary parking facilities, but without any purpose of obtaining for the District any profit or surplus revenue from the operation of said parking facilities. There shall be no discrimination in rates or privileges among the members of the public using said parking facilities.

(e) The power to secure and install mechanical parking meters or parking devices on the streets, avenues, roads, highways, and other public spaces in the District under the jurisdiction and control of the said Commissioners, in addition to those mechanical parking meters and devices installed pursuant to the authority conferred on the said Commissioners by section 40-616, such meters or devices to be located at such points as the Commissioners may determine, and the said Commissioners are authorized and empowered to make and enforce rules and regulations for the control of parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the Commissioners may prescribe fees for the parking of vehicles where meters or devices are installed.

(f) The power to lease on competitive bids for terms not exceeding fifty years, any property acquired pursuant to this chapter, or any other property heretofore or hereafter acquired by the District if no longer needed for the purpose for which it was acquired, and to stipulate in any such lease that the lessee shall erect at his or its expense a structure or structures on the land leased, which structure or structures and property shall be used,

maintained, and operated for the purposes of this chapter, including purposes incidental thereto, subject to regulation as provided in paragraph (d) of this section, except that the rates for use of space in parking facilities covered by any such lease shall be fixed and regulated by the Commissioners so as to allow to the lessee a fair return, as fixed by the Commissioners, on the cost of such structure or structures, together with an amount sufficient to amortize within the term of any such lease the cost of such structure or structures. Every such lease shall be entered into upon such terms and conditions as the Commissioners shall impose including, but not limited to, requirements that such structure or structures shall conform with plans and specifications approved by the Commissioners, that such structure or structures shall become the property of the District upon termination or expiration of any such lease; that the lessee shall furnish security in the form of a penal bond or otherwise to guarantee fulfillment of his or its obligations, and any other requirement which, in the judgment of the Commissioners, shall be related to the accomplishment of the purposes of this chapter.

(g) The power to use moneys in the fund established by section 40-808 for the purpose of widening or channelizing streets or making other street improvements to correct or improve traffic conditions in the vicinity of off-street parking facilities, and to correct traffic conditions resulting from a lack or shortage of parking facilities. (Feb. 16, 1942, 56 Stat. 91, ch. 76, § 3; Dec. 16, 1944, 58 Stat. 808, ch. 595, § 1; June 19, 1948, 62 Stat. 565, ch. 559; Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-692, § 1.)

AMENDMENTS

1958—Act Aug. 20, 1958, added subsection (g).

1948—Act June 19, 1948, added subsection (f).

1944—Act Dec. 16, 1944, amended subsection (b) by adding the last three sentences.

CROSS REFERENCE

Jurisdiction and control of street parking, see § 8-110.

NOTES TO DECISIONS

In general 1
Parking regulations 2
Presumption 3

1. In general

Appellant's contention, that, by placing the sign upon the meters the District is estopped to urge that Saturday afternoon is not a holiday within the meaning of the traffic regulation, is unfounded since the principle of estoppel generally does not apply to a city or a state when acting in its governmental capacity. *Doing v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

2. Parking regulations

Where appellant was convicted for illegal parking on Saturday afternoon and controversy arose by reason of fact that parking meter bore sign limiting parking to one hour, except on Sundays and holidays, his contention that Saturday afternoon was a legal holiday is without merit because Saturday is not a holiday under the statute or regulations issued thereunder. *Doing v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

3. Presumption

The presumption that everyone is presumed to know the law applies to traffic regulations just as it does to statutes. *Doing v. District of Columbia* (D. C. Mun. App. 1949, 67 A. 2d 396).

§ 40-805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.

There is hereby created a motor-vehicle parking agency consisting of seven members, namely, a representative of the Federal Works Agency, to be designated by the Administrator thereof; a representative of the National Park Service, to be designated by the Secretary of the Interior; a representative of the Department of Vehicles and Traffic of the District, to be designated by the Commissioners, and four other members, each of whom shall have been a bona fide resident of the District for at least three years immediately preceding his appointment, to be appointed by the Commissioners, without regard to race or creed. The Secretary of the Interior, the Federal Works Administrator, and the Commissioners may from time to time, in their discretion, change their respective designates in office, and they shall name new designates to fill any vacancies caused by the death, resignation, or other inability to serve, of their respective designates in office. The terms of the other four members of the agency shall be four years each, except that in the case of the initial appointments, one shall be for a term of one year, one for a term of two years, and one for a term of three years. In the case of any vacancy in the position of the members appointed for definite terms the same shall be filled for the remainder of the term. The said agency shall perform the duties imposed upon it by this chapter and such other duties as the Commissioners may assign to it. The Commissioners are authorized to delegate to the agency any or all of the powers vested in the said Commissioners by this chapter, except the powers set forth in paragraphs lettered (a) and (c) in section 40-804. The Commissioners are also authorized to delegate to the agency any or all of the powers vested in said Commissioners by sections 1 and 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center", approved June 6, 1940. (Feb. 16, 1942, 56 Stat. 92, ch. 76, § 4, Dec. 16, 1944, 58 Stat. 808, ch. 595, § 2.)

REFERENCES IN TEXT

An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center referred to in the text is act June 6, 1940, 54 Stat. 241, ch. 253.

AMENDMENT

1944—Act Dec. 16, 1944, amended section by adding last sentence.

TRANSFER OF FUNCTIONS

See note under section 40-101 concerning Department of Motor Vehicles.

§ 40-806. Establishment of parking facilities.

Parking facilities may be established in any section or portion of the District except that no parking facilities shall be established upon any property zoned residential without the approval of the Zoning Commission of the District. The Zoning Commission may grant such approval only after public notice and hearing in accordance with section 5-415. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 5.)

§ 40-807. Records and data available—Additional surveys.

The National Capital Park and Planning Commission and the Highway Planning Survey Unit shall make available such records and factual data and make such additional surveys as the Commissioners or the agency may deem necessary to carry out the purposes of this chapter. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 6.)

§ 40-808. Disposition of fees and moneys collected.

All fees and other moneys collected under this chapter, including all fees collected pursuant to section 40-616, and the Act entitled "An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center", approved June 6, 1940, and all moneys derived from the sale or assignment of any property, real or personal, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia and shall be appropriated and used solely and exclusively for the purposes set forth in this chapter, including the reimbursement of the highway fund of the District for any moneys advanced therefrom to carry out the purposes of this chapter. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 7; Dec. 16, 1944, 58 Stat. 809, ch. 595, § 3.)

REFERENCES IN TEXT

An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center referred to in the text is act June 6, 1940, 54 Stat. 241, ch. 253.

AMENDMENT

1940—Act Dec. 16, 1940, amended section by adding "and the Act * * * June 6, 1940" following "section 40-616".

PARKING METER FEES

The following District of Columbia Appropriation Acts provided that the fees from parking meters should be deposited to the credit of the highway fund:

- 1951—July 18, 1950, ch. 467, § 1, 64 Stat. 467.
- 1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
- 1949—June 19, 1948, ch. 555, § 1, 62 Stat. 553.
- 1948—July 25, 1947, ch. 324, § 1, 61 Stat. 443.
- 1947—July 9, 1946, ch. 544, § 1, 60 Stat. 518.
- 1946—June 30, 1945, ch. 209, § 1, 59 Stat. 289.
- 1945—June 28, 1944, ch. 300, § 1, 58 Stat. 526.
- 1944—July 1, 1943, ch. 184, § 1, 57 Stat. 338.
- 1943—June 27, 1942, ch. 452, § 1, 56 Stat. 451.
- 1942—July 1, 1941, ch. 271, § 1, 55 Stat. 528.

§ 40-809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.

Appropriations from the highway fund of the District are hereby authorized to carry out the provisions of this chapter for the fiscal year ending June 30, 1942, and thereafter the Commissioners are authorized and directed to include in their annual estimates such amounts as may be required from said highway fund and the fund created by this chapter for the purpose of carrying out the provisions of this chapter, including the payment of salaries and necessary administrative expenses. The Commissioners are authorized to employ a director and such other personal services as may be necessary to carry out the provisions of this chapter, and the salaries of such employees, other than members of said agency, are to be fixed in accordance with the

provisions of the Classification Act of 1949 as amended. The Commissioners shall fix the compensation of the members of said agency without reference to the provisions of the Classification Act: *Provided, however*, That the compensation of any members shall not exceed \$500 per annum: *And provided further*, That no compensation for services as a member of such agency shall be provided for any member who holds a salaried public office or position, in the District of Columbia or the Federal Government. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 8; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in the text, is classified to U.S. Code, title 5, chapter 21.

AMENDMENT

1949—Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923."

§ 40-810. Parking restrictions—Vehicles impounded—Penalties.

It shall be unlawful to park, store, or leave any vehicle of any kind, whether attended or not, or for the owner of any vehicle of any kind to allow, permit, or suffer the same to be parked, stored, or left, whether attended or not, upon any public or private property in the District of Columbia, other than public highways, without the consent of the owner of such public or private property and the Commissioners of the District of Columbia, and their designated agent or agents, are authorized to remove and impound any vehicle parked, stored, or left in violation of this section and section 40-811 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of such collateral to be fixed by the Commissioners in an amount not to exceed \$25. Whoever violates the provisions of this section and section 40-811 shall be punished by a fine of not more than \$25. Prosecutions for violations of the provisions of this section shall be in the municipal court for the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. In any prosecution under this section, proof that a vehicle was parked, stored, or left on public or private property shall be prima facie evidence that the vehicle was so parked, stored, or left without the consent of the owner of such public or private property. (Jan. 15, 1942, 56 Stat. 5, ch. 4, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

SEPARABILITY OF PROVISIONS

Section 3 of act Jan. 15, 1942, provided that: "Should any provisions of this Act be declared by the courts to be unconstitutional or invalid, the validity of the Act as a whole or any part thereof, other than the part declared to be unconstitutional or invalid, shall not be affected."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Jurisdiction and control of street parking, see § 8-110.
Regulation and enforcement for control of vehicles, see § 8-109.

§ 40-811. Same—United States public buildings and property—Regulations—Penalties.

Nothing contained in this section and section 40-810 shall be construed to interfere with the charge and control committed to the Federal Works Administrator, acting through the Commissioner of Public Buildings, over the public buildings and property of the United States in the District of Columbia or any other officer charged with the custody and control of property of the United States in the District of Columbia and such officers with respect to such property, under their respective jurisdiction and control, are hereby authorized and empowered to make and enforce all regulations for the parking of vehicles upon the property of the United States in the District of Columbia (other than public highways), to remove and impound any vehicle, parked, stored, or left in violation of this section and section 40-810 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of collateral to be fixed by the officer charged with the custody and control of property of the United States in the District of Columbia in an amount not to exceed \$25. Violations of regulations for the parking of cars upon the property of the United States in the District of Columbia shall be subject to the penalties prescribed in section 40-810 and all prosecutions for the violations thereof shall be upon information filed by the United States attorney in the municipal court for the District of Columbia. (Jan. 15, 1942, 56 Stat. 6, ch. 4, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Jurisdiction and control of street parking, see § 8-110.
Regulation and enforcement for control of vehicles, see § 8-109.

Chapter 9.—INSTALLMENT SALES OF MOTOR VEHICLES

Sec.

- 40-901. Definitions.
- 40-902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.
- 40-903. Bonding of automobile dealers and applicants—Liability Insurance—Designation of Commissioners as agents for service of process—Limitation on bonds—Action on bonds.
- 40-904. Delegation of functions—Exception.
- 40-905. Promulgation of regulations—Public hearings.
- 40-906. False statements.
- 40-907. Penalties.
- 40-908. Corporation counsel to conduct prosecutions.
- 40-909. Additional authority granted to Commissioners.
- 40-910. Separability of provisions.

§ 40-901. Definitions.

For purposes of this chapter, unless the context requires a different meaning—

(1) "Commissioners" means the Commissioners of the District of Columbia, or their designated agent.

(2) "District" means the District of Columbia.

(3) "Finance charge" means the total amount to be added to the principal balance to determine the balance of the buyer's indebtedness to be paid under a retail installment contract.

(4) "Governmental charges" means the excise tax, personal property tax, inspection fee, registration fee, recording fee, and such other fees charged by any government, or otherwise authorized by law, incident to the transfer of title to a motor vehicle as the Commissioners may by regulation include within such term.

(5) "Instrument of security" means any promissory note, retail installment contract, or other written promise to pay the unpaid balance of the total amount to be paid by a retail buyer of a motor vehicle.

(6) "Motor vehicle" means any automobile, mobile home, motorcycle, truck, truck tractor, trailer, semitrailer, or bus, but shall not include any boat trailer or any vehicle propelled or drawn exclusively by muscular power or designed to run only on rails or tracks.

(7) "Person" means an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal, or agent.

(8) "Principal balance" means the cash sale price of a motor vehicle, including accessories and equipment, plus the amounts, if any, included in the retail installment contract, if separate identified charges are stated therein, for insurance and governmental charges, less the amount of the purchaser's downpayment, if any, in money or goods or both.

(9) "Retail installment contract" means a contract entered into in the District or entered into by a seller licensed or required to be licensed by the District evidencing a retail installment transaction pursuant to which the title to or a lien on or security in the motor vehicle, which is the subject matter of such transaction, is retained or taken to secure the retail buyer's obligations. The term includes a chattel mortgage, conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the bailment or lease.

(10) "Retail installment transaction" means any transaction in which a retail buyer purchases a motor vehicle for a price in excess of the cash sale price and agrees to pay part or all of such price in one or more deferred installments. (Apr. 22, 1960, 74 Stat. 69, Pub. L. 86-431, § 1.)

EFFECTIVE DATE

Section 12 of act Apr. 22, 1960, provided that: "This Act [adding this chapter and amending § 47-2345] shall take effect on the thirtieth day after the date of enactment of this Act [Apr. 22, 1960]."

§ 40-902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.

(a) Notwithstanding the provisions of any instrument of security, refinancing contract, or other instrument to the contrary, made or entered into on or after the effective date of this chapter, no person shall charge, contract for, receive, or collect a finance charge if such charge exceeds the larger of \$25 or an amount determined under the following schedule:

Class 1. Any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle—\$8 per \$100 per year.

Class 2. Any new domestic motor vehicle not in class 1 and any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made and used foreign motor vehicle not more than two years old—\$11 per \$100 per year.

Class 3. Any used motor vehicle not in class 2, and, if a domestic motor vehicle, designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made, and, if a foreign motor vehicle, not more than four years old—\$14 per \$100 per year.

Class 4. Any used motor vehicle not in class 2 or class 3—\$16 per \$100 per year.

(b) The finance charge authorized by the preceding subsection shall be computed on the principal balance payable for a motor vehicle from the date of the instrument or contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

(c) For a period less or greater than twelve months or for amounts less or greater than \$100, the amount of the maximum charge set forth in the foregoing schedule shall be decreased or increased proportionately.

(d) The Commissioners shall from time to time investigate the economic conditions and other factors relating to and affecting finance charges, and shall ascertain all pertinent facts necessary to determine what maximum charges should be permitted in such transactions. Upon the basis of such ascertained facts, the Commissioners, notwithstanding the provisions of the preceding subsections, shall from time to time by regulation or order determine and fix the maximum finance charges sufficiently high to result in a fair return on investment to persons engaged in the business of financing retail installment transactions, but not so high as to constitute an unreasonable economic burden on the purchasers of motor vehicles under retail installment contracts. The Commissioners may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum finance charge, but, before determining or redetermining any such maximum charge, the Commissioners shall give reasonable notice of their intention to consider doing so, and provide a rea-

sonable opportunity to persons desiring to be heard with respect to any such proposed determination or redetermination. Notice of the action proposed by the Commissioners shall be published once a week for two consecutive weeks in one or more of the daily newspapers published in the District. Any such changed maximum finance charge shall not affect any preexisting instrument of security lawfully entered into between the seller and the purchaser of any motor vehicle.

(e) (1) The Commissioners are hereby authorized to make and enforce such regulations as they in their discretion deem appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

(i) governing the form and substance of instruments of security;

(ii) requiring that installment payments under instruments of security be made in substantially equal amounts and at regular intervals except (1) that the interval for the first installment payment may be longer than the other intervals; (2) that the final installment payment may be less in amount than the preceding installment payments; (3) that where a buyer's livelihood is dependent upon seasonal or intermittent income, one or more installment payments in the schedule of payments included in any such instrument of security may be reduced or omitted; and (4) that any contract covering a new motor vehicle to be used primarily as a demonstrator sold to a bona fide motor-vehicle salesman employed by the seller shall be exempt from the requirement that installment payments be in substantially equal amounts;

(iii) requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited;

(iv) establishing maximum delinquency, collection, repossession and other charges;

(v) specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security;

(vi) respecting the manner and methods of the sale or disposition of repossessed motor vehicles under such conditions, including, without limitation, rights of redemption, as the Commissioners deem advisable;

(vii) requiring the books and records of persons engaged in the business of financing retail installment transactions to be subject to production for examination by the Commissioners.

(2) The Commissioners are further authorized, in their discretion, to make and enforce such additional regulations as they deem necessary to insure that purchasers of motor vehicles under instruments of security are not being required, directly

or indirectly, to pay finance, insurance, or other charges in excess of those authorized by this chapter or by the Commissioners pursuant to the authority vested in them.

(3) In exercising their powers and authority under this subsection (e), the Commissioners are authorized, in their discretion, to make reasonable classifications (i) according to the parties to retail installment transactions, or (ii) according to the parties to the instruments of security, or (iii) according to the parties involved in repossessions, or (iv) according to other bases, or (v) according to two or more of the foregoing clauses (i) through (iv), and to exercise such powers and authority under this subsection with respect to any one or more of any classifications so made or with respect to all of said classifications.

(f) No provision shall be inserted in any retail installment contract whereby the buyer waives or purports to waive any provision of this chapter, and any such waiver or purported waiver shall be void and of no effect. The Commissioners are authorized in their discretion, by regulation (1) to prohibit the inclusion in any retail installment contract of any provision waiving or purporting to waive any provision of any regulation promulgated by the Commissioners relating to retail installment transactions, and (2) to provide that any such waiver or purported waiver, shall be void and of no effect. (Apr. 22, 1960, 74 Stat. 69, Pub. L. 86-431, § 2.)

EFFECTIVE DATE

Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.

§ 40-903. Bonding of automobile dealers and applicants—Liability Insurance—Designation of Commissioners as agents for service of process—Limitation on bonds—Action on bonds.

(a) In connection with the licensing of persons under the authority of chapter 23 of title 47, the Commissioners are authorized to require either bonds or such other security as they may by regulation deem necessary, of persons licensed to engage in the business of buying or selling motor vehicles and of persons licensed to engage in the business of purchasing contracts for the retail installment sales of motor vehicles, and the Commissioners may, from time to time, and in their discretion, establish classes and subclasses of such persons and, subject to subsection (b) of this section, specify the amount and conditions of the bond to be deposited by each of the members of any such class or subclass. In connection with the licensing of said persons, and the bonding of the members of any class or subclass of the said persons, the Commissioners, in their discretion, may by regulation require applicants for licenses:

(1) to furnish and keep in force a bond running to the District, or other security, to protect members of the public against financial loss by reason of the failure of the licensee or of any officer, agent, employee, or other person acting on behalf of said licensee, to observe any law or regulation in force in the District of Columbia applicable to the licensee's conduct of the licensed business;

(2) to procure and keep in force public liability insurance or property damage insurance, or both;

(3) to appoint the Commissioners as their true and lawful attorney upon whom all judicial and other process or legal notice directed to such person may be served.

(b) The bonds authorized by this section shall be corporate surety bonds in amounts to be fixed by the Commissioners, but no bond shall exceed \$25,000, and such bond shall be conditioned upon the observance by the licensee and any officer, agent, employee, or other person acting on behalf of said licensee, of all laws and regulations in force in the District applicable to the licensee's conduct of the licensed business, for the benefit of any person who may suffer damages resulting from the violation of any such law or regulation by or on the part of such licensee or any officer, agent, employee, or other person acting on behalf of the licensee.

(c) Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of the second, third, and the fifth subparagraphs of paragraph (b) of section 1-244, shall be applicable to each bond authorized by this section as if it were the bond authorized by the first subparagraph of such paragraph (b) of section 1-244: *Provided*, That nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries. (Apr. 22, 1960, 74 Stat. 71, Pub. L. 86-431, § 3.)

EFFECTIVE DATE

Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.

§ 40-904. Delegation of functions—Exception.

With the exception of the function of making regulations to carry out the purposes of this chapter, the Commissioners are authorized to delegate, with power to redelegate, any of the functions vested in them by this chapter. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 5.)

EFFECTIVE DATE

Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.

§ 40-905. Promulgation of regulations—Public hearings.

The Commissioners are authorized to promulgate regulations to carry out the purposes of this chapter: *Provided*, That no such regulation shall become effective until after a public hearing has been held

thereon. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 6.)

EFFECTIVE DATE

Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.

§ 40-906. False statements.

No person shall make any statement required or authorized by this chapter to be filed with the Commissioners, knowing that the information set forth in such statement is false. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 7.)

EFFECTIVE DATE

Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.

§ 40-907. Penalties.

Any person who shall violate any provision of this chapter or of any regulation promulgated by the Commissioners under the authority of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment for not more than six months, or both. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 8.)

EFFECTIVE DATE

Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.

§ 40-908. Corporation counsel to conduct prosecutions.

Prosecutions for violations of this chapter, or of the regulations made pursuant thereto, shall be conducted in the name of the District by the Corporation Counsel or any of his assistants. As used in this chapter the term "Corporation Counsel"

means the attorney for the District, by whatever title such attorney may be known, designated by the Commissioners to perform the functions prescribed for the Corporation Counsel in this chapter. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 9.)

EFFECTIVE DATE

Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.

§ 40-909. Additional authority granted to Commissioners.

The authority and power vested in the Commissioners by any provision of this chapter shall be deemed to be additional and supplementary to authority and power now vested in them, and not as a limitation. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 10.)

EFFECTIVE DATE

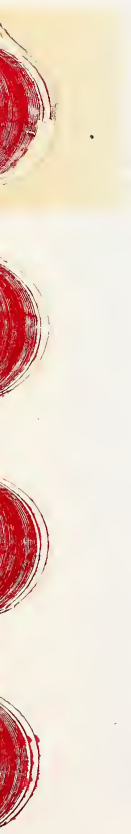
Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.

§ 40-910. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not effect other provisions or the application of this chapter which can be effected without the invalid provision or application, and to this end the provisions of this chapter are severable. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 11.)

EFFECTIVE DATE

Section effective on the thirtieth day after Apr. 22, 1960, see section 12 of act Apr. 22, 1960, set out as a note under section 40-901.



41

42

43

44

TITLE 41.—PARTNERSHIPS

Chap.	Sec.
1. Limited Partnerships.....	41-101
2. Dissolution and Payment of Debts.....	41-201

Chapter 1.—LIMITED PARTNERSHIPS

Sec.	Text
41-101.	Limited partnerships—For what purposes to be formed.
41-102.	"General and special partners" defined.
41-103.	Number of special partners.
41-104.	Liability of special partners.
41-105.	Certificate to be signed.
41-106.	Acknowledgment and recording.
41-107.	Affidavits to be filed.
41-108.	Partnership not formed until certificate and affidavit filed.
41-109.	False statements.
41-110.	Repealed.
41-111.	Effect of failure to acknowledge and record certificate.
41-112.	Repealed.
41-113.	Renewal of partnership.
41-114.	General partnership to result from failure to properly renew.
41-115.	What shall be a dissolution.
41-116.	Effect of acts after dissolution.
41-117.	Name to be used.
41-118.	What names to be used in suits.
41-119.	Effect of use in firm of name of special partner.
41-120.	Who to transact business.
41-121.	Withdrawal of capital.
41-122.	Reduction of capital.
41-123.	Assignment with preferences.
41-124.	Special partner violating sections 41-122 and 41-123 liable as general partner.
41-125.	Creditors to have preference over special partner.
41-126.	Suits to be against general partners only, in what cases.
41-127.	Suits against general and special partners may be prosecuted against general partners.
41-128.	New suits against special partners after judgment against general partners.
41-129.	Judgment prima facie evidence—Merger of partnership debt in judgment.
41-130.	Voluntary dissolution.
41-131.	Liability of the general partners.

§ 41-101. Limited partnerships—For what purposes to be formed.

Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within the District may be formed by two or more persons upon the terms, with the rights and powers, and subject to the conditions and liabilities prescribed in this title. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1498.)

§ 41-102. "General and special partners" defined.

Such partnership may consist of one or more persons, who shall be called general partners and who shall be jointly and severally responsible as general partners are by law, and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital to the common stock, who shall be called special partners. (Mar. 3, 1901, 31 Stat. 1415 ch. 854, § 1499.)

NOTES TO DECISIONS

1. Liability

Persons who hold themselves out or knowingly permit others to hold them out as partners become bound as partners to all who deal with them in that apparent relation. *Orndorff v. Cohen* (D. C. Mun. App. 1949, 62 A. 2d 794).

§ 41-103. Number of special partners.

The number of special partners shall in no partnership exceed six. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1500.)

§ 41-104. Liability of special partners.

The special partners shall not be liable for the debts of the partnership beyond the fund contributed by them to the capital. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1501.)

§ 41-105. Certificate to be signed.

Persons desirous of forming a limited partnership shall make and severally sign a certificate which shall contain—

First. The name or ¹ firm under which such partnership is to be conducted.

Second. The general nature of the business intended to be transacted.

Third. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners and their respective places of residence.

Fourth. The amount of capital which each special partner shall have contributed to the common stock.

Fifth. The period at which the partnership is to commence and the period at which it is to terminate. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1502.)

§ 41-106. Acknowledgment and recording.

The certificate shall be acknowledged by the several persons signing the same before a judge of any court in the District, or before any notary public, and such acknowledgments shall be made and certified in the same manner as the acknowledgments of deeds of land, and when so acknowledged and certified shall be filed in the office of the clerk of the United States District Court for the District of Columbia, and shall be recorded by him at large in a book kept for that purpose, open to public inspection. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1503; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

¹ So in original. Probably should read "of".

CROSS REFERENCE

Failure to acknowledge and record certificate, see § 41-111.

§ 41-107. Affidavits to be filed.

At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as directed in section 41-106 an affidavit of one or more of the general partners shall also be filed therewith in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1504.)

§ 41-108. Partnership not formed until certificate and affidavit filed.

No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded, nor until an affidavit shall have been made and filed, as directed by sections 41-105, 41-106 and 41-107. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1505.)

§ 41-109. False statements.

If any false statement, not the result of accident or mistake, shall be made in the certificate or affidavit required by sections 41-105, 41-106, and 41-107, all the persons interested in the partnership shall be liable for all the engagements of such partnership as general partners. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1506.)

§ 41-110. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Section, act Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1507, required publication of the terms of partnership in two newspapers.

§ 41-111. Effect of failure to acknowledge and record certificate.

If the procedure prescribed in section 41-106 be not made, the partnership shall be deemed general. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1508; June 16, 1953, 67 Stat. 62, ch. 117, § 1.)

AMENDMENT

1953—Act June 16, 1953, substituted "If the procedure prescribed in section 41-106" for "If the publication prescribed in section 41-110."

§ 41-112. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Section, act Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1509, related to affidavit as to publication by editors or publishers of newspapers.

§ 41-113. Renewal of partnership.

Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, acknowledged, and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner required by the provisions of this title for its original formation. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1510.)

§ 41-114. General partnership to result from failure to properly renew.

Every partnership which shall be renewed and continued otherwise than as provided in this title shall be deemed a general partnership. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1511.)

§ 41-115. What shall be a dissolution.

Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1512.)

§ 41-116. Effect of acts after dissolution.

Every partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership under the provisions of section 41-113. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1513.)

§ 41-117. Name to be used.

The business of the partnership may be conducted under the name of any one or more of the general partners, and with or without the addition of the word Co. or company, as the parties may determine. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1514.)

§ 41-118. What names to be used in suits.

In any action or suit brought on any contract or engagement of the partnership, or to enforce any liability of the same, the general partners whose names shall be used in the firm or business shall be the only necessary defendants; and any judgment or decree recovered against such defendants shall have the same legal effect and operation and execution thereon shall be enforced and have like effect against the partnership assets as if the judgment or decree had been recovered against the general partners. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1515.)

CROSS REFERENCES

Parties to actions, see § 13-401.

Partners as witnesses, see § 14-304.

§ 41-119. Effect of use in firm of name of special partner.

If the name of any special partner shall be used in the firm with his privity, he shall be deemed a general partner. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1516.)

§ 41-120. Who to transact business.

The general partners only shall transact the business, and if a special partner shall interfere contrary to this provision he shall be deemed a general partner, but he may from time to time examine into the state and progress of the partnership concerns and advise as to their management. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1517.)

§ 41-121. Withdrawal of capital.

No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits, or otherwise, during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him if the payment of such interest shall not reduce the original amount of such capital; and if after the payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1518.)

§ 41-122. Reduction of capital.

If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest, on being notified thereof. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1519.)

§ 41-123. Assignment with preferences.

Every sale, assignment, or transfer of any property or effects of a partnership, or of any general partner, made by such partnership or general partner when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of any general partner, with the intent of giving preference to any creditor of such partnership or insolvent partner, and every judgment confessed, lien created, or security given by such partnership or general partner under the like circumstances and with the like intent, shall be void as against the creditors of such partnership. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1520.)

§ 41-124. Special partner violating sections 41-122 and 41-123 liable as general partner.

Every special partner who shall violate any of the provisions of sections 41-122 and 41-123 or who shall concur in or assent to any such violation by the partnership or by any individual partner, shall be liable as a general partner. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1521.)

§ 41-125. Creditors to have preference over special partner.

In case of the insolvency or bankruptcy of a partnership no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1522.)

§ 41-126. Suits to be against general partners only, in what cases.

All suits respecting the business of the partnership shall be brought by and against the general partners only, subject to the provisions of section 41-118, except in those cases in which provision is made in this title that special partners shall be deemed general partners and special partnerships general partnerships, in which cases all persons so becoming general partners may be joined with those originally general partners in any suit brought against such partnerships. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1523.)

CROSS REFERENCE

Parties to action, see § 41-118.

NOTES TO DECISIONS**1. Liability of partners**

Persons who hold themselves out or knowingly permit others to hold them out as partners become bound as partners to all who deal with them in that apparent relation. *Orndorff v. Cohen* (D. C. Mun. App. 1949, 62 A. 2d 794).

When liability of a partner must be predicated on the fact that one of them was held out by another as a partner, it must appear that the person so held out consented in fact to the holding out, or when the fact of the hold-

ing out came to his knowledge, he negligently failed to assert the non-existence of the partnership in time to prevent others from relying thereon. *Id.*

§ 41-127. Suits against general and special partners may be prosecuted against general partners.

If, in any case or suit brought against general and special partners, it shall appear at the trial of the case that the special partners or any one of them are not liable to the suit of the plaintiff, the court may proceed to judgment or decree against the partners who may appear to be liable, in the same manner as if such partners were the only parties defendant to the suit, excepting that the partners who may be deemed not liable shall recover their legal costs against the plaintiffs. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1524.)

§ 41-128. New suits against special partners after judgment against general partners.

If, in any case or suit brought against general and special partners, the creditor shall recover a judgment or obtain a decree against the general partners only, and shall afterward discover that special partners, or some one or more of them, have become liable as general partners, he may bring a new suit against such special partner or partners. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1525.)

§ 41-129. Judgment prima facie evidence—Merger of partnership debt in judgment.

In the suits mentioned in sections 41-127 and 41-128 the judgment recovered shall be prima facie evidence of the amount due by the partnerships, and the partnership debt shall not be merged in any judgment or decree recovered or obtained against any partner or partners as against any other partner or partners. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1526.)

§ 41-130. Voluntary dissolution.

No dissolution of such partnership by act of the partners shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, unless in consequence of the death of one of the partners or insolvency of the partnership or of one of the general partners, nor until a notice of such dissolution shall have been filed and recorded in the office of the clerk of the United States District Court for the District, and published once a week for four weeks in two newspapers to be designated by the clerk, which publication may be proved by affidavit, and recorded as hereinbefore prescribed for the publication of the certificate for the formation of such partnership. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1527; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 41-131. Liability of the general partners.

The general partners shall be liable to account to each other and to the special partners for the management of the concern, both at law and in equity. (Mar. 3, 1901, 31 Stat. 1418, ch. 854, § 1528.)

NOTES TO DECISIONS

1. Right to sue

The law does not forbid partners to sue each other at law merely because they are or have been partners. It is only when the adjustment of the matter in controversy involves an investigation and audit of the partnership account that resort must be had to equity. *Boyle v. Smith* (D. C. Mun. App. 1949, 64 A. 2d 428).

Chapter 2.—DISSOLUTION AND PAYMENT OF DEBTS

Sec.

41-201. Composition with creditors on dissolution.

41-202. Memorandum of exoneration may be furnished—
Use of memorandum in evidence or to release judgment.

41-203. Other partners not discharged.

41-204. Partners' right of contribution.

§ 41-201. Composition with creditors on dissolution.

Where a partnership is dissolved, by mutual consent or otherwise, any partner may make a separate composition or compromise with any creditor of the partnership; and such a composition or compromise shall be a full and effectual discharge to the debtor who makes the same, and to him only, of and from all and every liability to the creditor with whom the same is made, according to the terms thereof. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1494.)

CROSS REFERENCES

Dissolution of limited partnership, see §§ 41-115, 41-130.
Separate compromise by one of several joint debtors, see § 16-906.

NOTES TO DECISIONS

1. Negotiable instruments

It is not within the general scope of the authority of one partner to make or endorse negotiable paper in the firm name. *Presbrey v. Thomas* (1 App. D. C. 171).

§ 41-202. Memorandum of exoneration may be furnished—Use of memorandum in evidence or to release judgment.

Every such debtor who makes such composition or compromise may take from the creditor with whom he makes the same a note or memorandum, in writing, exonerating him from all and every individual liability incurred by reason of his connection with the partnership, which note or memorandum may be given in evidence by such debtor, in bar of such creditor's right of recovery against him; and if such liability be by judgment, then, on the production and filing with the clerk of the notes or memorandum, the clerk shall enter the judgment as released by the plaintiff as far as the compromising debtor is concerned. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1495.)

NOTES TO DECISIONS

Discretion of commission 1
Federal laws, scope of 2
Power to fix rates 3

1. Discretion of commission

In public utility rate proceeding, Public Utility Commission's refusal of demand of intervening Price Administrator that thoroughgoing examination be made into rate base, rate of return, operating expenses, depreciation, and all other matters relative to establishment of fair return was not an abuse of discretion. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

2. Federal laws, scope of

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

3. Power to fix rates

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

§ 41-203. Other partners not discharged.

Such compromise or composition with an individual member of a firm shall not be held to discharge the other partners, nor shall it impair the right of the creditor to proceed against such members of the partnership as have not been discharged; and the members of the partnership so proceeded against shall be permitted to set off any demand against the creditor which could have been set off had the suit been brought against all the individuals composing the firm. Nor shall the compromise or discharge of an individual member of a firm prevent the other members of the firm from availing themselves of any defense that would have been available had this title not been passed, except that they shall not set up the discharge of one individual as a discharge of the other partners, unless it appear that all were intended to be discharged; but the discharge of any such partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1496.)

§ 41-204. Partners' right of contribution.

Such compromise or composition of a member of a firm with a creditor of such firm shall in no wise affect the right of the other partners to call on the member who makes it for his ratable proportion of any partnership debt which they may be compelled to pay. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1497.)

42

43

44

TITLE 42.—PERSONAL PROPERTY

Chap.	Sec.
1. Recordation of Instruments.....	42-101

Chapter 1.—RECORDATION OF INSTRUMENTS

Sec.	
42-101. Recording of bills of sale, chattel mortgages, and deeds of trust.	
42-102. Instruments relating to chattels need not be transcribed—Instruments retained by recorder—Legal effect.	
42-103. Conditional sales.	
42-104. Void instruments—Disposal.	
42-105. Instrument of release.	
42-106. Destruction of released instruments.	
42-107. False statements—Penalty.	

§ 42-101. Recording of bills of sale, chattel mortgages, and deeds of trust.

No bill of sale, mortgage, or deed of trust to secure a debt of any personal chattels whereof the vendor, mortgagor, or donor shall remain in possession, shall be valid or effectual to pass the title therein, except as between the parties to such instruments and as to other persons having actual notice of it, unless the same be executed, acknowledged, and within ten days from the date of such acknowledgment filed in the office of the recorder of deeds and the said filing of such instrument therein as aforesaid as to third persons not having notice of it as aforesaid shall be operative only from the time within the said ten days when it is delivered to said recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 546-A, formerly § 546; Mar. 3, 1925, 43 Stat. 1103, ch. 417; renumbered June 5, 1952, 66 Stat. 126, ch. 370, § 1.)

AMENDMENT

1925—Act Mar. 3, 1925, eliminated provision for recording in the same manner as deeds of real estate, and substituted provision for filing in the office of the recorder of deeds.

CROSS REFERENCES

Application to motor vehicle liens, see §§ 40-701, 40-702.
 Bills of lading, see U.S. Code, title 49, ch. 4.
 Bulk Sales Law, see §§ 28-1701 to 28-1705.
 Concealing, removing, or converting mortgaged property, see § 22-1209.
 Introduction into evidence of records of written instruments, see §§ 14-401, 14-402.
 Negotiable warehouse receipt for mortgaged property, penalty, see § 28-2106.
 Uniform Sales Act, see §§ 28-1101 to 28-1608.
 Warehouse receipts, uniform law, see §§ 28-1801 to 28-2205.

NOTES TO DECISIONS

Actual notice 1
 Construction 2
 Constructive notice 3
 Date of acknowledgment 4
 Failure to deliver possession 5
 Landlord's lien 6
 Purpose 7
 Rights of attaching creditor of vendor 8
 Unrecorded bill of sale 9
 Unrecorded transfer 10

1. Actual notice

The sale is not void as to persons who had "actual notice of it" before their rights accrued. *Splain v. B. F. Goodrich Rubber Co.* (1923, 29 F. 275, 53 App. D. C. 300).

Where automobile dealer had a "floor plan" arrangement by which plaintiff would advance funds to dealer for purchase of automobiles and would take back chattel mortgages, and dealer had arrangement whereby finance company would purchase the conditional sales contracts executed by buyers of automobiles, and the buyer of an automobile gave conditional sales contract which was assigned to finance company but company never received title certificate because dealer had financial difficulties and never repaid plaintiff, plaintiff was estopped from asserting lien against buyer who had no actual knowledge of plaintiff's recorded chattel mortgage lien, and the buyer, not being in default, was entitled to use and enjoyment of automobile, and finance company was entitled to have its lien recorded on certificate of title. *Smith, Kirkpatrick & Co., Inc. v. Continental Autos, Ltd. et al.* (1960, 184 F. Supp. 764).

2. Construction

This chapter applies to chattels, generally, not merely to automobiles, and accordingly a construction peculiarly applicable to motor vehicles is not appropriate. *Fogle v. General Credit* (1941, 122 F. 2d 45, 74 App. D.C. 208, 136 A.L.R. 814).

3. Constructive notice

A mortgagee cannot throw the buyer of mortgaged property off guard concerning protection which this section gives to him and take advantage at the same time of what otherwise would or might have been discovered, and thus if the mortgagee clothes mortgagor with indicia of ownership, or gives him authority to sell the property, or stands by in silence and watches the mortgagor deal with it as owner, the mortgagee nullifies the effect of recording by his inconsistent representation. *Fogle v. General Credit* (1941, 122 F. 2d 45, 74 App. D.C. 208, 136 A.L.R. 814).

The opportunity to investigate is foundation of the "constructive notice" afforded by this section and when it exists unimpaired by any act of mortgagee, this section casts burden of investigation on those who may deal with the mortgagor, and their failure to make it assumes something of the quality of negligence, but this section is a bulwark, not a trap, and mortgagee is favored only so long as he acts consistently with its conditions, and when he goes further and either by his conduct prevents purchaser from making usual investigation or takes advantage of circumstances which he knows or reasonably should know would have such effect, he destroys the foundation on which his own protection rests. *Id.*

4. Date of acknowledgment

"Record is required within 10 days after * * * the act of acknowledgement. There is nothing in the law which requires that acknowledgment of the instrument be of its date, and, unless the delay in acknowledging be unreasonable and intervening rights accrue during the period of delay the recorded instrument will have the same force and effect as if acknowledged on the date of its execution." *R. P. Andrews Paper Co. v. Southern Soda Fountain Co.* (46 App. D. C. 84).

Rights under the mortgage do not relate back to the time of the execution of the deed where mortgage was not acknowledged or recorded until after mortgagor had contracted new debts with third parties without notice. *In re Nolan Motor Co., Inc.* (1938, 25 F. Supp. 186).

The code regarding recordation of chattel mortgages does not require acknowledgment simultaneous with the execution thereof. *Id.*

5. Failure to deliver possession

Failure to deliver possession to the buyer did not make the sale void, but was a fact to be considered by the jury

in determining whether or not the sale was fraudulent. *Splain v. B. F. Goodrich Rubber Co.* (1923, 290 F. 275, 53 App. D. C. 300).

6. Landlord's lien

Whether landlord's lien is embraced within provision requiring recordation of conditional sales contract, see *R. P. Andrews Paper Co. v. Southern Soda Fountain Co.* (46 App. D. C. 84).

7. Purpose

This chapter is intended ordinarily to make a recorded instrument effective to give constructive notice to all with whom person in possession may undertake to deal, but the protection is not entirely one-sided or absolute, and this section has the further function of providing an opportunity for investigation of the title and discovery of liens. *Fogle v. General Credit* (1941, 122 F. 2d 45, 74 App. D. C. 208, 136 A. L. R. 814).

8. Rights of attaching creditor of vendor

Unrecorded bill of sale to automobile which remained in possession of vendor did not operate to pass title to buyer as against attaching judgment creditor of vendor. *Barlow v. Langlands* (D. C. Mun. App. 1955, 110 A. 2d 688).

9. Unrecorded bill of sale

Failure to record bill of sale does not make sale void as to marshal who levied on the property with notice of the transfer of title. *Splain v. B. F. Goodrich Rubber Co.* (1923, 290 F. 275, 53 App. D. C. 300).

10. Unrecorded transfer

Unrecorded transfer is good inter partes. *V. G. Fisher Art Co. v. Hutchins* (41 App. D. C. 156). See, also, *Colbert v. Baetjer* (4 App. D. C. 416).

§ 42-102. Instruments relating to chattels need not be transcribed—Instruments retained by recorder—Legal effect.

It shall not be necessary for the Recorder of Deeds to spread upon the records of his office the instruments filed pursuant to section 42-101 or section 42-103, but the same shall be indexed and, except as hereinafter provided, shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of said office. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 46-C, formerly § 546; Mar. 3, 1925, 43 Stat. 1103, ch. 417; renumbered and amended June 5, 1952, 66 Stat. 126, ch. 370, § 2.)

AMENDMENT

1952—Act June 5, 1952, added "filed pursuant to section 42-101 or section 42-103" following word "instruments", substituted "and, except as hereinafter provided," for "in the manner as deeds to real estate are indexed" and deleted the provision for fees for filing and indexing.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 6 of act June 5, 1952, provided that: "This Act [adding §§ 42-104 to 42-107, and amending the section and sections 40-711, 42-103] shall take effect ninety days after its enactment [June 5, 1952]."

CROSS REFERENCES

Application to motor vehicle liens, § 40-702.
See notes to § 42-101.

§ 42-103. Conditional sales.

No conditional sale of chattels in virtue of which the property is delivered to the purchaser, but by the terms of which the title is not to pass until the price of said chattels is fully paid, where the purchase-price exceeds \$100, shall be valid as against third persons acquiring title to said property from said purchaser without notice of the terms of said sale, unless the terms of said sale are reduced to writing and signed by the parties thereto and ac-

knowledge by the purchaser and filed in the office of the Recorder of Deeds of the District of Columbia, and said writing shall be indexed as if the purchaser were a mortgagor and the seller a mortgagee of such chattels, and shall be operative as to third persons without actual notice of it from the time of being filed. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 546-B, formerly § 547; June 30, 1902, 32 Stat. 533, ch. 1329; Mar. 3, 1925, 43 Stat. 1103, ch. 417; renumbered and amended June 5, 1952, 66 Stat. 126, ch. 370, § 1.)

AMENDMENTS

1952—Act June 5, 1952, struck out provisions for collection of fees for filing and indexing, and the effective date of the 1925 amendment.

1925—Act Mar. 3, 1925, substituted "where" for "when" preceding "the purchase price exceeds \$100", "filed in the office of the recorder of deeds of the District of Columbia" for "recorded in the same manner as a chattel mortgage, as hereinabove provided", and "filed" for "so recorded", and added the last sentence providing for fees for filing and indexing.

1902—Act June 30, 1902, added the words "when the purchase price exceeds \$100".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act June 5, 1952, effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42-102.

CROSS REFERENCES

Criminal penalty for concealing, removing, or converting property held under conditional sales contract, see § 22-1406.

Motor vehicle liens, see § 40-702.

NOTES TO DECISIONS

Assignee of lease 1
Construction and application 2
Election of remedies 3
Fictitious names, use of 4
Landlord's lien 5
Notice 6
Oral agreement 7
Title withheld 8
Unrecorded conditional sale 9
Warehouseman's lien 10

1. Assignee of lease

Assignee of lease was not a third person "acquiring title to said property from said purchaser." *Palm v. Bachrach* (1925, 5 F. 2d 125, 55 App. D. C. 302).

2. Construction and application

Whether creditor of vendee in contract of conditional sale, or of purchaser (without notice) from him, are entitled to the benefits of this section, see *Baum v. Knabe Mfg. Co.* (33 App. D. C. 237).

"Since this statute restricts the rights of property by regulating its use its scope may not be broadened by construction." *Gill v. Kahl-Holt Co.* (47 App. D. C. 53).

Lease construed as conditional sales agreement. *Stern v. Drew* (1923, 285 F. 925, 52 App. D. C. 191). See, also, *Smith v. Gilmore* (7 App. D. C. 192).

3. Election of remedies

Election of remedies as affecting rights under conditional bill of sale, see *Smith v. Gilmore* (7 App. D. C. 192).

4. Fictitious names, use of

A conditional seller who records conditional sale agreement obtains full protection under this section, even though such instrument was executed in a fictitious name by buyer. *Zweig v. Schwartz* (1943, 31 A. 2d 857).

5. Landlord's lien

Unrecorded conditional sale contract of chattels brought upon leased premises is superior to landlord's lien on chattels. *Stern Co. v. Rosenberg* (1937, 89 F. 2d 843, 67 App. D. C. 99).

6. Notice

Where conditional buyer of \$400 diamond ring perpetrated fraud in representing herself to be another person, but sellers did not record conditional sale agreement and second-hand dealer purchased ring for \$75 in usual course

of business from one known to the dealer, the price paid was not so inadequate as to constitute "notice" to the second-hand dealer of possible defects in the title acquired by him. *Zweig v. Schwartz* (1943, 31 A. 2d 857).

7. Oral agreement

An assignee of after-acquired property takes it subject to the conditions with which it is encumbered, notwithstanding that such encumbrance is an oral conditional sales agreement. *Gill v. Kahl-Holt Co.* (47 App. D. C. 53)

8. Title withheld

"A sale and delivery of personal property on condition that the title remain in the vendor until performance of the condition authorizes the vendor, in case of failure to fulfill the conditions, to repossess himself of the property, not only from the vendee but from those holding under him. * * * Such a condition may exist either in the case of a sale for cash or on time." *Minnix Co. v. L. C. Smith & Bros. Typewriter Co.* (33 App. D. C. 357).

Title does not pass until condition is fulfilled. *Minnix Co. v. L. C. Smith & Bros. Typewriter Co.* (33 App. D. C. 357). See, also, *Wall v. De Mitkiewicz* (9 App. D. C. 109).

9. Unrecorded conditional sale

When property under conditional sale contracts is reserved in the vendor until the purchase price is paid, such contracts are valid even though unrecorded except as against third persons acquiring title without notice of the terms of sale. *Baum v. Knabe Mfg. Co.* (33 App. D. C. 237).

Unrecorded conditional sale was valid against judgment, creditor levying upon buyer's property. The provision that it should not be valid against third persons without notice applies only in favor of subsequent purchasers and mortgagees. *Higgins v. Central Cigar Co.* (1929, 32 F. 2d 400, 59 App. D. C. 9).

Unrecorded conditional sale contract superior to levy on an automobile, the latter not transferring any title. *C. I. T. Corp. v. Carl* (1936, 85 F. 2d 809, 66 App. D. C. 232).

At common law a conditional bill of sale was valid not only as between parties but also as to third parties, but under this section when purchase price exceeds \$100, unless seller protects his lien by recording the conditional sale agreement, the buyer may convey an indefeasible title to a third party for value and without notice. *Zweig v. Schwartz* (1943, 31 A. 2d 857).

Even though conditional buyer perpetrated fraud in representing herself to be another person, conditional sellers who did not avail themselves of benefit of this section could not recover from subsequent buyer if he was a purchaser for value and acquired title without notice of the conditional sale. *Id.*

10. Warehouseman's lien

Conditional sale contract, not of record, is inferior to warehouseman's lien. *Fidelity Storage Co. v. Reliable Stores Corp.* (1934, 69 F. 2d 569, 63 App. D. C. 83).

§ 42-104. Void instruments—Disposal.

Every instrument filed with the Recorder of Deeds pursuant to section 42-101 or section 42-103 and instruments filed with said Recorder or presented for recording pursuant to sections 40-701 to 40-715, shall be void as against the creditors of the party indebted thereon and subsequent purchasers or mortgagees in good faith after the expiration of seven years from the filing thereof, unless, within ninety days next preceding the expiration of the term of seven years from such filing and each seven-year period thereafter, the vendor, mortgagee, trustee, conditional vendor, or donor shall make and file an affidavit setting forth the amount then due and unpaid: *Provided*, That no such instrument filed prior to September 3, 1952, shall be void as against such creditors, subsequent purchasers or mortgagees, if such affidavit be made and filed within ninety days before the expiration of seven years from the filing of such instrument or one year

from September 3, 1952, whichever is later, and each seven-year period thereafter. The Recorder of Deeds shall attach such affidavit after the filing thereof to the instrument to which it relates. The Recorder of Deeds may destroy any such instrument which has become void under the provisions of this chapter, together with any affidavit, release and assignment relating thereto: *Provided*, That such destruction shall not be effected until the expiration of one year from September 3, 1952: *Provided*, That this paragraph shall not be applicable to any bill of sale, mortgage, deed of trust, or conditional sale of railroad rolling stock filed pursuant to section 42-101 or section 42-103 of this chapter. (Mar. 3, 1901, ch. 854, § 546-D, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3, and amended June 18, 1953, 67 Stat. 64, ch. 126, § 1.)

AMENDMENT

1953—Act June 18, 1953, added proviso that this section would not be applicable to any bill of sale, mortgage, deed of trust, or conditional sale of railroad rolling stock filed pursuant to section 42-101 or section 42-103.

EFFECTIVE DATE

Section effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42-102.

§ 42-105. Instrument of release.

When the debt secured by any instrument filed pursuant to section 42-101 or section 42-103 of this chapter has been paid in full, the vendor, mortgagee, trustee or conditional vendor or his assignee shall, within twenty days thereafter, (a) execute or cause to be executed a release thereof, acknowledged before a notary public, and (b) deliver or cause to be delivered such release to the Recorder of Deeds. The Recorder (a) shall file the instrument of release by attaching the same to the instrument to which it relates; and (b) shall enter on the released instrument and on the index record thereof the word "released", the date of filing of the instrument of release and a facsimile of his signature. (Mar. 3, 1901, ch. 854, § 546-E, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3.)

EFFECTIVE DATE

Section effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42-102.

§ 42-106. Destruction of released instruments.

When any instrument filed pursuant to section 42-101 or section 42-103 of this chapter has not become void but has, subsequent to September 3, 1952, been released as provided in section 42-105 of this chapter, the Recorder may, after the expiration of three years from the date of the filing of such release, destroy such instrument, the release, and assignments relating thereto. (March 3, 1901, ch. 854, § 546-F, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3.)

EFFECTIVE DATE

Section effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42-102.

§ 42-107. False statements—Penalty.

Any person intentionally making a false statement with respect to an instrument filed with the

Recorder of Deeds pursuant to section 42-101 or section 42-103 of this chapter, or who, after receipt of payment in full of the debt secured by any such instrument, shall, for a period of more than twenty days after written demand by the person indebted, neglect or refuse to execute and file with the Recorder of Deeds a release as provided in section 42-105 of this chapter shall upon conviction be punished by a fine of not more than \$500 or be imprisoned for not more than one year, or both.

Prosecutions for violations of this chapter shall be by the Corporation Counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia. (Mar. 3, 1901, ch. 854, § 546-G, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3.)

EFFECTIVE DATE

Section effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42-102.

TITLE 43.—PUBLIC UTILITIES

Chap.		Sec.
1.	Definition of Terms and Application of law	43-101
2.	Creation of Public Utilities Commission—Members—Counsel—Employees ..	43-201
3.	Service, Valuation, Accounts	43-301
4.	Rates, Examinations, Investigations, and hearings	43-401
5.	Sale and Merger of Utilities	43-501
6.	Gas and Electric Corporations	43-601
7.	Orders and Court Proceedings	43-701
8.	Issuance of Securities	43-801
9.	Penal Provisions	43-901
10.	General Provisions	43-1001
11.	Electric Light and Power Companies—Special Acts	43-1101
12.	Gas Companies—Special Acts	43-1201
13.	Private Conduits	43-1301
14.	Telegraph and Telephone Companies	43-1401
15.	Water Supply, Assessments, and Rates ..	43-1501
16.	Sanitary Sewage Works	43-1601

Chapter 1.—DEFINITION OF TERMS AND APPLICATION OF LAW

Sec.	
43-101.	Definitions—Commission.
43-102.	Commissioner.
43-103.	Public utility.
43-104.	Service.
43-105.	Corporation.
43-106.	Person.
43-107.	Joint rates.
43-108.	Extension or extensions.
43-109.	Street railroad.
43-110.	Street railroad corporation.
43-111.	Common carrier—Exempt organizations.
43-112.	Gas plant.
43-113.	Gas corporation.
43-114.	Electric plant.
43-115.	Electrical corporation.
43-116.	Water-power company.
43-117.	Telephone corporation.
43-118.	Telephone line.
43-119.	Telegraph corporation.
43-120.	Telegraph line.
43-121.	Pipe-line company.
43-122.	Chapters 1-10 of this title applicable to transportation of passengers, freight, or property within the District of Columbia—Construction in connection with Constitution and interstate commerce laws.
43-123.	Corporations subject to chapters 1-10 of this title.

§ 43-101. Definitions—Commission.

For the purpose of chapters 1-10 of this title the term "commission" when used herein shall mean the Public Utilities Commission of the District of Columbia created by chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43-102. Commissioner.

The term "commissioner" when used in chapters 1-10 of this title shall mean one of the members of such commission. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43-103. Public utility.

The term "public utility" as used in chapters 1-10 of this title shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electrical corporation, water power company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipe line company. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

NOTES TO DECISIONS

1. Automobile for hire

Owner of automobile who hires out the vehicle and his services by the hour, was not a "public utility," *Bell v. Harlan* (1927, 20 F. 2d 271, 57 App. D. C. 255).

§ 43-104. Service.

The term "service" is used in chapters 1-10 of this title in its broadest and most inclusive sense. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

NOTES TO DECISIONS

1. In general

Under the act of Congress applicable to the District of Columbia requiring public utilities to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, the term "service" is used in its broadest and most inclusive sense. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43-105. Corporation.

The term "corporation" when used in chapters 1-10 of this title includes a corporation, company, association, and joint-stock company or association. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43-106. Person.

The word "person" when used in chapters 1-10 of this title includes an individual and a firm or co-partnership. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43-107. Joint rates.

The term "joint rates" when used in chapters 1-10 of this title with reference to street railways shall be taken to mean rates between unrelated lines in effect on March 4, 1913, under then existing law or under contract, or which may thereafter be specifically authorized by law. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43-108. Extension or extensions.

The term "extension or extensions" when used in chapters 1-10 of this title shall include the reasonable extension of the service and facilities of every street railroad, street railroad corporation, gas plant, gas corporation, electric plant, electrical corporation, telephone corporation, telephone line, telegraph line, and telegraph corporation as the same are defined in chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43-109. Street railroad.

The term "street railroad" when used in chapters 1-10 of this title includes every such railroad, whether wholly or partly in the District of Columbia, by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, and includes all equipment, construction, maintenance, repairs, switches, spurs, tracks, terminals, terminal facilities of every kind, trackage, joint or reciprocal trackage, transfers of passengers between street railways having connecting lines and street railways having independent lines, subways, tunnels, and stations, used, operated, or owned by or in connection with any such street railroad, and all the property of the same used in the conduct of its business. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43-110. Street railroad corporation.

The term "street railroad corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any street railroad or any cars or other equipment used thereon or in connection therewith. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43-111. Common carrier—Exempt organizations.

The term "common carrier" when used in chapters 1-10 of this title includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire. Steam railroads, express companies subject to the jurisdiction of the Interstate Commerce Commission, the Washington Terminal Company, and the Norfolk and Washington Steamboat Company, and all companies engaged in interstate traffic upon the Potomac River and Chesapeake Bay and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia, and the Washington-Virginia Railway Company, excepting as to the regulation of its operation inside of the District of Columbia, are excluded from the operation of chapters 1-10 of this title, and are not included in the term "common carrier." (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; Feb. 25, 1916, 39 Stat. 13, ch. 34; Aug. 21, 1916, 39 Stat. 521, ch. 367; Aug. 26, 1916, 39 Stat. 536, ch. 412.)

AMENDMENTS

1916—Act Aug. 26, 1916, added all beginning with "and the Washington-Virginia Old Dominion" and ending with "District of Columbia."

Act Aug. 21, 1916, added the following: "express companies subject to the jurisdiction of the Interstate Commerce Commission."

Act Feb. 25, 1916, added the following: "and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia."

NOTES TO DECISIONS

Emergency price control act 1
Ownership 2
Taxicab company 3

1. Emergency price control act

One who owned and rented taxicabs to others for operation in the District of Columbia was a "common carrier" within this section and was entitled, under provision of former Emergency Price Control Act, former section 942(c) of title 50, U. S. Code App., to exemption from price control, though rentals which he charged were not actually controlled by Public Utilities Commission. *In re Rice* (1948, 165 F. 2d 617, 83 U. S. App. D. C. 26).

2. Ownership

Under this section providing that term "common carrier" includes every person owning, operating, controlling, or managing any agencies for public use for conveyance of persons or property within the District of Columbia for hire, any person who owns such facilities, regardless of whether he personally operates them, is a "common carrier" subject to regulation by Public Utilities Commission of the District. *In re Rice* (1948, 165 F. 2d 617, 83 U. S. App. D. C. 26).

3. Taxicab company

A taxicab company is a common carrier within this act and subject to the jurisdiction of the Public Utilities Commission. *Terminal Taxicab Co. v. Kutz* (1916, 36 S. Ct. 583, 241 U.S. 252, 60 L. Ed. 984).

§ 43-112. Gas plant.

The term "gas plant" when used in chapters 1-10 of this title includes all buildings, easements, real estate, mains, pipes, conduits, service pipes, services, pipe galleries, meters, boilers, water-gas sets, retorts, fixtures, condensers, scrubbers, purifiers, holders, materials, apparatus, personal property, and franchises, and property of every kind used in the conduct of the business operated, owned, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale, or furnishing of gas (natural or manufactured) for light, heat, or power. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43-113. Gas corporation.

The term "gas corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, and in said district owning, operating, controlling, or managing any gas plant, except where the gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43-114. Electric plant.

The term "electric plant" when used in chapters 1-10 of this title includes all engines, boilers, dynamos, generators, storage batteries, converters, motors, transformers, cables, wires, poles, lamps, meters, easements, real estate, fixtures, and personal property, materials, apparatus, and devices of every kind operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale, or furnishing of electricity for light, heat, or power, and any conduits, ducts, or other devices, materials, apparatus, or property for

containing, holding, or carrying electrical conductors used or to be used wholly or in part for the transmission of electricity for light, heat, or power, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43-115. Electrical corporation.

The term "electrical corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any electric plant, including any water plant, or water property, or water falls, or dam, or water-power stations, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43-116. Water-power company.

The term "water-power company" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling any plant or property, dam or water supply, canal, or power station for the development of water power for the generation of electrical current or other power or for the distribution or sale of such electrical current or other power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43-117. Telephone corporation.

The term "telephone corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43-118. Telephone line.

The term "telephone line" when used in chapters 1-10 of this title includes conduits, ducts, poles, wires, cables, cross arms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits

telephonic communication. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43-119. Telegraph corporation.

The term "telegraph corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles, or property for the purposes of communication, or of transmitting or receiving messages by telegraph, or by any telegraphic apparatus or instrument, or any telegraph line or part of telegraph line used in the conduct of the business of affording for hire, communication by telegraph, or which licenses, lets, or permits telegraphic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43-120. Telegraph line.

The term "telegraph line" when used in chapters 1-10 of this title includes conduits, ducts, poles, wires, cables, cross-arms, instruments, machinery, appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, and routes used, operated, controlled, or owned by any telegraph corporation to facilitate the business of affording communication by telegraph for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43-121. Pipe-line company.

The term "pipe-line company" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling the supply of any liquid, steam, or air through pipes or tubing to consumers for use or for lighting, heating, or cooling purposes, or for power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43-122. Chapters 1-10 of this title applicable to transportation of passengers, freight, or property within the District of Columbia—Construction in connection with Constitution and interstate commerce laws.

Chapters 1-10 of this title shall apply to the transportation of passengers, freight, or property from one point to another within the District of Columbia, and any common carrier performing such service; and chapters 1-10 of this title shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

NOTES TO DECISIONS

Garage business 1
Single operator 2

1. Garage business

A taxicab company which has the exclusive right to taxicab passengers from the Washington terminal, and the exclusive right to the taxicab business out from certain hotels, is to this extent, under the jurisdiction of the Public Utilities Commission, but the Commission has no jurisdiction over its garage business, or rates charged on such business. *Terminal Taxicab Co. v. Kutz* (1916, 36 S. Ct. 583, 241 U. S. 252, 60 L. Ed. 984).

2. Single operator

An operator of a single passenger sedan is not a public utility and does not come under the jurisdiction of an order of Public Utilities Commission requiring financial protection of his patrons. *Bell v. Harlan* (1927, 20 F. 2d 271, 57 App. D. C. 255).

§ 43-123. Corporations subject to chapters 1-10 of this title.

Corporations formed to acquire property or to transact business which would be subject to the provisions of chapters 1-10 of this title, and corporations possessing franchises for any of the purposes contemplated by chapters 1-10 of this title shall be deemed to be subject to the provisions of chapters 1-10 of this title, although no property may have been acquired, business transacted, or franchises exercised. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

Chapter 2.—CREATION OF PUBLIC UTILITIES COMMISSION—MEMBERS—COUNSEL—EMPLOYEES**Sec.**

- 43-201. Members—Eligibility of Commissioners—Oath.
- 43-202. Quorum—Investigations, inquiries, may be undertaken by any Commissioner.
- 43-203. Acts of prior Commission validated.
- 43-204. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.
- 43-205. People's counsel—Duties, term of office, salary, qualifications.
- 43-206. Employees—Compensation—Expenses—Expenditures.
- 43-207. Power withdrawn from Interstate Commerce Commission—Rules and regulations of said Commission to remain in force.
- 43-208. Orders as to repairs—Improvement in equipment, service.
- 43-209. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Utilities Commission.

§ 43-201. Members—Eligibility of Commissioners—Oath.

The Public Utilities Commission of the District of Columbia shall be composed of three commissioners as follows: (1) The Engineer Commissioner of the District of Columbia, and (2) two persons appointed by the President, by and with the advice and consent of the Senate. Each of the appointed commissioners shall receive a salary at the rate of \$7,500 per annum. Of the two commissioners first appointed after December 15, 1926, one shall be appointed for a term of two years, and one for a term of three years, commencing July 1, 1926. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The commission shall at least biennially elect a chairman by a majority vote of its members. No commissioner, other than the said Engineer Commissioner of the District of Columbia, shall, during his term of office, hold any other public office. The commissioners of the District of Columbia shall furnish the Public Utilities Commission with suitable offices and quarters. No person, other than the said

Engineer Commissioner of the District of Columbia, shall be eligible to the office of commissioner of the Public Utilities Commission who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of said Public Utilities Commission who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the commission, the counsel of the commission and every employee of said commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the United States District Court for the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1926—Act Dec. 15, 1926, amended section generally, and among other changes, provided for a Public Utilities Commission composed of the Engineer Commissioner of the District and two commissioners appointed by the President, made provisions for the filling of vacancies on the commission, the biennial election of a chairman by majority vote, and for suitable offices and quarters, fixed the salaries of the appointed members and staggered their terms of office, prohibited the holding of any other public office by the appointees, and prescribed the qualifications for membership on the commission.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCES

Constitutionality of act, see § 43-1003.

Liberal construction of act, see § 43-1003.

Saving clause; laws, orders, rules and regulations prior to this act; proceedings pending, see §§ 43-1005, 43-1006.

NOTES TO DECISIONS**1. Utility companies**

The Public Utilities Commission of the District of Columbia is the special agency created to perform in the first instance the relevant regulatory functions over public utility companies within its jurisdiction, and it may make orders, subject to court review, to carry out its decisions. *Public Utilities Commission of District of Columbia v. Capital Transit Co. et al.* (1954, 214 F. 2d 242, 94 U. S. App. D. C. 140).

§ 43-202. Quorum—Investigations, inquiries may be undertaken by any Commissioner.

A majority of the commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission. Any investigation, inquiry, or hearing within the powers of the commission may be made or held by any commissioner, whose acts and orders, when approved by the commission, shall be deemed to be the order of the commission. The commission shall have power to adopt and publish rules and regulations for the administration of the provisions of chapters 1-10 of this title, including the conduct of its investigations, inquiries, hearings, and other proceedings. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(b); Dec. 15, 1926, 44 Stat. 921, ch. 8, § 1.)

AMENDMENT

1926—Act Dec. 15, 1926, deleted "to govern its proceedings and to regulate the mode and manner of all investigations and hearings pertaining to public utilities" following the word "rules" in the last sentence, and substituted in lieu thereof "and regulations for the administration of the provisions of chapters 1-10 of this title, including the conduct of its investigations, inquiries, hearings, and other proceedings."

CROSS REFERENCES

Investigation of injuries or deaths occurring in the operation of a utility company, see § 43-1001.

Jurisdiction and control over street railroads and bus lines, see § 44-201 et seq.

Powers over motor carriers; liability insurance or bond required, see § 44-301.

Prosecution of violations of rules and regulations, see §§ 43-906 to 43-908.

Recommendations of changes in utility laws, see § 43-304.

Rules and regulations by Commissioners of the District, see § 43-209.

Rules and regulations for street car fenders, see § 44-204.

Rules and regulations for testing gas and electric meters, see § 43-603.

Rules and regulations for testing meters and measuring devices, see § 43-320.

Rules and regulations generally, see § 1-226.

Rules and regulations governing proceedings, investigations, inspections, tests, audits, and hearings before the Commission, see § 43-402.

Rules and regulations governing sliding scale of rates and dividends, see § 43-317.

Rules and regulations of Interstate Commerce Commission, see § 43-207.

Rules, regulations, and forms for accounts of new construction, see § 43-316.

Rules, regulations, and forms for computing depreciation, see § 43-315.

NOTES TO DECISIONS

**Administrative agency 1
Jurisdiction 2**

1. Administrative agency

Congress of the United States exercises exclusive legislative powers within the District of Columbia, and the Public Utilities Commission is merely an administrative agency. *Patrick v. Smith* (1931, 45 F. 2d 924, 60 App D. C. 6).

2. Jurisdiction

Utility companies operating under public franchises and having monopolistic characteristics are subject to special regulations, and cases involving utility's operations are not governed by the ordinary rules applicable to judicial interference in the conduct of a business enterprise. *Public Utilities Commission of District of Columbia v. Capital Transit Co. et al.* (1954, 214 F. 2d 242, 94 U. S. App. D. C. 140).

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D.C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43-203. Acts of prior Commission validated.

Sections 43-201 to 43-203 shall not be construed (1) to invalidate any subpoena, valuation, order, rule, regulation, or revocation, or any rescission, alteration, modification, amendment, or suspension thereof issued by the commission prior to the date on which the commissioners first appointed under section 43-201 take office; or (2) to invalidate any complaint served, or any investigation, inquiry, or hearing held or commenced, or any determination, or decision rendered by the commission prior to such date; or (3) to invalidate, abate, or discontinue any action, suit, trial, or proceeding commenced by or against such commission prior to such date. (Dec. 15, 1926, 44 Stat. 921, ch. 8, § 2.)

CROSS REFERENCE

Other provisions for saving clause for laws, orders, rules, and regulations, and pending proceedings, see §§ 43-1005, 43-1006.

§ 43-204. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.

The corporation counsel of the District of Columbia shall be the general counsel of the commission and shall receive from and be paid out of the appropriations provided and to be provided for the expenses of the commission in addition to his compensation otherwise provided by law the sum of \$1,000 per annum, payable in equal monthly installments. It shall be the duty of the general counsel to represent and appear for the commission in all actions and proceedings involving any question under chapters 1-10 of this title, or under or in reference to any act, order, or proceeding of the commission, and if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized by the commission, and to expedite, in every way possible, final and just determination of all such actions and proceedings; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and of the members thereof, and generally to perform all duties and services as attorney and counsel to the commission which the commission may reasonably require of him. The assistants to the corporation counsel shall perform such duties relating to matters arising under chapters 1-10 of this title and all other matters as the corporation counsel may prescribe. The commission may, if at any time it deems necessary, employ other attorneys at law as additional assistants to the said general counsel for the

performance of such extraordinary legal services for or in behalf of the commission at such special compensation for such additional assistants as the commission may prescribe, which said compensation shall be paid out of the appropriations provided for the expenses of the commission. The said corporation counsel and any of his assistants designated by him or by the commission shall have the right to appear and prosecute any civil, quasi criminal, or criminal case to recover any penalty, forfeiture, fine, or for the imposition of any punishment provided for in chapters 1-10 of this title whether instituted by or on behalf of the United States of America or by or on behalf of the District of Columbia or otherwise, and on every appeal provided by law. The commission may enforce its orders in any case by mandamus or other legal or equitable remedy in any court of competent jurisdiction, and it shall be the duty of the corporation counsel or his assistants to represent the commission in every such proceeding. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91.)

NOTES TO DECISIONS

1. Injunction

Where it appeared that District of Columbia Public Utilities Commission, in determining whether transit company's depreciation reserve was adequate, might find it necessary to issue an order, which would be subject to judicial review, directing withdrawal of amount from earned surplus, but corporation proposed to pay a dividend from earned surplus, preliminary injunction would be issued restraining corporation from paying proposed dividend pending determination of adequacy of reserve. *Public Utilities Commission of District of Columbia v. Capital Transit Co. et al.* (1954, 214 F. 2d 242, 94 U. S. App. D. C. 140).

Where it did not appear that there was a substantial likelihood that Public Utilities Commission of the District of Columbia, after investigation of transit company's financial condition, would be able to conclude that proposed retirement of bond issue would so handicap the company as to require the cancellation or modification of retirement program, Commission was not entitled to preliminary injunction restraining retirement pending investigation. *Id.*

§ 43-205. People's counsel—Duties, term of office, salary, qualifications.

CODIFICATION

Section, act Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91A, as added Dec. 15, 1926, 44 Stat. 921, ch. 8, § 3, provided for a people's counsel appointed by the President by and with the advice and consent of the Senate.

The office, created by act Dec. 15, 1926, to represent and appear for the people of the District at hearings of the Public Utility Commission or in judicial proceedings in matters concerning service furnished by public utilities, to represent petitioners before the commission in complaints as to rates and service, and to investigate service, rates charged, and valuation of properties of utilities, was abolished by 1952 Reorg. Plan No. 5, § 2(b), 66 Stat. 824, set out in Appendix to Title 1, Administration.

§ 43-206. Employees—Compensation—Expenses — Expenditures.

The commission shall have the power in each and every instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of chapters 1-10 of this title, and to fix and pay their compensation within the appropriations provided by Congress. The commission is hereby authorized, within

the appropriation made by Congress, to incur and pay incidental expenses for postage, printing, blanks, books, law books, books of reference, and periodicals, stationery, binding, rebinding, repairing and preservation of records, desks, office furniture and supplies, traveling expenses of the commission, the commissioners, and every officer, agent, and employee thereof, and all other general expenses reasonably necessary to be incurred in carrying out the purposes of chapters 1-10 of this title. All payments and disbursements, as provided in chapters 1-10 of this title, shall be made by the disbursing officer of the District of Columbia upon proper vouchers, certified as required by the commission; and the commission is hereby also granted power and authority to designate and appoint during its pleasure such officers, clerks, inspectors, and employees of the District of Columbia and members of the Metropolitan police force of the District of Columbia to perform any of the duties which the commission may from time to time, respectively, assign to them, and to employ any assistance within the limits of the appropriations for its use made by Act of Congress. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 95.)

§ 43-207. Power withdrawn from Interstate Commerce Commission—Rules and regulations of said Commission to remain in force.

The authority vested by law in the Interstate Commerce Commission by virtue and under the Act of Congress, approved May 23, 1908, entitled "An Act authorizing certain extensions to be made in the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway of Washington, and the Capital Traction Company, in the District of Columbia and for other purposes" shall no longer be exercised by the Interstate Commerce Commission: *Provided*, That the orders, rules, and regulations made by the Interstate Commerce Commission shall continue to be in force until changed, repealed, altered, or amended by the commission created by chapters 1-10 of this title, which said commission is hereby given power and jurisdiction to issue and, at its pleasure, to revoke all permits, or licenses, to carry chapters 1-10 of this title into effect, and its rules and regulations shall be valid and binding on all public-service corporations and on all persons. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

REFERENCE IN TEXT

Act May 23, 1908, referred to in text, is classified to §§ 44-202, 44-203, 44-206, and 44-207.

CROSS REFERENCE

Rules and regulations generally, see § 43-202.

§ 43-208. Orders as to repairs—Improvement in equipment, service.

Whenever the commission shall be of opinion, after hearing had upon its own motion or upon complaint, that repairs, improvements, or changes in any street railroad, gas plant, electric plant, telephone line, telegraph line, pipe line, water-power plant, or the facilities of any common carrier ought reasonably to be made, or that any addition of service or equipment ought reasonably to be made thereto, or that

the vehicles or cars of any street railroad or common carrier are unclean, insanitary, uncomfortable, inconvenient, or improperly equipped, operated, or maintained, or are in need of paint, or unsightly in appearance, or that any addition ought reasonably to be made thereto, in order to promote the comfort or convenience of the public or employees, or in order to secure adequate service or facilities, the commission shall have power to make and serve an order directing that such repairs, improvements, changes, or additions to service or equipment be made within a reasonable time and in a manner to be specified therein, and every such public utility is hereby required and directed to obey every such order of the commission. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

CROSS REFERENCES

New construction, see § 43-316.

Other provisions concerning care, maintenance, and repair of street cars, see § 44-202 et seq.

NOTES TO DECISIONS

Bus lines 1
Street-car vestibules 2

1. Bus lines

Under statutory provision that Capital Transit Company should succeed to property rights and franchises of Capital Traction and Washington Railway Electric Company, subject to right of Public Utilities Commission to order reasonable extension or reasonable abandonment of tracks and facilities, word "facilities" includes buses, and right of Commission to order reasonable extension is not limited to extension of tracks. *Washington, Marlboro & Annapolis Motor Lines Inc. v. Public Utilities Commission of District of Columbia* (1953, 114 F. Supp. 321).

2. Street-car vestibules

This act did not impliedly repeal act March 3, 1905 (§ 44-205), requiring glass vestibules. *Washington R. & Elec. Co. v. District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

§ 43-209. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Utilities Commission.

All the duties, powers, and authority of the Commissioners of the District of Columbia shall continue and remain in full force and effect notwithstanding chapters 1-10 of this title; and all powers, authority and duties of the municipality known as the District of Columbia and all rights vested in said municipality shall continue and remain in full force and effect notwithstanding chapters 1-10 of this title. All the lawful ordinances and regulations made by the Commissioners of the District of Columbia as such, and all other lawful municipal ordinances and regulations, shall continue and remain in full force and effect, and may be altered, changed, or amended, and new ordinances and regulations may be made by the commissioners of the District of Columbia, acting as such, hereafter, notwithstanding chapters 1-10 of this title: *Provided*, That when any order of the Commission created by chapters 1-10 of this title shall be made which shall be inconsistent and repugnant to any municipal ordinance or regulation, or any ordinance or regulation made or to be made by the Commissioners of the District of Columbia, acting as such, then and in such event the order of the Commission created by chapters 1-10 of this title shall be given full force and effect, notwithstanding

such municipal ordinance or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 99.)

CROSS REFERENCES

Power of Commissioner to fix fares charged by public conveyances, see §§ 1-223, 1-224.

Rules and regulations generally, see § 43-202.

Traffic regulations by joint board composed of Commissioners of the District and the Public Utilities Commission, see § 40-603.

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

Sec.

- 43-301. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of Commission.
- 43-302. Use of equipment of other companies—Application to Commission to require such use in event of disagreement.
- 43-303. Commission to compel compliance with chapters 1-10 of this title, with laws, ordinances, and charter—Criminal liability continued.
- 43-304. Proposed changes in law to be submitted to Commission—Hearings—Recommendations to Congress.
- 43-305. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.
- 43-306. Property to be valued as of time of evaluation.
- 43-307. Valuation—Notice and hearing—Statement of valuation to be filed.
- 43-308. Revaluation.
- 43-309. Uniform accounts to be rendered—Separate account of other business may be required.
- 43-310. Commission to prescribe forms of books and records.
- 43-311. Commission to furnish blank forms.
- 43-312. Utilities to have office in the District of Columbia—Books and records of utilities not to be removed from the District of Columbia—Records may be kept at general office of utility.
- 43-313. Accounts to be closed annually—Verified balance sheet to be filed with Commission—Copy to Congress.
- 43-314. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.
- 43-315. Depreciation account—Rates of depreciation—Application of depreciation fund.
- 43-316. Commission to keep informed of new construction—Construction account.
- 43-317. Sliding scale of rates and dividends.
- 43-318. Utilities to furnish accounts and reports—Information to be included.
- 43-319. Annual report of Commission.
- 43-320. Commission to fix adequate and serviceable standards—Regulations for testing products, service, and meters.
- 43-321. Commission to provide for examination and test of appliances—Fees paid by consumer—Appliances to be tested at request of consumer.
- 43-322. Commission may purchase material and equipment for tests—Entry on premises of utilities for purpose of tests.
- 43-323. Schedule of rates to be filed—Existing rates to remain in force until changed.
- 43-324. Rules and regulations affecting rates to be filed.
- 43-325. Copy of rate schedule to be available for public inspection.
- 43-326. Schedule of joint rates to be filed.
- 43-327. Change in schedule—Notice.
- 43-328. New schedules to be filed.
- 43-329. Utility not to receive greater or less compensation than fixed in schedule.
- 43-330. Commission may prescribe changes in form of schedule.

§ 43-301. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of Commission.

Every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminatory charge for such facility or service is prohibited and is hereby declared unlawful. Every public utility is hereby required to obey the lawful orders of the commission created by chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 2.)

CROSS REFERENCES

Constitutionality of act, see § 43-1003.

Criminal penalties for failure to obey laws or rules, regulations or orders of Commission, see §§ 43-906 to 43-908.

Illegal rates of electric power companies, see § 43-1107.

Liberal construction of act, see § 43-1003.

Power to alter unreasonable or discriminatory rate, regulation, or practice, see § 43-911.

Provisions concerning discriminatory rates, see §§ 43-329, 43-902 to 43-904.

Saving clauses for previous laws, orders, rules and regulations, and pending proceedings, see § 43-203.

NOTES TO DECISIONS

Determination of rate base 1

Generally 1

Prudent investment theory of return 2

Gas rates 3

Injunctive relief 4

Jurisdiction 5

Previously established rates 6

Prudent investment theory of return, determination of rate base 2

Right to compel furnishing service 7

Service 8

System rates 9

1. Determination of rate base—Generally

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, use by Public Utility Commission of District of Columbia of power company's system-wide revenues and revenue needs as part of process of reaching approved rate for District of Columbia was proper. *Capital Transit Co. v. Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

If gas rates are to be granted for emergency purposes in a summary proceeding before the District of Columbia Public Utilities Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. *Id.*

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Id.*

District of Columbia Public Utilities Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding that six per cent

was fair rate of return, where risk factor had been materially reduced in recent years and pertinent local conditions and economic factors had not remained static. *Id.*

Gas company's expenditure for adapting customer's appliances to natural gas to permit changeover from manufactured to natural gas is a proper item of expense currently deductible from operating revenues for rate purposes and can be treated as a deferred expense allocable over period of future years. *Id.*

The inclusion of items in gas rate base must meet the test of justness and reasonableness to the consumer as well as to the investor. *Id.*

Under reproduction cost theory, it is unreasonable to burden public with gas rates based on cost of obsolete and abandoned property which no one will conceivably think of reproducing. *Id.*

2. — Prudent investment theory of return

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

Whether gas company's expenditure for adapting customer's appliances to natural gas to permit changeover from manufactured to natural gas should be considered a prudent investment includible in the rate base is a matter for the District of Columbia Public Utilities Commission. *Id.*

In gas rate proceeding, whether risk of obsolescence has been borne by the investor in the past and whether he has been compensated for such risk is an inquiry which must be made in the first instance by the District of Columbia Public Utilities Commission. *Id.*

District of Columbia Public Utilities Commission awarding higher gas rates because of past inequities to investors must support the factual premise by evidence in the record, and if the factual premise that past earnings were not sufficient to compensate investors for inadequate depreciation charges is true the commission can properly require the burden to be borne by consumers or to be shared by investors and consumers depending upon the circumstances. *Id.*

Where conversion to natural gas makes retirement of gas manufacturing plant imminent, District of Columbia Public Utilities Commission, in order to depreciate plant at accelerated pace for gas rate purposes, must determine whether investors have already been compensated for the risk that annual depreciation charges would prove inadequate at time of retirement because of obsolescence. *Id.*

If District of Columbia Public Utilities Commission includes abandoned property in gas rate base, protection of consumer interest requires that such treatment of abandoned property be offset in the rate of return. *Id.*

In gas rate proceeding, compensation to investors for risk of obsolescence may be made either through inclusion of obsolescence as one of the elements used in calculating depreciation expense or as risk considered in fixing the permissible rate of return, so if in the past the risk of obsolescence was so provided for, abandoned property should not be included in the rate base. *Id.*

The prudent investment theory of gas rate base valuation contemplates that rates will enable investor to maintain his original prudent investment intact until it is recovered through annual charges to depreciation expense reflected in a depreciation reserve, and if a unit of property resulting from prudent investment becomes obsolete before it has been recovered in full by the investor it is not necessarily erroneous as a matter of law for the commission to include such property in the rate base until such recovery has occurred, and such a course may be necessary to assure efficiency and progress in the art and continued attraction of capital to the enterprise. *Id.*

The prudent investment theory of gas rate regulation requires determination by District of Columbia Public Utilities Commission of the rate base and of a rate of return on that rate base sufficient to produce adequate revenues above operating expenses, including depreciation, to pay interest on bonds, dividends on stock and maintain financial integrity of the enterprise, and it is essential to inquiry on fair rate of return that there be a study of capital costs of the business, such as service on debt and dividends on stock, in light of returns on other investments in other enterprises having similar risk factor. *Id.*

3. Gas rates

Commission is without power to fix rates at which gas piped from another State will be supplied to local distributing company. *Galloway v. Bell* (1926, 11 F. 2d 558, 56 App. D. C. 172).

4. Injunctive relief

Where telephone company, operating in the District, received a letter from U. S. attorney requesting company to discontinue service because phone was used in violation of District gambling statute, an injunction against the United States attorney would be improper because his action was that of the United States. *Fay v. Miller* (1950, 183 F. 2d 986, 87 U. S. App. D. C. 168).

5. Jurisdiction

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

6. Previously established rates

The legality of past rates cannot be challenged in a gas rate proceeding, and past excessive earnings belong to the gas company and past losses must be borne by the company. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

7. Right to compel furnishing service

Appellant has no positive right to compel the power company to furnish service to him contrary to its own rules and regulations duly approved by the Commission, and the company's right to suspend or discontinue the service in accordance with its notice can neither be controlled nor restrained. *Lewis v. Potomac Elec. Power Co.* (1933, 64 F. 2d 701, 62 App. D. C. 63).

8. Service

Under the act of Congress applicable to the District of Columbia requiring public utilities to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, the term "service" is used in its broadest and most inclusive sense. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

9. System rates

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and system-wide method was pursued in determining rates for District of Columbia consumers, such rates would have to be reasonable, just, and non-discriminatory as a part of, or in relation to, system rates contained in schedules for areas and services beyond jurisdiction of Public Utility Commission of District of Columbia so that District consumers would not subsidize non-District consumers or vice versa. *Capital Transit Co. v. Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

§ 43-302. Use of equipment of other companies—Application to Commission to require such use in event of disagreement.

Every utility doing business in the District of Columbia having tracks, conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment shall, for a reasonable compensation, permit the use of the same by any other public utility whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owners or other users of such equipment; nor in any substantial detriment to the service to be rendered by such owners or other users. In case of failure to agree upon such use, or the conditions or compensation for such use, any public utility or any person, firm, copartnership, association, or corporation interested may apply to the commission, and if after investigation the commission shall ascertain that public convenience and necessity require such use and that it would not result in irreparable injury to the owners or other user of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users of such equipment, it shall by order direct that such use be permitted and prescribe the conditions and compensation for such joint use. Such use so ordered shall be permitted and such conditions and compensation so prescribed shall be the lawful conditions and compensation to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party, as hereinafter provided, which provisions, so far as applicable, shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion after hearing and notice by order in writing. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 3.)

CROSS REFERENCES

Joint use of bridges, see §§ 7-505, 7-507, 7-508, 7-511.

Joint use of certain railroad facilities, see §§ 7-1213, 7-1216 to 7-1224, 44-208 to 44-212.

Rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43-402.

Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company, see § 43-1108.

§ 43-303. Commission to compel compliance with chapters 1-10 of this title, with laws, ordinances, and charter—Criminal liability continued.

The commission shall have power, after hearing and notice by order in writing, to require and compel every public utility to comply with the provisions of chapters 1-10 of this title, and with all other laws of the United States applicable, and any municipal ordinance or regulation relating to said public utility, and to conform to the duties upon it thereby imposed or by the provisions of its own charter, if any charter has or shall be granted it: *Provided*, That nothing herein contained shall be held to relieve any public utility, its officers, agents, or servants, from any punishment, fine, forfeiture, or penalty for violation of any such law, ordinance, regulation, or duty imposed by its charter, nor to limit, take away, or restrict the jurisdiction of any court or other authority which on March 4, 1913, had or which may thereafter have

power to impose any such punishment, fine, forfeiture, or penalty. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 4.)

CROSS REFERENCES

Certified copies of orders, effect as evidence, see § 43-713.
Criminal penalties, see §§ 43-901 to 43-913.

Penalties and forfeitures provided by this act do not bar proceedings or prosecutions under other laws, see § 43-913.

NOTES TO DECISIONS

1. Jurisdiction

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43-304. Proposed changes in law to be submitted to Commission—Hearings—Recommendations to Congress.

Whenever any public utility or person shall propose any change in any law relating directly or indirectly to the property or operations of any public utility the said proposed change shall also and at the same time be submitted to the commission, which may take testimony and give a public hearing thereon, and the commission shall recommend such bills as will in its judgment protect the interests of the public and such public utility and transmit the same to the proper committees of the Senate and House of Representatives. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 5.)

§ 43-305. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.

The commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices, works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The commission shall also ascertain in detail the gross and net income of the

public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this section is obtained it shall be printed in the annual report of the commission. In making such investigation the commission may avail itself of any information in possession of any department of the government of the United States or of the commissioners of the District of Columbia. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 6.)

CROSS REFERENCES

Application to court for instructions, see § 43-704.
Payment of expenses, see § 43-412.
Rates and rate making, see § 43-401.
Records, form and requisites, see §§ 43-309 to 43-319.
Rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43-402.

NOTES TO DECISIONS

In general 1
Goodwill 2
Methods used by commission 3
In general 3
Segregation of properties 4
Segregation of properties, methods used by commission 4

1. In general

The valuation sections of the code are not binding on District of Columbia Public Utilities Commission in gas rate proceedings. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

2. Goodwill

Court when fixing rate base valuation of street railway property on appeal from the Public Utilities Commission could properly include the goodwill of one of the companies that had previously consolidated. *Public Utilities Comm. v. Capital Trac. Co.* (1927, 17 F. 2d 673, 57 App. D.C. 85).

3. Methods used by commission—In general

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

4. — Segregation of properties

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

If part of the business of electric power company is subject to state regulation and part is subject to federal regulation, state, in fixing rates, must segregate properties used in the intrastate business and establish intrastate rates on basis of the segregated properties as a rate base, and costs must be allocated as between intrastate and interstate business, but such segregation is not mandatory if business of company is subject to regulation by two or more states, no part of it being subject to federal supervision. *Id.*

Normally, the unit for rate-making purposes for electricity is the entire inter-connected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Id.*

§ 43-306. Property to be valued as of time of evaluation.

The commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 7.)

CROSS REFERENCES

Application to court for instructions, see § 43-704.
Expenses of making valuation, see § 43-412.

NOTES TO DECISIONS

In general 1
Conclusiveness of valuation statutes 2

1. In general

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D. C. 115, certiorari denied 71 S.Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

Where consent decree fixed rate base, established a sliding scale of rates, and provided that if rates yielded more than a certain per cent return, one-half of excess should be used in reduction of future rates, and Public Utilities Commission, after full hearing on proper notice, directed electric company to file new lower rate schedules, the new rate order, which would allow fair return on fair valuation, was not invalid on ground that company had not consented thereto nor on ground that valuation requirements of this section had not been complied with. *Potomac Elec. Power Co. v. Public Utilities Commission of District of Columbia* (1947, 158 F. 2d 521, 81 U.S. App. D.C. 225, certiorari denied 67 S. Ct. 1303, 331 U.S. 816, 91 L. Ed. 1834).

2. Conclusiveness of valuation statutes

The valuation sections of the code are not binding on District of Columbia Public Utilities Commission in gas rate proceedings. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

§ 43-307. Valuation—Notice and hearing—Statement of valuation to be filed.

Before final determination of such value the commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 8.)

CROSS REFERENCES

Payment of expenses of proceedings, see § 43-412.
Rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43-402.

§ 43-308. Revaluation.

The commission may at any time, on its own initiative, make a revaluation of the property of any public utility. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 9.)

CROSS REFERENCES

Application to court for instructions, see § 43-704.
Payment of expenses of revaluating, see § 43-412.

§ 43-309. Uniform accounts to be rendered—Separate account of other business may be required.

Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. Every public utility engaged directly or indirectly in any other business than that of the conduct of a street railway, or the production, transmission, or furnishing of heat, light, water, or power, or the conveyance of telegraph or telephone messages, shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of chapters 1-10 of this title shall apply with like force and effect to the books, accounts, papers, and records of such other business. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 10.)

CROSS REFERENCES

Criminal penalties for violation of this section, see § 43-905.

Witnesses; production of books, records, and accounts; investigation of records and accounts; duty of utility companies to furnish information, records, and accounts, see §§ 43-405 to 43-407.

§ 43-310. Commission to prescribe forms of books and records.

The commission shall prescribe the forms of all books, accounts, papers, and records required to be kept, and every public utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to such books, accounts, papers, and records. In so far as practicable for the purposes of chapters 1-10 of this title, the form prescribed shall be the form accepted by the Interstate Commerce Commission. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 11.)

CROSS REFERENCE

Criminal penalties, see § 43-905.

§ 43-311. Commission to furnish blank forms.

The commission shall cause to be prepared suitable blanks for carrying out the purposes of chapters 1-10 of this title, and shall when necessary furnish such blanks to each public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 12.)

§ 43-312. Utilities to have office in the District of Columbia—Books and records of utilities not to be removed from the District of Columbia—Records may be kept at general office of utility.

Each public utility shall have an office within the District of Columbia in which it shall keep all such books, accounts, papers, and records as shall be required by the commission to be kept within the District of Columbia. No books, accounts, papers, or records required by the commission to be kept within the District of Columbia shall be at any time removed from the District of Columbia, except upon such condition as may be prescribed by the Commission: *Provided*, That public utilities operating in the District of Columbia and elsewhere who have their general or executive offices outside of the District, may continue to keep their books, accounts, records, and so forth, at their executive or general offices, such public utilities being required, however, to produce

before the commission such books, accounts, records, and papers from time to time as the commission may order. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 13.)

CROSS REFERENCE

Rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43-402.

§ 43-313. Accounts to be closed annually—Verified balance sheet to be filed with Commission—Copy to Congress.

The accounts shall be closed annually on the thirty-first day of December, and a balance sheet of that date promptly taken therefrom. On or before the first day of February following such balance sheet, together with such other information as the commission shall prescribe, verified by an owner or officer of the public utility, shall be filed with the commission, and a copy thereof transmitted to Congress. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 14.)

§ 43-314. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.

The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission. The agents, accountants, or examiners employed by the commission shall have authority, under the direction of the commission, to inspect and examine any and all books, accounts, papers, records, and memoranda kept by such public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 15.)

CROSS REFERENCES

Payment of expense of audit, see § 43-412.
Rules and regulations, see § 43-402.
Similar provisions, see § 43-404.

§ 43-315. Depreciation account—Rates of depreciation—Application of depreciation fund.

Every public utility shall carry a proper and adequate depreciation account. The commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. All moneys in this fund may be expended in keeping the property of such public utility in repair and good and serviceable condition for the use to which it is devoted, or invested, and, if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section, unless with the consent and by order of the com-

mission. Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 16.)

CROSS REFERENCE

Rules and regulations generally, see § 43-202.

§ 43-316. Commission to keep informed of new construction—Construction account.

The commission shall keep itself informed of all new construction, extensions, and additions to the property of all public utilities, and shall prescribe the necessary forms, regulations, and instructions to the officers and employees of all public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 17.)

CROSS REFERENCES

Power of commission to require repairs to be made, see § 43-208.
Rules and regulations generally, see § 43-202.

§ 43-317. Sliding scale of rates and dividends.

Nothing in chapters 1-10 of this title shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of chapters 1-10 of this title. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 18.)

CROSS REFERENCES

Payment of expenses of investigation, see § 43-412.
Power of commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, see § 43-911.
Rate making, see § 43-401.
Rules and regulations generally, see § 43-202.

NOTES TO DECISIONS

Deposits 1
Emergency Fleet Corporation 2
Emergency Price Control Act 3
Emergency purposes, rates for 4
Previously established rates 5

1. Deposits

Order of Public Utilities Commission which permits deposits in advance from those unable to establish financial responsibility was not discriminatory. *Riegel v. Public Utilities Comm.* (1931, 48 F. 2d 1023, 60 App. D. C. 111).

2. Emergency Fleet Corporation

The Emergency Fleet Corporation, although organized as a private corporation under District of Columbia laws, is entitled to the benefit of the provisions of the Post Roads Act of 1866 giving it special rates for telegraph service. *United States Shipping Board Emergency Fleet Corp. v. Western Union Tel. Co.* (1928, 48 S. Ct. 198, 275 U. S. 415, 72 L. Ed. 345).

3. Emergency Price Control Act

In determining whether power of Public Utility Commission of District of Columbia to regulate utility rates had been restricted by amendment to Emergency Price Control Act, former section 901 et seq. and section 961 of title 50 U. S. Code App., the purpose of said act and amendment were required to be considered. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

On application of gas company to Public Utilities Commission of the District of Columbia for a rate increase in accordance with a sliding scale arrangement entered into in 1935, Commission should afford president's representatives the opportunity to intervene pursuant to amendment to Emergency Price Control Act, former section 901 et seq. and section 961 of title 50 U. S. Code App., and grant them opportunity to fully test the inflationary trend, if any, which proposed increase in rates might portend. *Byrnes v. Flanagan* (1943, 48 F. Supp. 703).

Public Utilities Commission of the District of Columbia could not proceed on application of gas company for a rate increase in accordance with a sliding scale arrangement entered into in 1935 alone, in face of amendment to Emergency Price Control Act, former section 901 et seq. and section 961 of title 50 U. S. Code App., requiring public utilities seeking general increase in their rates which were in effect on September 15, 1942, to first give 30 days' notice to president, or such agency as he may designate, and consent to timely intervention by such agency before the federal, state or municipal authority having jurisdiction to consider such increase. *Id.*

4. Emergency purposes, rates for

If gas rates are to be granted for emergency purposes in a summary proceeding before the District of Columbia Public Utilities Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

5. Previously established rates

District of Columbia Public Utilities Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding that six percent was fair rate of return, where risk factor had been materially reduced in recent years and pertinent local conditions and economic factors had not remained static. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

§ 43-318. Utilities to furnish accounts and reports—Information to be included.

Each public utility shall furnish to the commission in such form and at such times as the commission shall require, such accounts, reports, and information as shall show in itemized detail: Depreciation; salaries and wages; legal expenses; taxes and rentals; quantity and value of material used; receipts from residuals, by-products, services, or other sales; total and net costs; net and gross profits; dividends and interest; surplus or reserve; prices paid by consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 19.)

CROSS REFERENCES

Annual reports by street railroads, see § 44-215.
Reports by electric power companies, see § 43-1109.
Reports by gas companies, see § 43-1206.
Rules and regulations, see § 43-402.

§ 43-319. Annual report of Commission.

The commission shall publish annual reports showing its proceedings relating to all the public utilities of each kind in the District of Columbia, and such other occasional reports as it may deem advisable. The commission shall also publish in its annual reports the value of all property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service, or regulations any hearing has been held by the commission or the value of whose property has been ascertained by it under the provisions of chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 20.)

§ 43-320. Commission to fix adequate and serviceable standards—Regulations for testing products, service, and meters.

The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examining and testing such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 21.)

CROSS REFERENCES

Provisions for testing gas and electric meters, rules and regulations, see § 43-603.

Provisions for testing quality of gas, see § 43-605.

Rules and regulations generally, see § 43-202.

§ 43-321. Commission to provide for examination and test of appliances—Fees paid by consumer—Appliances to be tested at request of consumer.

The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 22.)

§ 43-322. Commission may purchase material and equipment for tests—Entry on premises of utilities for purpose of tests.

The commission may purchase such materials, apparatus, and standard measuring instruments for such examination and tests as it may deem necessary. The commission, its agents, experts, or examiners, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in chapters 1-10 of this title, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 23.)

CROSS REFERENCE

Criminal penalties for destruction of apparatus belonging to commission, see § 43-909.

§ 43-323. Schedule of rates to be filed—Existing rates to remain in force until changed.

Every public utility shall file with the commission, within a time to be fixed by the commission, schedules, which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the District of Columbia, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges allowed by law on March 4, 1913, and shall be the lawful rates, tolls, and charges within the District of Columbia, and shall remain and be in force until set aside by the commission. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 24.)

CROSS REFERENCE

Changing existing rates, see § 43-401.

NOTES TO DECISIONS

1. Jurisdiction of commission

Limitations upon the commission forbid any attempt at regulation by it of the manner or price at which gas shall be delivered by a Maryland company to its consumers. *Galloway v. Bell* (1926, 11 F. 2d 558, 56 App. D.C. 172).

§ 43-324. Rules and regulations affecting rates to be filed.

Every public utility shall file with and as a part of such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 25.)

CROSS REFERENCE

Rate making, see § 43-401.

§ 43-325. Copy of rate schedule to be available for public inspection.

A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station and office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and so as to be conveniently inspected. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 26.)

§ 43-326. Schedule of joint rates to be filed.

Where a schedule of joint rates or charges is, or may be, in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office, as provided in section 43-325. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 27.)

§ 43-327. Change in schedule—Notice.

No change shall be made in any schedule, including schedules of joint rates, except upon ten days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect: *Provided*,

That the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 28.)

CROSS REFERENCES

Changes to conform to orders of commission, see § 43-701.

Rate making, see § 43-401.

§ 43-328. New schedules to be filed.

Copies of all new schedules shall be filed, as heretofore provided, in every station and office of such public utility where payments are made by consumers or users ten days prior to the time the same are to take effect, unless the commission shall prescribe a less time. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 29.)

CROSS REFERENCE

Rate making, see § 43-401.

§ 43-329. Utility not to receive greater or less compensation than fixed in schedule.

It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the District of Columbia, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed as provided in chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 30.)

CROSS REFERENCES

Criminal penalties, see §§ 43-902, 43-904.

Other provisions concerning discriminatory rates, see § 43-301.

Rate making, see § 43-401.

§ 43-330. Commission may prescribe changes in form of schedule.

The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 31.)

CROSS REFERENCE

Rate making, see § 43-401.

Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

Sec.

43-401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.

43-402. Commission may adopt rules and regulations.

43-403. Commission to keep informed as to conduct of business—May obtain from utilities all necessary information.

43-404. Inspection of books and examination of officers of utilities.

43-405. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of United States attorney and corporation counsel.

43-406. Appointment of investigating agents—Powers.

43-407. Utilities to furnish information required by Commission—Maps, books, reports to be delivered to Commission on request.

43-408. Commission may investigate unjust discriminatory rates, schedules, or services—No order to be entered without formal hearing.

Sec.

- 43-409. Commission to notify utility of complaints.
- 43-410. Notice as to hearings—Compulsory attendance of witnesses.
- 43-411. Reasonable rates may be ordered—Notice to be given utility affected thereby.
- 43-412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.
- 43-413. Separate hearings on complaints—Complaints not to be dismissed because of absence of direct damage.
- 43-414. Summary investigation.
- 43-415. Hearings after summary investigation.
- 43-416. Notice of hearing—Hearing to be conducted as though complaint had been filed.
- 43-417. Utility may make complaint.
- 43-418. Commissioners and agents may administer oaths, issue subpoenas, proceeding to punish for contempt.
- 43-419. Witness fees.
- 43-420. Testimony may be taken by deposition.
- 43-421. Record of proceedings to be kept—Testimony to be taken stenographically.
- 43-422. Transcript of evidence or proceedings, certified by stenographer, to be received in evidence—Copy of transcript to be furnished without cost

§ 43-401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.

First, unless the commission shall otherwise order, it shall be unlawful for any public utility within the District of Columbia to demand, collect, or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same service under the law in force on March 4, 1913; second, every public utility in the District of Columbia shall, within thirty days after March 4, 1913, file in the office of the commission copies of all schedules of rates and charges, including joint rates, in force on March 4, 1913; third, any public utility desiring to advance or discontinue any such rate or rates may make application to the commission in writing, stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuance; fourth, upon receiving such application the commission shall fix a time and place for hearing, and give such notice to interested parties as shall be proper and reasonable; if, after such hearing and investigation, the commission shall find that the change or discontinuance applied for is reasonable, fair, and just, it shall grant the application, either in whole or in part; fifth, any public utility being dissatisfied with any order of the commission made under the provisions of this section may commence a proceeding against it in the United States District Court for the District of Columbia in the manner as is in chapters 1-10 of this title provided, which action shall be tried and determined in the same manner as is in chapters 1-10 of this title provided. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 94; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCES

- Accounts required; form and requisites, audits, expenses of audits, see §§ 43-309 to 43-319.
- Alteration, revocation, or amendment of orders, see § 43-702.
- Changing rates, see § 43-411.
- Complaint by utility company for change of rate or service, see 43-417.
- Constitutionality of act, see § 43-1003.
- Criminal penalties for discriminatory rates; refusal to give information, testimony, records, or accounts; failure to obey laws, rules, orders, or regulations, see §§ 43-902, 43-908.
- Discriminatory rates forbidden, see § 43-301.
- Enforcement of orders, appeal or review, rights and duties pending appeal, see § 43-701 et seq.
- Filing schedules of rates and charges; rates and charges effective when act took effect, change thereof, see §§ 43-323 to 43-330.
- Investigation of unreasonable or discriminatory rates, see § 43-408.
- Itemized accounts and reports required of utility companies, see § 43-318.
- Liberal construction of act, see § 43-1003.
- Power of commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, see § 43-911.
- Rates for electric power companies, see § 43-1107.
- Rates for gas companies, see § 43-1207.
- Saving clause for laws, regulations, or orders and pending proceedings, see §§ 43-1005, 43-1006.
- Sliding scale of rates and dividends, see § 43-317.
- Street railroads, see §§ 44-207, 44-212 to 44-214.
- Summary investigation of rates, see § 43-414.
- Valuation of public utilities, see §§ 43-305 to 43-308.

NOTES TO DECISIONS

- Burden of proof 1
- Discretion of commission 2
- Evidence 3
- Hearing, sufficiency of 4
- Jurisdictional lines 5
- Power to fix rates 6
- Prudent investment theory 7
- Rate base 8
- Reconsideration after intervention 9

1. Burden of proof

In proceeding by power company, which served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and which was also subject to regulation by other commissions, including Federal Power Commission, before Public Utility Commission of District of Columbia for rate increase, wherein power company's customer, a District of Columbia transit company, intervened as an interested party, burden upon customer to sustain its attack upon order granting rate increases was carried where findings rationally manifesting the method used in determining the rates, essential to adequate review, were lacking. *Capital Transit Co. v. Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

2. Discretion of commission

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

In public utility rate proceeding, Public Utility Commission's refusal of demand of intervening Price Administrator that thoroughgoing examination be made into rate base, rate of return, operating expenses, depreciation, and all other matters relative to establishment of fair return was not an abuse of discretion. *Washington Gas Light*

Co. v. Byrnes (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

Bus and street car transportation between points in the District of Columbia and points on the Virginia side of the Potomac River, which operations were performed within territorial limits of the District of Columbia municipal zone and involved intrastate transportation subject to regulation by the Commissions of Virginia and the District of Columbia, was not "interurban" but "urban transportation," and, as such, it was not within jurisdiction of Interstate Commerce Commission to regulate fares for such transportation. *Capital Transit Co. v. U. S.* (1944, 55 F. Supp. 51).

3. Evidence

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

4. Hearing, sufficiency of

Record showed that the Director of Economic Stabilization and the Administrator of the Office of Price Administration of the United States as interveners in a rate proceeding before the Public Utilities Commission of the District of Columbia were offered every opportunity for a full hearing. *Vinson v. Washington Gas Light Co.* (1944, 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

5. Jurisdictional lines

Where problem of determining rate for power company lies across jurisdictional lines and is not solved by the permissible formulae of allocating, as between jurisdictions, either properties, costs, and revenues, or costs and revenues, method which is adopted must be rationally manifested in findings and conclusions, the findings grounded in evidence and the conclusions grounded in evidence and reasoning, which enable the court to support the rates for one jurisdiction alone. *Capital Transit Co. v. Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

Where areas served by power company are found to be substantially the same with respect to all features bearing upon reasonableness of power company's rate, and areas are shown to be intimately bound together, there is not any occasion to separate costs and revenues of power company according to jurisdictional lines, but evidence and findings must bring the situation within such tests if such tests are to apply. *Id.*

6. Power to fix rates

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

The Emergency Price Control Act of 1942, former section 901 et seq. of title 50 U. S. Code App., and the Inflation Control Act of 1942, former section 961 et seq. of title 50 U. S. Code App., did not limit powers conferred by law on regulatory commissions over utility rates nor prohibit such commissions from permitting any increase in utility rates which were not shown to be neces-

sary to prevent actual hardship, nor endow a different federal agency with new and superior rights and powers over utility rates. *Vinson v. Washington Gas Light Co.* (1944, 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

7. Prudent investment theory

A commission, in reaching decision concerning reasonable rate of return for power company under the prudent investment theory of rate regulation, must make findings upon underlying issues of return necessary to service company's outstanding funded debt and its preferred stock, return necessary to attract investors in common stock, and return on funded debts, preferred stock, and common stock of other public utilities having a risk factor similar to that of the company, and upon issue whether local conditions, economic conditions generally, and risk factor have remained static since determination of rate of return in a previous proceeding involving the company. *Capital Transit Co. v. Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

8. Rate base

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, ascertainment of rate base on basis of system-wide operations of the well integrated power company without allocation of its properties, costs, or revenues to the different jurisdictions served was not illegal in itself nor upon facts peculiar to power company's case. *Capital Transit Co. v. Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

In aid of process of rate making within jurisdiction of Public Utility Commission of the District of Columbia, Commission may make findings upon evidence concerning conditions and events beyond its regulatory jurisdiction if such conditions and events are thought to affect rates to be determined by Commission. *Id.*

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

9. Reconsideration after intervention

Record showed that Director of Economic Stabilization and Administrator of the Office of Price Administration as interveners in a rate proceeding before the Public Utilities Commission in the District of Columbia requested the reconsideration of the basic principle of sliding scale arrangement and demanded the suspension of the sliding scale and re-examination of its basis in a complete investigation of all the elements that entered into the determination of a utility rate by a regulatory body and that such demands were properly denied. *Vinson v. Washington Gas Light Co.* (1944, 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

§ 43-402. Commission may adopt rules and regulations.

The commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 32.)

CROSS REFERENCE

Rules and regulations generally, see § 43-202.

NOTES TO DECISIONS

Federal laws, scope of 1
Intervention, effect of 2

1. Federal laws, scope of

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

2. Intervention, effect of

The intervention of the Director of Economic Stabilization and Administrator of Office of Price Administration in rate proceeding before the Public Utilities Commission of the District of Columbia was in subordination to Commission's standing rule that intervention should not change or enlarge the issues. *Vinson v. Washington Gas Light Co.* (1944, 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

§ 43-403. Commission to keep informed as to conduct of business—May obtain from utilities all necessary information.

The commission shall keep itself informed as to the manner and method in which the business of all public utilities is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 33.)

CROSS REFERENCE

Utility companies required to keep and furnish information, accounts, books, and records, see §§ 43-309 to 43-319.

§ 43-404. Inspection of books and examination of officers of utilities.

The commission or any commissioner or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection or examination. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 34.)

CROSS REFERENCE

Similar provisions, see § 43-314 et seq.

§ 43-405. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of United States attorney and corporation counsel.

The commission may require, by order or subpoena, to be served upon any public utility in the same manner that a summons is served in a civil action in the United States District Court for the District of Columbia, the production within the District of Columbia at such time and place as it may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the District of Columbia, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission under its direction. Any public utility failing or refusing to comply with any order or subpoena shall for each day it shall so fail or refuse forfeit and pay to the District of Columbia the sum of one hundred dollars, to be recovered in an action to be brought in the name of said District.

Attendance of witnesses and the production of such documentary evidence may be required from

any place in the United States. And in case of disobedience to a subpoena the commission, or any party to a proceeding before the commission may invoke the aid of any court of the United States or the United States District Court for the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. And the said commission is hereby given power to call on any United States attorney, the corporation counsel of the District of Columbia or any counsel of the commission to enforce the provisions of chapters 1-10 of this title in the proper courts of the United States, and on such call it shall be the duty of the said United States attorney, corporation counsel, or any counsel of the commission, upon request of said commission, to enforce the provisions of this section, the cost and expenses incurred to be paid out of the appropriations for the expenses of the courts of the United States. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 35; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, § 32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U.S. Code, title 28, § 501.

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCES

Commissioners and agents may issue subpoenas, see § 43-418.

Criminal penalties, see § 43-905.

Depositions, see § 43-420.

Records and accounts required to be kept by utility companies, see §§ 43-309 to 43-319.

§ 43-406. Appointment of investigating agents—Powers.

For the purpose of making any investigation with regard to any public utility the commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in chapters 1-10 of this title to the commission and shall have power to administer oaths and take depositions. The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent or agents the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the commission so order, nor further investigation. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 36.)

CROSS REFERENCE

Commissioners and agents may issue subpoenas, see § 43-418.

§ 43-407. Utilities to furnish information required by Commission—Maps, books, reports to be delivered to Commission on request.

Every public utility shall furnish to the commission all information required by it to carry into effect the provisions of chapters 1-10 of this title, and shall make specific answers to all specific questions submitted by the commission. Any public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer, fully and correctly, each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the president, secretary, superintendent, or general manager of such public utility, and returned to the commission at its office within the period fixed by the commission. Whenever required by the commission, every public utility shall deliver to the commission any or all maps, profiles, contracts, reports of engineers, and all documents, books, accounts, papers, and records, or copies of any or all of the same, with a complete inventory of all its property, in such form as the commission may direct. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 37.)

§ 43-408. Commission may investigate unjust discriminatory rates, schedules, or services—No order to be entered without formal hearing.

Upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway or common carrier, or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or can not be obtained, the commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the commission without a formal hearing. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 38.)

CROSS REFERENCE

Rate making generally, see § 43-401.

NOTES TO DECISIONS

In general 1
Administrative remedy 2
Federal laws, scope of 3
Findings of commission 4
Legislative intent 5
Public opinion surveys 6
Scope of review 7

1. In general

It was within statutory authority of the Public Utilities Commission of the District of Columbia to prohibit or to permit and regulate the receipt and amplification of transit radio programs on streetcars and busses under such conditions that total utility service would not be

unsafe, uncomfortable or inconvenient. *Public Utilities Commission v. Pollak* (1952, 72 S. Ct. 813, 343 U. S. 451 96 L. Ed. 1068).

2. Administrative remedy

Where suit by transit company against carrier to obtain injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co. v. Safeway Trails, Inc.* (1953, 201 F. 2d 708, 92 U. S. App. D. C. 20).

3. Federal laws, scope of

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 78 U.S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

4. Findings of commission

Where Public Utilities Commission of the District of Columbia conducted investigation of transit radio service on busses and streetcars in accordance with prescribed statutory procedure and found that radio reception was not an obstacle to safety of operation, that public comfort and convenience were not impaired and that in fact the creation of better will among passengers tended to improve conditions under which the public rode, concluding that such installation and use were not inconsistent with public convenience, comfort and safety, Board was within its discretion in dismissing investigation. *Public Utilities Commission v. Pollak* (1952, 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

5. Legislative intent

It is not contemplated that any resident of the District, feeling himself aggrieved, may rush into the courts without first submitting his case to the Public Utilities Commission, whose duty it is primarily to hear and adjust and, if possible, finally dispose of such complaints. *Hollis v. Kutz* (1920, 265 F. 451, 49 App. D. C. 301).

6. Public opinion surveys

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, weight to be attached to public opinion surveys was a proper matter for determination by the Commission. *Public Utilities Commission v. Pollak* (1952, 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

7. Scope of review

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, courts on review were expressly restricted to facts found by Commission insofar as those findings did not appear to be unreasonable, arbitrary or capricious. *Public Utilities Commission v. Pollak* (1952, 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43-409. Commission to notify utility of complaints.

The commission shall prior to such formal hearing notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 39.)

§ 43-410. Notice as to hearings—Compulsory attendance of witnesses.

The commission shall give the public utility and the complainant, if any, ten days' notice of the time and place when and where such hearing and inves-

tigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 40.)

§ 43-411. Reasonable rates may be ordered—Notice to be given utility affected thereby.

If upon such investigation the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of chapters 1-10 of this title, the commission shall have power to determine and by order fix and order to be substituted therefor such rate or rates, tolls, charges, or schedules as shall be just and reasonable. If upon such investigation it shall be found that any regulation, time schedule, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this section, or if it be found that reasonable service is not supplied, the commission shall have power to determine and substitute therefor such other regulations, time schedules, service, or acts and to make such orders respecting and such changes in such regulations, time schedules, service, or acts as shall be just and reasonable. And upon any investigation for the purpose of determining upon and requiring any reasonable extension or extensions of lines or of service that shall promise to be compensatory within a reasonable time, the commission shall have power to fix, determine, and require every such extension or extensions to be made and the terms and conditions upon which the same shall be made: *Provided*, That no hearing shall be had and no order shall be made respecting such extension or extensions, without notice to the public utility affected thereby, as provided in section 43-410. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 41.)

CROSS REFERENCE

Rate making generally, see § 43-401.

NOTES TO DECISIONS

Constitutionality 1
Cost of stock capital 2
Determination of rates 3
Extensions 4
Findings 5
Hearing, sufficiency of 6
Increase in rate 7
Reasonableness of rates 8

1. Constitutionality

The constitutional rights of private consumers of gas are not invaded by rates established by the Public Utilities Commission at a higher rate than is charged to the Government. *Hollis v. Kutz* (1921, 41 S. Ct. 371, 255 U. S. 452, 65 L. Ed. 727).

2. Cost of stock capital

In proceedings before Public Utilities Commission of District of Columbia relating to fixing gas rates, question before Commission was what constitutes a reasonable allowance based on cost of common stock capital, and by "cost of capital" is meant interest charges and enough more to attract capital to the company and to maintain its credit. *Washington Gas Light Co. v. Public Utilities Commission of District of Columbia* (1944, 55 F. Supp. 627).

3. Determination of rates

Where power company's rates in District of Columbia are arrived at by formulating schedules on system-wide basis, extending into other jurisdictions, rates must be

supported also by findings of similar conditions pertinent to rate-fixing where the other rates are similar or, where other rates are different, by findings of other relevant economic conditions which justify, on a rational basis, the District rates in relation to the other rates, and, if this can not be done, it would seem necessary to resort to allocation. *Capital Transit Co. v. Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

4. Extensions

A motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., was entitled to such notice of hearing conducted by Public Utilities Commission of District of Columbia, relative to whether routes of another bus company operating in area should be extended, as would afford such motor lines reasonable opportunity to protect any of its interests which might be involved, and mere presence of employee of motor lines at such hearing did not meet requirement of reasonable notice, nor did posting of notice in District building. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia* (1953, 114 F. Supp. 321).

5. Findings

Whatever formula is adopted by District of Columbia Public Utilities Commission for gas rate purposes, the commission's findings must be based on substantial evidence in the record. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

6. Hearing, sufficiency of

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and non-discriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

7. Increase in rates

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

8. Reasonableness of rates

Gas rates fixed by Public Utilities Commission of District of Columbia, to be valid, must enable company to operate successfully, to maintain its financial integrity to attract capital, and to compensate its investors for risks assumed. *Washington Gas Light Co. v. Public Utilities Commission of District of Columbia* (1944, 55 F. Supp. 627).

§ 43-412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.

The expenses of any investigation, valuation, revaluation, or proceeding of any nature by the Public Utilities Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the Public Utilities Commission shall deem proper and be allowed for in the rates to be charged by such utility. When any such investigation, valuation, revaluation, or other proceeding is begun the said Public Utilities Commission may call upon the utility in question for the deposit of such reasonable sum or sums as in the opinion of said commission, it may deem necessary from time to time until the said proceeding or the litigation arising therefrom is completed, the money so paid to be deposited in the treasury of the United States to the credit of the appropriation account known as "miscellaneous trust fund deposit, District of Columbia" and to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia, for such purposes as may be approved by the Public Utilities Commission. Any unexpended balance of such sum or sums so deposited shall be returned to the utility depositing the same: *Provided*, That the amount expended by the commission in any valuation or rate case shall not exceed one-half of 1 per centum of the existing valuation of the company investigated, and that the amount expended in all other investigations shall not exceed one-tenth of 1 per centum of the existing valuation for any one company for any one year. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3.)

CODIFICATION

Act Aug. 27, 1935, consolidated paragraphs 42 and 42a of act Mar. 4, 1913, and redesignated them as paragraph 42.

AMENDMENT

1935—Act Aug. 27, 1935, added the following: "and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission," in the first sentence.

SEPARABILITY PROVISION

For separability provision of act Aug. 27, 1935, see § 43-711.

CROSS REFERENCES

Investigation and valuations, see § 43-305 et seq.
Rate making generally, see § 43-401.

NOTES TO DECISIONS

1. Payment of expenses

Later statute requiring utility to bear expenses of investigation or revaluation by Public Utilities Commission prevails over a previous statute which requires a utility to pay expenses only where utility is at fault. *Washington R. & Elec. Co. v. District of Columbia* (1935, 77 F. 2d 366, 64 App. D. C. 243).

§ 43-413. Separate hearings on complaints—Complaints not to be dismissed because of absence of direct damage.

The commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 43.)

§ 43-414. Summary investigation.

Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 44.)

NOTES TO DECISIONS

1. In general

Where suit by transit company against carrier to obtain injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co. v. Safeway Trails, Inc.* (1953, 201 F. 2d 708, 92 U. S. App. D. C. 20).

§ 43-415. Hearings after summary investigation.

If after making such investigation the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 45.)

§ 43-416. Notice of hearing—Hearing to be conducted as though complaint had been filed.

Notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in section 43-410, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 46.)

§ 43-417. Utility may make complaint.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by the commissioner or upon reasonable complaint as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 47.)

NOTES TO DECISIONS

1. Administrative remedy, exhaustion of

Where suit by transit company against carrier to obtain injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co. v. Safeway Trails, Inc.* (1953, 201 F. 2d 708, 92 U. S. App. D. C. 20).

§ 43-418. Commissioners and agents may administer oaths, issue subpoenas—Proceeding to punish for contempt.

Each of the commissioners and every agent provided for in section 43-406, for the purposes mentioned in chapters 1-10 of this title, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner, or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be interrogated before the commission or its agent authorized, it shall be the duty of the United States District Court for the District of Columbia, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 48; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 43-419. Witness fees.

Each witness who shall appear before the commission or its agent by its order shall receive for his attendance the fees and mileage provided for witnesses in the United States District Court for the District of Columbia on March 4, 1913, which shall be audited and paid in the same manner as fees in criminal cases within the District of Columbia are audited and paid, upon the presentation of proper vouchers, sworn to by such witnesses and approved by the chairman of the commission. No witnesses subpoenaed at the instance of parties other than the commission shall be entitled to compensation for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated, and that his attendance as a witness was reasonably necessary. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 49; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 43-420. Testimony may be taken by deposition.

The commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the District of Columbia to be taken in the manner prescribed by law for like depositions in civil actions in District Courts. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 50.)

§ 43-421. Record of proceedings to be kept—Testimony to be taken stenographically.

A full and complete record shall be kept of all proceedings had before the commission or its agents on any formal investigation had, and all testimony shall be taken down by a stenographer appointed by the commission. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 51.)

§ 43-422. Transcript of evidence or proceedings, certified by stenographer, to be received in evidence—Copy of transcript to be furnished without cost.

A transcribed copy of the evidence and proceedings, or any specific part thereof, in any investigation taken by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony in the investigation or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had in such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 53.)

Chapter 5.—SALE AND MERGER OF UTILITIES

Sec.

43-501. Assignment of franchise—Acquisition of stocks and bonds of competing utilities.

43-502. Antimerger law.

43-503. Merger of street railways permitted.

§ 43-501. Assignment of franchise—Acquisition of stocks and bonds of competing utilities.

No franchise nor any right to or under any franchise to own or operate any public utility as defined in chapters 1-10 of this title or to use the tracks of any street railroad shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the commission in writing. The permission and approval of the commission to the assignment, transfer, or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. It shall be unlawful for any street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corpora-

tion, or other public utility corporation, directly or indirectly, to acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business as it is, unless authorized in writing to do so by the commission, and every contract, transfer, agreement for transfer or assignment of any such stock or bonds without such written authority shall be void and of no effect. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 54.)

CROSS REFERENCES

Constitutionality of act, see § 43-1003.
Criminal penalties, see §§ 43-906 to 43-908.
Liberal construction of act, see § 43-1003.
Other provisions concerning reorganization or consolidation of companies, issuance of stock, see § 43-805.
Saving clauses, see §§ 43-1005, 43-1006.

NOTES TO DECISIONS

1. Purchase of other companies

Under authority of this paragraph, the Washington Gas Light Company was granted permission by the Public Utilities Commission to purchase the stocks and bonds of various other gas-light companies. *Washington Gas Light Co. v. Dann* (1934, 70 F. 2d 746, 63 App. D. C. 142).

§ 43-502. Antimerger law.

It shall be unlawful for any foreign public utility corporation, or for any foreign or local holding corporation, or for any local street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or any other local public utility corporation, directly or indirectly, to own, control, or hold or vote stock or bonds of any public utility corporation organized under any general incorporation law or special Act of the United States or authorized under any law of the United States to do business in the District of Columbia, except as heretofore or hereafter expressly authorized by Congress; and it shall be unlawful for any public utility corporation organized or authorized as aforesaid to sell or transfer any portion of its stock or bonds to any other public utility corporation or holding corporation whatsoever, unless heretofore or hereafter expressly authorized by Congress so to do; and every contract, transfer, agreement to transfer, or assignment by any said public utility corporation organized or authorized as aforesaid of any portion of its stock or bonds without such authority shall be utterly void and of no effect. The United States District Court for the District of Columbia, on application of the District of Columbia by its commissioners or attorney, or on application of the United States by its proper officer, or on application of any shareholder interested in any such corporations, shall have jurisdiction in equity to dissolve any public utility corporation organized under any general incorporation law or special section¹ of the United States, or authorized under any law of the United States to do business in the District of Columbia, for violation of any of the provisions of this section or of their charters; and further, to require any foreign public utility corporation, or foreign or local holding corporation which owns, holds, or controls, or which shall hereafter own, hold, or control any such stock or bonds contrary to any of the provisions of this section, to sell or dispose of the same and to refrain from voting such stock or bonds:

Provided, That in case the allegations in any bill filed in said court relate to the ownership of stock or bonds of a local corporation by any foreign corporation, then it must be shown to the satisfaction of the court that such ownership includes at least twenty per centum of the capital stock of the local corporation.

The inhibitions and restrictions contained in this section are hereby removed, so far and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations referred to in section 43-503: *Provided*, Congress reserves the right to alter, amend, or repeal this paragraph of this section.

The word "foreign" when used in this section shall be construed to mean foreign to the District of Columbia, and the word "local" when used in this section shall be construed to mean local in the District of Columbia.

Each provision of this section and every part of each provision is hereby declared to be an independent provision, and the holding of any provision or provisions, or part or parts thereof, to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other provision or part thereof. (Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 11; Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 2, 3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1925—Act Mar. 4, 1925, provided that the inhibitions and restrictions in this section are thereby removed so far, and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations approved by Public Utilities Commission, and Congress also reserved the right to alter, amend, or repeal this act or any provision thereof.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Reorganization or consolidation, issuance of stock, see § 43-805.

NOTES TO DECISIONS

1. Evidence

In electric rate proceeding, an exhibit which allegedly contained information purporting to show that the holding companies owning common stock of the electric company involved were engaged in conspiracy to violate this section was properly excluded, since the Public Utilities Commission was justified in refusing to take into account the collateral issues posed by the tendered exhibit. *U. S. v. Public Utilities Commission of District of Columbia* (1947, 158 F. 2d 533, 81 U. S. App. D. C. 237, certiorari denied 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

§ 43-503. Merger of street railways permitted.

Any or all of the street railway companies operating in the District of Columbia are hereby authorized and empowered to merge or consolidate, either by purchase or lease by one company of the properties, and/or stocks or securities of any of the others, or by the formation of a new corporation to acquire the properties and/or stocks or securities and to succeed to the powers and obligations of each or any of said companies under such terms and conditions

¹ So in original. Probably should read "Act."

as may be agreed upon by a vote of a majority in amount of the stock of the respective corporations and as may be approved by the Public Utilities Commission of the District of Columbia: *Provided*, That no merger of said companies shall be finally consummated until the same is approved by a joint resolution of Congress. Such new corporation shall be incorporated under the provisions of chapter 2 of title 29 of this Code, as far as applicable, with issues of stock at a stated par value and/or of no par value, as may be approved by the Public Utilities Commission. Congress reserves the right to alter, amend, or repeal this section or any provision thereof. (Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 1, 3.)

REFERENCE IN TEXT

Formation of corporation under the provisions of chapter 2 of title 29 of this code, referred to in the text, has reference to incorporation under business corporation provisions of act Mar. 3, 1901, 31 Stat. 1284, ch. 854, subch. 4. Formation of corporations under the provisions of the District of Columbia Business Corporation Act one hundred and eighty days after June 8, 1954, and prohibition against incorporation, after such date, under any other act or statute then in force, see effective date note set out under section 29-901.

STREETCAR MERGER

Paragraph "Second" of the preamble of the joint resolution to authorize merger of street-railway corporations operating in the District of Columbia, approved Jan. 14, 1933, 47 Stat. 753, ch. 10, § 1, as amended Feb. 16, 1933, 47 Stat. 819, ch. 94, § 1, read as follows:

"Second. The New Company shall be incorporated under the provisions of subchapter IV of chapter XVIII of the Code of Law of the District of Columbia (see reference in text under this section) and pursuant to an act of Congress entitled 'An Act to permit the merger of street-railway corporations operating in the District of Columbia, and for other purposes', approved March 4, 1925, with power subject to the approval of the Public Utilities Commission to acquire, construct, own, and operate directly transit properties within the District of Columbia and either directly or through subsidiaries in adjacent States, including the power to acquire, own, and operate the properties to be conveyed to the New Company in accordance with this agreement, and to acquire and own the stock and/or bonds of said companies and of any other company or companies engaged in the transportation of passengers by street railway or bus in the District of Columbia and adjacent States with the power to mortgage its property rights, and franchises, and to conduct such other activities as may be useful or necessary in connection with or incident to the foregoing purposes, including the power to buy, sell, hold, own, and convey real estate within and without the District of Columbia. Said New Company when incorporated shall become and remain subject in all respects to regulation by the Public Utilities Commission of the District of Columbia or its successors to the extent of the jurisdiction now or hereafter vested in it or them by law over corporations engaged in the transportation of passengers by street railway or bus within the District of Columbia: *Provided*, That before they are recorded, the articles of incorporation and/or any amendments thereto shall be approved by the Public Utilities Commission.

"Sec. 2. That Congress hereby expressly reserves the right to alter, amend, or repeal this resolution."

CROSS REFERENCE

Competing lines, restrictions, see § 44-201.

Reorganization or consolidation, issuance of stock, see § 43-805.

Chapter 6.—GAS AND ELECTRIC CORPORATIONS

Sec.

43-601. Public Utilities Commission—General powers.

43-602. Approval of construction of gas or electric plant.

Sec.

43-603. Inspectors of gas and electric meters—Inspection of meters—Commission to make rules and regulations.

43-604. Excessive charges to defeat suit to collect for gas or electricity furnished.

43-605. Appointment and removal of inspectors and assistant inspectors of gas and meters.

43-606. Inspector of gas and meters to transfer books to Commission.

§ 43-601. Public Utilities Commission—General powers.

The commission shall, within its jurisdiction—

Have general supervision of all gas corporations and electrical corporations having authority under any general or special law or under any charter or franchise to lay down, erect, or maintain wires, pipes, conduits, ducts, or other fixtures in, over, or under the streets, highways, and public places in the District of Columbia for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat, or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased, or operated by any corporation.

Investigate and ascertain, from time to time, the quality and quantity of gas supplied by persons or corporations; examine or investigate the methods employed by such persons and corporations in manufacturing, distributing, and supplying gas or electricity for light, heat, or power, and in transmitting the same, and have power to order such reasonable improvements as will reasonably promote the public interest, preserve the public health, and protect those using such gas or electricity and those employed in the manufacture and distribution thereof or in the manufacture and operation of the works, wires, poles, lines, conduits, ducts, and systems connected therewith, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas corporations and electrical corporations.

Have power by order to fix from time to time standards for determining the purity or the measurement of the illuminating power of gas to be manufactured, distributed, or sold by persons or corporations for lighting, heating, or power purposes, and to prescribe from time to time the efficiency of the electric supply system, of the current supplied, and of the lamps furnished by the persons or corporations generating and selling electric current, and by order to require the gas so manufactured, distributed, or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons or corporations. For the purpose of determining whether the gas manufactured, distributed, or sold by such persons or corporations for lighting, heating, or power purposes conforms to the standards of illuminating power, purity, and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied, and of the lamps furnished conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering, and supplying gas or electricity, and shall have access, through

its members or persons employed and authorized by it to make such examinations and investigations, to all parts of the manufacturing plants owned, used, or operated for the manufacture, transmission, or distribution of gas or electricity by any such person or corporation. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 for each offense. (Mar. 4, 1913, 37 Stat. 986, ch. 150, § 8, par. 55.)

CROSS REFERENCES

Constitutionality of act, see § 43-1003.
Criminal penalties generally, see §§ 43-906, 43-907.
Disposition of fines and forfeitures, see § 43-912.
Fees for testing meters or measuring devices, see § 43-321.
General provisions for testing meters and quality of product, rules and regulations, see § 43-320.
Investigation of personal injuries or deaths occurring from operation of utility, see § 43-1001.
Liberal construction of act, see § 43-1003.
Penalties provided by this section do not bar prosecution under other laws, see § 43-913.
Saving clauses, see §§ 43-1005, 43-1006.
Special provisions concerning electric and gas companies, see §§ 43-1101 to 43-1109, 43-1201 to 43-1207.

§ 43-602. Approval of construction of gas or electric plant.

No gas corporation or electrical corporation shall begin the construction of a gas plant or electric plant without first having obtained the permission and approval of the commission. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 56.)

§ 43-603. Inspectors of gas and electric meters—Inspection of meters—Commission to make rules and regulations.

The commission shall appoint inspectors of gas meters, whose duty it shall be, when required by the commission, to inspect, examine, prove, and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat, or power furnished by any person or corporation to or for the use of any person or corporation, and when found to be or made to be correct, the inspector shall seal all such meters and each of them with some suitable device, which device shall be recorded in the office of the commission.

No corporation or person shall furnish, set, or put in use any gas meter which shall not have been inspected, proved, and sealed by an inspector of the commission.

The commission shall appoint inspectors of electric meters, whose duty it shall be, when required by the commission, to inspect, examine, and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation, and to inspect, examine, and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters; and when found to be or made to be cor-

rect the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the commission. No corporation or person shall furnish, set, or put in use any electric meter the type of which shall not have been approved by the commission or any meter not approved by an inspector of the commission.

Every gas corporation and electrical corporation shall provide, repair, and maintain such suitable premises and apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same, on being so tested, shall be found to be more than two per centum defective or incorrect to the prejudice of the consumer, the inspector shall order the gas or electrical corporation forthwith to remove the same and to place instead a correct meter, and the expense of such inspection and test shall be borne by the corporation; if the same, on being so tested, shall be found to be correct, the expense of such inspection and test shall be borne by the consumer.

The commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 57; Apr. 5, 1939, 53 Stat. 568, ch. 38.)

AMENDMENT

1939—Act Apr. 5, 1939, deleted the words "four per centum, if an electric meter, or more than" in the fifth paragraph following the word "than" the first time it appears, and the words "if a gas meter" following the words "two per centum" where they appear in said paragraph.

CROSS REFERENCES

Laboratory for inspector of gas and meters, see §§ 43-1201, 43-1202.
Rules and regulations generally, see § 43-202.

§ 43-604. Excessive charges to defeat suit to collect for gas or electricity furnished.

If it be alleged and established in an action brought in any court for the collection of any charge for gas or electricity that a price has been demanded in excess of that fixed by the commission or by statute no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 58.)

CROSS REFERENCE

Cutting off gas for failure to pay charges, see § 43-1205.

§ 43-605. Appointment and removal of inspectors and assistant inspectors of gas and meters.

A suitable and impartial person, competent as a chemist, who is not a stockholder or employee in any gas works, shall be appointed by the Public Utilities Commission to be designated and known as inspector of gas and meters, whose duties shall be to test and determine the illuminating power and purity of the

gas furnished by any company, person, or persons in the District of Columbia; and to test, prove, and seal all meters that may be hereafter used by them. The inspector shall give bond to the extent of double his annual salary, and shall take an oath or affirmation, before some officer legally qualified to administer the same, that he will faithfully, diligently, and impartially discharge the duties of his office. The appointment and power to remove the inspector of gas and meters and assistant inspectors of gas and meters from office is hereby vested in the commission. All the powers and duties of such inspectors conferred and imposed by statute shall be exercised and performed under the supervision and control of the commission. (June 23, 1874, 18 Stat. 278, 279, ch. 480, §§ 2, 10; Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 59.)

CODIFICATION

Section consolidates sections 2 and 10 of act June 23, 1874, and par. 59 of section 8 of act Mar. 4, 1913.

§ 43-606. Inspector of gas and meters to transfer books to Commission.

The inspector of gas and meters provided for by law prior to March 4, 1913, shall transfer and deliver to the commission all books, maps, papers, records, apparatus, and the property of whatsoever description in his possession, and said commission is authorized to take possession of all books, maps, papers, records, apparatus, and property of whatsoever description. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 60.)

Chapter 7.—ORDERS AND COURT PROCEEDINGS Sec.

- 43-701. Schedules to conform to orders of Commission—Changes in schedules to be first approved by Commission.
- 43-702. Commission may rescind, alter, or amend orders fixing rates.
- 43-703. Rates to be in force and to be prima facie reasonable.
- 43-704. Application to District Court for instructions—Application for reconsideration.
- 43-705. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.
- 43-706. Appeal limited to questions of law.
- 43-707. Orders to remain in force pending appeal—Suspension of order.
- 43-708. Certification of question to United States Court of Appeals.
- 43-709. Authority of Commission to rescind its order after appeal is filed.
- 43-710. Method of review exclusive.
- 43-711. Separability of provisions.
- 43-712. Production of incriminating evidence compellable, immunity from prosecution.
- 43-713. Commission to furnish certified copies of orders.

§ 43-701. Schedules to conform to orders of Commission—Changes in schedules to be first approved by Commission.

All public utilities to which an order of the commission applies shall make such changes in their schedules on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or in any joint rate or rates, without the approval of the commission. Certified

copies of all other orders of the commission shall be delivered to the public utility affected thereby in like manner, and the same shall take effect within such reasonable time thereafter as the commission shall prescribe. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 61.)

CROSS REFERENCES

Certified copies, effect as evidence, see § 43-713.
 Constitutionality of act, see § 43-1003.
 General penal provisions, see §§ 43-906 to 43-908.
 Liberal construction of act, see § 43-1003.
 Other provisions concerning changes of rates and schedules, see §§ 43-323 to 43-328.
 Rates and rate making, see § 43-401.
 Saving clauses, see §§ 43-1005, 43-1006.

§ 43-702. Commission may rescind, alter, or amend orders fixing rates.

The commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in section 43-410, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 62.)

CROSS REFERENCES

Pending appeal, see § 43-709.
 Power of Commission to alter unreasonable or discriminatory rates, see § 43-911.

§ 43-703. Rates to be in force and to be prima facie reasonable.

All rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the commission shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 63.)

§ 43-704. Application to District Court for instructions—Application for reconsideration.

If at any time the commission shall be in doubt of the elements of value to be by them considered in arriving at the true valuation under the provisions of chapters 1-10 of this title, they are authorized and empowered to institute a proceeding in equity in the United States District Court for the District of Columbia petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

Any public utility or any other person or corporation affected by any final order or decision of the commission may, within thirty days after the publication thereof, file with the commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No public utility or other person or corporation shall in any court urge or rely on any ground not so set forth in said application. The commission, within thirty days after the filing of such application, shall either grant or deny it. Failure by the commission to act upon such application within such period shall be deemed a denial thereof. If such application be granted, the commission, after giving notice thereof to all interested parties, shall, either with or without

hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application: *Provided*, That upon written consent of the utility such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission unless an application for reconsideration shall have been first made and determined. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 64; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1935—Act Aug. 27, 1935, amended section generally, and among other changes, eliminated provisions for commencement of proceedings in equity in Supreme Court of District by persons dissatisfied with orders or decisions of the commission, preference of such actions over any other civil action, appeal from decisions of court, suspension by commission of decision or order pending appeal, prohibition of taxation of costs against commission and liability for damage, loss, or injury, and substituted therefore provisions for filing application in writing with commission requesting reconsideration of final order or decision, such filing to act as stay of order or decision until final action of commission upon the application, and determination of application as prerequisite to appeal.

Provisions for appeal, prohibition against taxation of costs and for liability of commission for damage or injury, and precedence of cases are contained in section 43-705.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Valuation, see § 33-305 et seq.

NOTES TO DECISIONS

Agreement not to resell product 1
Application or petition for reconsideration 2
Complaint and hearing 3
Costs on appeal 4
Exhaustion of administrative remedy 5
Legislative intent 6

1. Agreement not to resell product

Utility may require agreement from user not to remeter and resell current. *Lewis v. Potomac Elec. Power Co.* (1933, 64 F. 2d 701, 62 App. D. C. 63).

2. Application or petition for reconsideration

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with section of District Code permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia* (1953, 114 F. Supp. 321).

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order pre-

scribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

3. Complaint and hearing

A formal complaint and hearing before the Commission are not necessary conditions precedent to a suit in equity. *Hollis v. Kutz* (1921, 41 S. Ct. 371, 255 U. S. 452, 65 L. Ed. 727).

4. Costs on appeal

Appeal taken by the Public Utilities Commission from the order of the District Court of the United States for the District in a rate case was an administrative proceeding and the costs of printing the record and the brief of the Commission upon the appeal were expenses of the proceeding, although the appeal wherein these expenses were incurred was dismissed as a result of changed conditions. *Washington R. & Elec. Co. v. District of Columbia* (1935, 77 F. 2d 366, 64 App. D. C. 243).

5. Exhaustion of administrative remedy

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with this section permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia* (1953, 114 F. Supp. 321).

6. Legislative intent

Congress intended that the court shall revise the legislative discretion of the Commission by considering the evidence and full record of the case and entering the order it deems the Commission ought to have made. *Keller v. Potomac Elec. Power Co.* (1923, 43 S. Ct. 445, 261 U. S. 428, 67 L. Ed. 731).

§ 43-705. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.

The United States District Court for the District of Columbia shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other person or corporation affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may, within sixty days after final action by the Commission upon the petition for reconsideration, file with the clerk of the United States District Court for the District of Columbia a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice in writing of the appeal together with a copy of the petition. Within twenty days of the receipt of such notice of appeal the Commission shall file with the clerk of the said court the record, including a transcript of all proceedings had and testimony taken before the Commission, duly certified, upon which the said order or decision of the

Commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered thereon: *Provided*, That the parties, with the consent and approval of the Commission, may stipulate in writing that only certain portions of the record be transcribed and transmitted. Within this period the Commission or any other interested party shall answer, demur, or otherwise move or plead. Thereupon the appeal shall be at issue and ready for hearing. All such proceedings shall have precedence over any civil cause of a different nature pending in said court, and the United States District Court for the District of Columbia shall always be deemed open for the hearing thereof. Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said court. The said court, or any judge or judges thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without unreasonable delay shall transmit to the said court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

Upon the conclusion of its hearing of any such appeal the court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the court shall accompany its order by a statement of its reasons for its action, and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

Any party, including said Commission, may appeal from the order or decree of said court to the United States Court of Appeals for the District of Columbia, which shall thereupon have and take jurisdiction in every such appeal. Thereafter the Supreme Court of the United States may, upon a petition for certiorari granted in its discretion, review the said case.

Said Commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said Commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor required in any case to make any deposit for costs or pay for any service to the clerks of any court or to the marshal of the United States. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 65; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1935—Act Aug. 27, 1935, amended section generally. Prior to such amendment, section provided: "That

every proceeding, action, or suit to set aside, vacate, or amend any determination or order of the Commission, or to enjoin the enforcement thereof, or to prevent in any way any such order or determination from becoming effective shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised, within one hundred and twenty [120] days after the entry or rendition of such order or determination, and the right to commence any such action, proceeding, or suit, or to take or exercise any such appeal or right of recourse to the courts, shall terminate absolutely at the end of such one hundred and twenty days."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", "judge" for "justice" and "judges" for "justices."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

In general 1
 "Affected," definition 2
 Application for reconsideration 3
 Burden of proof 4
 Evidence to support findings 5
 Exhaustion of administrative remedy 6
 Final and conclusive orders 7
 Findings of commission 8
 Jurisdiction of courts 9
 Nature and scope of appeal 10
 Persons affected 11
 Petitions of appeal 12
 Presumption of validity of orders 13
 Record 14
 Validity 15

1. In general

Administrative determinations which are not commands may for all practical purposes determine rights as effectively as the judgment of a court, and may be re-examined by courts under particular statutes providing for the review of "orders". *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

2. "Affected," definition

Where order of the Public Utilities Commission authorized District of Columbia transit company to use radio loudspeakers in its vehicles, persons who used the services of the transit and intervened before the Commission were "affected by" the Commission's order and could appeal. *Pollak et al. v. Public Utilities Commission of District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

The word "affected", as used in this section was chosen by Congress to expand the privilege of complaint and appeal beyond that contemplated by words it used in other statutes, and beyond the conventional tests used in equity suits seeking restraint of governmental action. *U. S. v. Public Utilities Commission of District of Columbia* (1945, 151 F. 2d 609, 80 U. S. App. D. C. 227).

3. Application for reconsideration

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

4. Burden of proof

Though the burden of proof was upon the party contesting a finding of the Commission, the court must exercise its own judgment where challenged for a mistake of law, failure of evidence or contrary to weight of evidence. *Potomac Elec. Power Co. v. Public Utilities Comm.* (1922, 276 F. 2d 71, 51 App. D. C. 77).

5. Evidence to support findings

When supported by substantial evidence, Public Utilities Commission's choice between two conflicting views will not be disturbed, even though court might justifiably have reached a different conclusion had the matter been before it de novo. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1953, 114 F. Supp. 328, affirmed 206 F. 2d 490).

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

Where Public Utilities Commission's witness found that investors' appraisal of return required on common stock capital of gas company was 11.68 percent, and company's witnesses fixed it at 10.98 percent, both exclusive of cost of financing, and earnings-price ratio of companies involved to which Commission's witness testified was 10.54 percent, Commission's action in substituting 9 percent as a reasonable allowance in fixing rates and in amending sliding scale order so as to reduce primary rate of return from 6½ percent to 5¼ percent, was void, as not supported by substantial evidence. *Washington Gas Light Co. v. Public Utilities Commission of District of Columbia* (1944, 55 F. Supp. 627).

6. Exhaustion of administrative remedy

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with section 43-704 permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia* (1953, 114 F. Supp. 321).

7. Final and conclusive orders

Where each year during which sliding scale arrangement under consent decree had been in effect, electric rates were fixed by an order of Public Utilities Commission, the annual orders became final and conclusive when no person affected thereby availed himself of right of appeal under this section, and therefore the rates so fixed became the legal rates for the periods during which they were to endure, and neither the United States, as a consumer, nor any other party affected thereby could brand them as illegal. *U. S. v. Public Utilities Commission of District of Columbia* (1947, 158 F. 2d 533, 81 U. S. App. D. C. 237, certiorari denied 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

8. Findings of commission

Findings of administrative agency such as Public Utilities Commission of District of Columbia, where there is evidence to support them, may not be set aside by court. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 79 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

A mere general opinion of Public Utilities Commission of District of Columbia in relation to gas rates, unsupported by findings of fact based on substantial evidence is ineffective. *Washington Gas Light Co. v. Public Utilities Commission of District of Columbia* (1944, 55 F. Supp. 627).

9. Jurisdiction of courts

Congress may vest in the courts of the District power to review the discretion of a Public Utilities Commission fixing rates for a public service corporation, and enter the

order which they deem the commission should have made. *Keller v. Potomac Elec. Power Co.* (1923, 43 S. Ct. 445, 261 U. S. 428, 67 L. Ed. 731).

Where order of the Public Utilities Commission dismissing investigation with respect to radio broadcasts on vehicles of the transit system for the District of Columbia was erroneous as matter of law and the District Court dismissed the petitions of appellants on the ground that no legal right of theirs had been invaded, the Court of Appeals was authorized to vacate the judgment of the District Court with instructions to vacate the Commission's order and remand the case to the Commission for further proceedings, and appellants whose constitutional rights were allegedly invaded, were not required to sue out an injunction under the court's general equity powers, in order to obtain relief. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

10. Nature and scope of appeal

The right of appeal from order of public service commission is statutory in character, and extent of the right in each case depends upon meaning of language used in the statute, and not upon ordinary requirements of injunction suits. *U. S. v. Public Utilities Commission of District of Columbia* (1945, 151 F. 2d 609, 80 U. S. App. D. C. 227).

If total effect of rates fixed by the Public Utilities Commission of the District of Columbia for electric power cannot be said to be unjust and unreasonable, judicial inquiry is at an end. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. *Id.*

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. *Id.*

11. Persons affected

Where order of the Public Utilities Commission dismissed its investigation of protests by passengers against use of radio loudspeakers on vehicles of transit company of the District of Columbia and the final decision of the Commission was that the transit company could use loudspeakers in its vehicles, the order was appealable. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

The term "person affected", as used in this section includes a consumer of a public utility company. *U. S. v. Public Utilities Commission of District of Columbia* (1945, 151 F. 2d 609, 80 U. S. App. D. C. 227).

The United States, as a customer of public utility company, had standing as a "person affected" to prosecute its petition of appeal in the District Court from an order of Public Utilities Commission of District of Columbia determining rates which the company could charge for sale of electric energy in District of Columbia. *Id.*

12. Petitions of appeal

Where appellants' petition of appeal from an order of the Public Utilities Commission permitting use of radio loudspeakers on vehicles of transit system for the District of Columbia, stated that they were obliged to use the vehicles of the system and were thereby subjected against their will to the broadcasts in issue and the appellees moved to dismiss the petitions, allegations of the petitions were admitted. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

13. Presumption of validity of orders

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

14. Record

Order of District Court vacating Public Utility Commission's order granting utility a rate increase could not be reversed on theory that district judge did not have before him record of case before commission where material parts of record were brought to attention of district judge at time of hearing and before his decision was rendered. *Washington Gas Light Co. v. Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

15. Validity

A section of the statute providing for review is not rendered wholly void by the inclusion in it of an invalid provision for ultimate appeal to the Supreme Court. *Keller v. Potomac Elec. Power Co.* (1923, 43 S. Ct. 445, 261 U. S. 428, 67 L. Ed. 731).

§ 43-706. Appeal limited to questions of law.

In the determination of any appeal from an order or decision of the Commission the review by the court shall be limited to questions of law, including constitutional questions; and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings of the Commission are unreasonable, arbitrary, or capricious. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 66; Aug. 27, 1935, 49 Stat. 883, ch. 742, § 2.)

AMENDMENT

1935—Act Aug. 27, 1935, amended section generally. Prior to such amendment, section provided: "That no injunction shall issue suspending or staying any order of the commission, except upon application to the Supreme Court of the District of Columbia or a judge thereof, and only upon notice to the commission and after hearing had."

NOTES TO DECISIONS

In general 1
Application for reconsideration 2
Discretion of commission 3
Evidence supporting findings 4
Presumption of validity of orders 5
Rates, computation of 6
Reasonableness and justness of rates fixed 7
Record 8

1. In general

The District of Columbia Public Utilities Commission should keep in mind its obligation to facilitate judicial review of its orders and should assemble record and make findings which cover all the relevant issues and should indicate the formula chosen and should make clear the evidentiary support for its findings under whatever formula adopted. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

2. Application for reconsideration

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

3. Discretion of commission

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safe-guarded. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

4. Evidence supporting findings

When supported by substantial evidence, Public Utilities Commission's choice between two conflicting views will not be disturbed, even though court might justifiably have reached a different conclusion had the matter been before it de novo. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1953, 114 F. Supp. 328, affirmed 206 F. 2d 490).

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. *Id.*

5. Presumption of validity of orders

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

6. Rates, computation of

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

Normally, the unit for rate-making purposes for electricity is the entire interconnected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Id.*

7. Reasonableness and justness of rates fixed

If Public Utilities Commission's order providing for increase in rate to be charged by transit company produces no arbitrary results, court's inquiry is at an end. *Allied Civic Group, Inc., et al. v. Public Utilities Commission* (1955, 125 F. Supp. 453).

If total effect of rates fixed by the Public Utilities Commission of the District of Columbia for electric power cannot be said to be unjust and unreasonable, judicial inquiry is at an end. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

8. Record

On appeal from order of Public Utilities Commission of District of Columbia, case is not before court de novo, and court will not consider and review entire record. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1953, 114 F. Supp. 328, affirmed 206 F. 2d 490).

§ 43-707. Orders to remain in force pending appeal—Suspension of order.

All orders and decisions of the Commission shall remain in full effect, except as provided in section 43-704 hereof, unless and until they are suspended, superseded, or rescinded by the Commission or are

vacated by lawful order of the United States District Court for the District of Columbia: *Provided*, That if in any petition made to the said court appealing from an order or decision of the Commission it be alleged that substantial and irreparable property loss would be occasioned to the petitioner by the operation of the said order pending the determination of the said appeal, the court shall set a time and place for hearing upon the said allegation after not less than three days' notice to the Commission (during which period the execution of the order or decision shall be stayed), and the said court may then, upon a clear showing of the irreparable and substantial property loss as alleged, suspend the effective date of the said order. No such suspension shall be for a greater period than sixty days without further order after notice or hearing by the court. In the event of the issuance of an order suspending the operation of any order of the Commission, the court may include therein such provision as it deems advisable for the preservation of records or accounts and the impounding or otherwise securing of moneys necessary to give effect to the order of the Commission in the event the said order is sustained. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 67; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1935—Act of Aug. 27, 1935, substituted the above section for paragraph 67 of § 8 of the 1913 act, which provided the procedure formerly followed upon introduction of new evidence.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

NOTES TO DECISIONS

1. Error of law

High profits of electric company and alleged fact that Public Utilities Commission had not been as vigilant as it might have been in driving down the company's rates did not establish an error of law requiring judicial remedy and did not justify retrospectively holding invalid rate schedules authorized by the Commission over a course of many years. *U. S. v. Public Utilities Commission of District of Columbia* (1947, 158 F. 2d 533, 81 U. S. App. D. C. 237, certiorari denied 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

The earnings, in percentages, are meaningful only when they are related to electric company's total capital structure which presents a task for the Public Utilities Commission, and federal appellate court should not impose its judgment to effect that earnings were unlawful unless it is clearly shown that the rates which gave rise to the earnings were invalid because they woefully neglected the interests of consumers. *Id.*

§ 43-708. Certification of question to United States Court of Appeals.

The United States District Court for the District of Columbia, or any judge thereof before whom an appeal from an order of the Commission is pending, may certify to the United States Court of Appeals for the District of Columbia any questions or propositions of law concerning which instructions are desired for the proper disposition of

the appeal; and thereupon the Court of Appeals may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 68; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1935—Act Aug. 27, 1935, amended section generally. Prior to such amendment, section provided: "That if the commission shall rescind its order complained of the proceeding or suit shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order, and costs shall be taxed as may be deemed proper under the circumstances."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judge" for "justice."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 43-709. Authority of Commission to rescind its order after appeal is filed.

The Commission may at any time, rescind, alter, modify, or amend its order. If, after appeal is filed, the Commission shall rescind the order or decision appealed from, the appeal shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order or decision shall take the place of the original order and the court shall proceed thereon as though the late order had been made by the Commission in the first instance. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 69; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

AMENDMENT

1935—Act Aug. 27, 1935, substituted the above section for paragraph 69 of § 8 of the 1913 act, which fixed the burden of proof on the party adverse to the Commission or seeking to set aside determination, requirement, or order of said Commission.

CROSS REFERENCE

Amendment or revocation of orders, see § 43-702.

§ 43-710. Method of review exclusive.

The method of review of the orders and decisions of the Commission provided by sections 43-704 to 43-709, herein, shall be exclusive. (Mar. 4, 1913, ch. 150, § 8, par. 69a, as added Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

§ 43-711. Separability of provisions.

If any provisions of sections 43-412, 43-704 to 43-710 or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby. (Aug. 27, 1935, 49 Stat. 885, ch. 742, § 4.)

SAVINGS PROVISION

Section 5 of act Aug. 27, 1935, provided as follows: "No proceeding or litigation, except a proceeding involving solely the valuation of the property of any public utility, pending in any court in the District of Columbia on August 27, 1935, shall be affected by any of the provisions hereof."

§ 43-712. Production of incriminating evidence compellable, immunity from prosecution.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 1-10 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 70.)

CROSS REFERENCE

Criminal penalties for failure to testify or to produce documentary evidence, see § 43-905.

§ 43-713. Commission to furnish certified copies of orders.

Upon application of any person the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be prima facie evidence of the facts stated therein. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 71.)

Chapter 8.—ISSUANCE OF SECURITIES

Sec.

- 43-801. Creation of liens on property of utilities—Supervision by Commission.
- 43-802. Certificate of Commission showing authority to issue stock or pay dividends to be obtained.
- 43-803. Stocks not to be issued until certificate is recorded.
- 43-804. Repealed.
- 43-805. Issue of stocks for purpose of reorganization or consolidation—Approval of consolidation by Commission.
- 43-806. Application of proceeds of stock.
- 43-807. Stock to be void unless law is complied with.
- 43-808. Penalty for improper issuance or application of stock or proceeds.

§ 43-801. Creation of liens on property of utilities—Supervision by Commission.

The power to create liens on corporate property by public utilities in the District of Columbia is hereby declared to be a special privilege, the right of supervision, regulation, restriction, and control of which is hereby vested in the Public Utilities Commission of the District of Columbia, and such power shall be exercised according to the provisions of chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 72.)

CROSS REFERENCES

Constitutionality of act, see § 43-1003.
Construction of act, see § 43-1003.
Saving clauses, see §§ 43-1005, 43-1006.

§ 43-802. Certificate of Commission showing authority to issue stock or pay dividends to be obtained.

No public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than one year from date, or pay any stock, bond or scrip dividend, until it shall have first obtained the certificate of the commission showing authority for such issue from the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 73; Aug. 4, 1955, 69 Stat. 485, ch. 545, § 2.)

AMENDMENT

1955—Act Aug. 4, 1955, amended section by inserting the words "or pay any stock, bond or scrip dividend," after word "date."

CROSS REFERENCE

Criminal penalties, see § 43-901.

§ 43-803. Stocks not to be issued until certificate is recorded.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness for money, property, or services, either directly or indirectly, nor shall it receive any money, property, or services in payment of the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the certificate of the commission in chapters 1-10 of this title provided for. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 74.)

CROSS REFERENCE

Criminal penalties, see § 43-901.

§ 43-804. Repealed. Aug. 4, 1955, 69 Stat. 485, ch. 545, § 1.

Section, act Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 75, prohibited public utilities from declaring any stock, bond, or scrip dividend, etc. See § 43-802.

§ 43-805. Issue of stocks for purpose of reorganization or consolidation—Approval of consolidation by Commission.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness secured on its property in the District of Columbia for the purpose of any reorganization or consolidation in excess of the total amount of the stocks, certificates of stock, bonds, or other evidences of indebtedness than outstanding against the public utilities so reorganizing or consolidating, and no such public utility shall purchase the property of any other public utility for the purpose of effecting a consolidation until the commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the commission shall have approved in writing the terms upon which said consolidation shall be made. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 76.)

CROSS REFERENCES

Merger of street railways, see § 43-503.
Other similar provisions, see §§ 43-501, 43-502.

§ 43-806. Application of proceeds of stock.

No public utility shall apply the proceeds of any such stock, certificates of stock, bonds, or other evi-

dences of indebtedness to any other purpose or issue the same on any less favorable terms than that specified in the certificate issued by the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 77.)

§ 43-807. Stock to be void unless law is complied with.

All stocks, certificates of stock, bonds, and other evidences of indebtedness issued contrary to the provisions of chapters 1-10 of this title shall be void. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 78.)

§ 43-808. Penalty for improper issuance or application of stock or proceeds.

Any public utility, or any agent, director, or officer thereof, who shall, directly or indirectly, issue or cause to be issued any stocks, certificates of stock, bonds, or other evidences of indebtedness contrary to the provisions of chapters 1-10 of this title, or who shall apply the proceeds from the sale thereof to any purposes other than that specified in the certificate of the commission, shall forfeit and pay into the Treasury of the United States, to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia, not less than \$1,000 nor more than \$10,000 for each offense. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 79; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

1921—Act Feb. 22, 1921, amended section by adding the words beginning with "to the credit" and ending with "revenues of the District of Columbia."

CROSS REFERENCES

Disposition of fines, forfeitures, and penalties, see § 43-912.

Lump-sum appropriation by Federal Government for the District, see § 47-134.

Other criminal penalties, see § 43-901.

Penalties and forfeitures do not bar prosecutions under other laws, see § 43-913.

Chapter 9.—PENAL PROVISIONS

Sec.

- 43-901. Penalty for false statements in securing approval of issuance of stock.
- 43-902. Penalty for demanding or receiving greater or less than established rates.
- 43-903. Less than rates not to be charged in consideration of consumer furnishing equipment—Exceptions.
- 43-904. Rebates prohibited—Penalty.
- 43-905. Penalties for failing or refusing to furnish information, for furnishing false information for failing to keep proper accounts.
- 43-906. Penalty for failure or refusal to perform duty enjoined or to obey order of Commission.
- 43-907. Prosecution and penalty for violation of rules.
- 43-908. Construction of sections 43-906 and 43-907.
- 43-909. Penalty for destruction of apparatus or appliance of Commission.
- 43-910. Each day's default to constitute separate and distinct offense.
- 43-911. Commission may regulate unreasonable and discriminatory rates and fix new rates.
- 43-912. Fines, penalties, and forfeitures to be paid into Treasury.
- 43-913. Saving clause—Rights, penalties, and forfeitures under laws and regulations continued—Penalties and forfeitures cumulative.

§ 43-901. Penalty for false statements in securing approval of issuance of stock.

Each and every director, president, secretary, or other official of any such public utility who shall make any false statement to secure the issue of any stock, certificate of stock, bond, mortgage, or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the commission the making of the certificate herein provided, or issue, with knowledge of such fraud, negotiate, or cause to be negotiated, any such stock, certificate of stock, bond, mortgage, or other evidence of indebtedness in violation of chapters 1-10 of this title, shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than \$1,000 or by imprisonment for a term of not less than one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 80.)

§ 43-902. Penalty for demanding or receiving greater or less than established rates.

If any public utility or any agent or officer thereof shall, directly or indirectly, by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered by it in or affecting or relating to the conduct of a street railroad or street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electric corporation, water power company, telephone line, telephone corporation, telegraph line, or telegraph corporation, or pipe line company, or to the production, transmission, delivery, or furnishing of heat, light, water, or power, or the conveyance of telephone or telegraph messages, or for any service in connection therewith than that prescribed in the public schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation other than one conducting a like business for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be a misdemeanor and unlawful, and upon conviction thereof shall forfeit and pay to the District of Columbia not less than \$100 nor more than \$1,000 for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$100 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 81.)

CROSS REFERENCE

Illegal rates by electric power companies, see § 43-1107.

NOTES TO DECISIONS

1. Cash deposit

Utility may require cash deposit from customers unable to establish financial responsibility. *Riegel v. Public Utilities Comm.* (1931, 48 F. 2d 1023, 60 App. D. C. 11).

§ 43-903. Less than established rates not to be charged in consideration of consumer furnishing equipment—Exceptions.

It shall be unlawful for any public utility to demand, charge, collect, or receive from any person, firm, or corporation less compensation for any service rendered or to be rendered by said public utility

in consideration of the furnishing by said person, firm, or corporation of any part of the facilities incident thereto: *Provided*, That nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water, or power, or the supply of any liquid, steam, or air, through pipes or tubing, or the conveyance of telegraph or telephone messages, and paying a reasonable rental therefor; or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises, and, unless otherwise ordered by the commission, meters, and appliances for measurements of any product or service. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 82.)

§ 43-904. Rebates prohibited—Penalty.

It shall be unlawful for any person, firm, or corporation to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any liquid, steam, or air, or the conveying of telegraph or telephone messages within the District of Columbia, or for any service in connection therewith whereby any such service shall, by any device whatsoever or otherwise be rendered free or at a less rate than that named in the schedules and tariffs in force as provided in chapters 1-10 of this title, or whereby any service or advantage is received other than is in chapters 1-10 of this title specified. Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$200 nor more than \$1,000 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 83.)

§ 43-905. Penalties for failing or refusing to furnish information, for furnishing false information, for failing to keep proper accounts.

Any officer, agent, or employee of any public utility who shall fail or refuse to fill out and return any blanks, as required by chapters 1-10 of this title, or shall fail or refuse to answer any question therein propounded, or shall knowingly or wilfully give a false answer to any such question, or shall evade the answer to any such question where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to the commission or any commissioner or any person authorized to examine the same, any book, paper, account, record, or memoranda of such public utility which is in his possession or under his control, or who shall fail to properly use and keep his system of accounting, or any part thereof, as prescribed by the commission under chapters 1-10 of this title, or who shall refuse to do any act or thing in connection with such system of accounting when so directed by the commission or its authorized representative shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$200 nor more than \$1,000 for each offense, and a penalty of not less than \$500 nor more than \$2,000 shall, on conviction, be imposed on the public

utility for each such offense when such officer, agent, or employee acted in obedience to the direction, construction,¹ or request of such public utility or any general officer thereof. (Mar. 4, 1913, 37 Stat. 992 ch. 150, § 8, par. 84.)

§ 43-906. Penalty for failure or refusal to perform duty enjoined or to obey order of Commission.

If any public utility shall violate any provision of chapters 1-10 of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal such public utility shall forfeit and pay to the District of Columbia the sum of \$200 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 85.)

CROSS REFERENCES

Each day's default separate offense, see § 43-910.

Investigation of neglect or violations of laws, rules, or regulations, see § 43-1002.

§ 43-907. Prosecution and penalty for violation of rules.

Prosecution for violation of any rule, order, or regulation made, adopted, or approved by the Public Utilities Commission under authority of chapters 1-10 of this title, or section 40-603, or sections 47-2301 to 47-2328, 47-2331 to 47-2450, or by the Joint Board under authority of section 40-603 or sections 47-2301 to 47-2328, 47-2331 to 47-2350, shall be on information in the Municipal Court for the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. Any person, corporation, or public utility violating any such rule, order, or regulation shall, upon conviction, be fined not more than \$200: *Provided*, That the provisions of sections 43-907, 43-908 shall not be construed to apply to rules, orders, or regulations adopted or promulgated by the Commissioners of the District of Columbia which are not specifically required to be referred to the Joint Board or subject to the approval of such board: *Provided further*, That with respect to orders, rules, or regulations made or adopted by the Public Utilities Commission under authority of chapters 1-10 of this title, this section shall be construed to apply only to such orders, rules, or regulations as are subject to the penalties specifically provided in section 43-906. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT
"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

¹ So in original. Probably should read "instruction".

CROSS REFERENCES

Rules and regulations generally, see § 43-202.

Violations of provisions concerning street cars, see § 44-203.

§ 43-908. Construction of sections 43-906 and 43-907.

The provisions of sections 43-906 and 43-907, so far as they relate to the orders, rules, and regulations of the Public Utilities Commission, shall be construed as prescribing alternative methods of enforcement of the orders, rules, or regulations of the commission, and any order, rule, or regulation adopted by the Public Utilities Commission which is required to be referred to or is subject to the approval of the joint board may be enforced either as provided by sections 43-906 or 43-907. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 2.)

§ 43-909. Penalty for destruction of apparatus or appliance of Commission.

Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the commission or its agent shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding \$100 or imprisonment for a period not exceeding thirty days, or both. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 86.)

§ 43-910. Each day's default to constitute separate and distinct offense.

Every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or willfully to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this section, shall constitute a separate and distinct violation of such order, or direction, or of chapters 1-10 of this title, as the case may be. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 87.)

§ 43-911. Commission may regulate unreasonable and discriminatory rates and fix new rates.

Whenever, after hearing and investigation as provided in chapters 1-10 of this title, the commission shall find that any rate, toll, charge, regulation, or practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix, and determine the same as provided in chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 88.)

CROSS REFERENCES

General provision for alteration, revocation, or amendment of orders, see § 43-702.

Investigation and determination of rates, see §§ 43-408 to 43-417.

NOTES TO DECISIONS

1. In general

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

§ 43-912. Fines, penalties, and forfeitures to be paid into Treasury.

All moneys received from fines, forfeitures, and penalties shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 98; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CODIFICATION

Section consolidates par. 98 of section 8 of act Mar. 4, 1913, and section 7 of act Feb. 22, 1921.

CROSS REFERENCE

Lump-sum appropriation by Federal Government for the District, see § 47-134.

§ 43-913. Saving clause—Rights, penalties, and forfeitures under laws and regulations continued—Penalties and forfeiture cumulative.

Chapters 1-10 of this title shall not have the effect to release or waive any right of action by the United States, or by the District of Columbia, or by any person, for any right, penalty, or forfeiture under any law of the United States or any regulation in force in the District of Columbia; and all penalties and forfeitures accruing under said chapters shall be cumulative, and a suit for any recovery of one shall not be a bar to the recovery of any other penalty (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 93.)

Chapter 10.—GENERAL PROVISIONS

Sec.

- 43-1001. Utilities to report to Commission accidents upon their premises—Commission may investigate.
- 43-1002. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.
- 43-1003. Chapters to be liberally construed—Separability of provisions.
- 43-1004. Number of directors of public utilities.
- 43-1005. Existing laws to remain in force.
- 43-1006. Action pending March 4, 1913, unaffected by chapters 1-10 of this title.
- 43-1007. Right to alter, amend, or repeal reserved.

§ 43-1001. Utilities to report to Commission accidents upon their premises—Commission may investigate.

Every public utility shall, whenever an accident attended with loss of human life or personal injury without loss of human life occurs within the District of Columbia, upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 89.)

§ 43-1002. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.

The commission shall inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any

public utility, and shall have the power, and it shall be its duty, to enforce the provisions of chapters 1-10 of this title as well as all other laws relating to public utilities. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 90.)

CROSS REFERENCE

General provisions for enforcement of laws, rules and regulations, see §§ 43-906 to 43-908.

NOTES TO DECISIONS

1. Jurisdiction

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak et al. v. Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43-1003. Chapters to be liberally construed—Separability of provisions.

The provisions of chapters 1-10 of this title shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the commission by the provisions of chapters 1-10 of this title the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in chapters 1-10 of this title conferred on said commission. The commission hereby created shall have, in addition to the powers in chapters 1-10 of this title specified, mentioned, and indicated all additional, implied, and incidental power which may be proper and necessary to effect and carry out, perform, and execute all the said powers herein specified, mentioned, and indicated. A substantial compliance with the requirements of chapters 1-10 of this title shall be sufficient to give effect to all the rules, orders, acts, and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. That each section of chapters 1-10 of this title, and every part of each section, are hereby declared to be independent sections and the holding of any section or sections or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part thereof. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 92.)

§ 43-1004. Number of directors of public utilities.

The Board of Directors of every public utility shall consist of not more than fifteen nor less than seven members, within which limitation the membership may be in any case increased or diminished, as the stockholders may from time to time determine. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 100.)

§ 43-1005. Existing laws to remain in force.

Except as modified or changed by chapters 1-10 of this title and until modified or changed under its provisions, all charters, statutes, laws, ordinances, and regulations in force on March 4, 1913, shall remain and continue to be in full force and effect until altered, amended, or repealed according to law: *Provided*, That all charters, statutes, acts, and parts

of acts, laws, ordinances, and regulations enacted prior to March 4, 1913, inconsistent and repugnant to the provisions of chapters 1-10 of this title, and only so far as inconsistent and repugnant thereto, are hereby repealed. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 101.)

CROSS REFERENCES

Appeal and review, separability clause, see § 43-711.
Other provisions for saving clause for laws, orders, rules and regulations and pending proceedings, see §§ 43-203, 43-1006.

§ 43-1006. Action pending March 4, 1913, unaffected by chapters 1-10 of this title.

Chapters 1-10 of this title shall not affect actions or proceedings, civil or criminal, or quasi criminal, pending on March 4, 1913, but the same may be prosecuted or defended as provided by preexisting law or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 102.)

COMPILER'S NOTE

This section is probably temporary and obsolete.

CROSS REFERENCE

Saving clause, see § 43-1005.

§ 43-1007. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 103.)

Chapter 11.—ELECTRIC LIGHT AND POWER COMPANIES—SPECIAL ACTS

Sec.

- 43-1101. Extension of overhead wires in Georgetown—
Extension of underground conduits in Mount Pleasant.
- 43-1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.
- 43-1103. Certain existing conduits and overhead wires legalized.
- 43-1104. Electric-lighting wires west of Rock Creek.
- 43-1105. Electric-lighting wires east of Rock Creek.
- 43-1106. Permits for repair, extension, and enlargement of conduits.
- 43-1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—
Additional charge for nonpayment of bills.
- 43-1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.
- 43-1109. Repealed.

§ 43-1101. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.

The said commissioners may authorize any electric light company existing June 11, 1896, to construct and use under such regulations as the commissioners may fix conduits for the reception of overhead wires existing on said date within the territory formerly known as Georgetown, and to extend the same by an aggregate of not more than one and one-fourth miles of conduit in the same territory. And the United States Electric Lighting Company may extend its underground conduits and wires east of Rock Creek and within the fire limits to Mount Pleasant, and Washington and Columbia Heights under such regulations as the Commissioners of the District of Columbia may prescribe. (June 11, 1896, 29 Stat. 401, ch. 419 § 1.)

CROSS REFERENCES

Inspection and regulation of production, use and control of electrical power, see § 1-719 et seq.

Jurisdiction and control over public ways, see § 7-102.

Permits to lay underground conduits in or on highways, streets, and bridges, see §§ 7-1230, 7-1232.

Private conduits, see § 43-1301 et seq.

Protection of life, health, and property, rules and regulations generally, see § 1-226.

§ 43-1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.

Until Congress shall provide for a conduit system it shall be unlawful to lay conduits or erect overhead wires for electric lighting purposes in any road, street, avenue, highway, park, or reservation, except as specifically authorized by law: *Provided, however*, That the Commissioners of the District of Columbia are hereby authorized to issue permits for house connections with conduits and overhead wires existing on June 4, 1897, adjacent to the premises with which such connection is to be made; and also permits for public lighting connections with conduits existing on June 4, 1897, in the portion of the street proposed to be lighted. And nothing herein contained shall be construed to affect in any way any litigation pending on June 4, 1897, involving the validity or invalidity or legality of the construction of any conduits made since June 18, 1896, nor to prevent the United States Electric Lighting Company from extending conduits into Columbia Heights, Washington Heights, and Mount Pleasant within the fire limits as specifically provided in sections 43-1101 and 43-1401. (Mar. 3, 1897, 29 Stat. 673, ch. 387; June 4, 1897, 30 Stat. 41, ch. 2.)

CODIFICATION

Section consolidates parts of acts Mar. 3, 1897, and June 4, 1897.

CROSS REFERENCE

Similar provisions, see § 43-1401.

§ 43-1103. Certain existing conduits and overhead wires legalized.

All conduits existing on July 7, 1898, within the fire limits, and all overhead electric light wires existing on July 7, 1898, without the fire limits in the District of Columbia are hereby legalized until otherwise provided by law, and house connections may be made with such overhead electric light wires outside such fire limits. (July 7, 1898, 30 Stat. 664, ch. 571 § 1.)

§ 43-1104. Electric-lighting wires west of Rock Creek.

The Commissioners of the District of Columbia are hereby authorized to issue permits to electric light companies existing on July 8, 1898, in the District of Columbia for the extension of overhead electric wires existing on July 8, 1898, outside the fire limits and west of Rock Creek to be used for lighting purposes only. (July 8, 1898, 30 Stat. 753, Joint Res. No. 59.)

§ 43-1105. Electric-lighting wires east of Rock Creek.

The Commissioners of the District of Columbia are hereby authorized, under conditions and regulations to be prescribed by them, to permit the erection of poles and the stringing of overhead wires thereon outside of the fire limits and east of Rock Creek for electric-lighting purposes only. (July 1, 1902, 32 Stat. 602, ch. 1352 § 1.)

§ 43-1106. Permits for repair, extension, and enlargement of conduits.

The Commissioners of the District of Columbia are hereby authorized to grant permits for the repair, enlargement, and extension, under proper regulations, of electric-lighting conduits existing on June 6, 1900, and in every conduit constructed or to be constructed under the provisions of this section, three ducts shall be reserved for the use of the United States and the District of Columbia. (June 6, 1900, 31 Stat. 563, ch. 789, § 1.)

§ 43-1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.

The Commissioners of the District of Columbia are authorized to grant permits for the repair, enlargement, and extension, under proper regulations, of electric-lighting conduits existing on March 3, 1899, and in every conduit constructed or to be constructed under the provisions of this section, three ducts shall be reserved for the use of the United States and the District of Columbia. As a condition for the right to use conduits built prior to March 3, 1899, or built or to be built under the provisions of this section, the electric lighting companies shall be required at all times to furnish to the public and to private consumers in all parts of the District of Columbia standard arc lights of not less than one thousand actual candlepower, at a rate not exceeding seventy-two dollars per annum for each arc light. The maximum price of electric current sold or furnished to any consumer in the District of Columbia shall not exceed ten cents per kilowatt hour. If consumers other than the Government shall not pay monthly electric bills within ten days after the same shall have been presented, said companies may charge and collect from said consumer so failing to pay said bill as aforesaid eleven cents per kilowatt hour for the electric current furnished to said consumer during said month: *And provided further*, The right to amend, modify, or repeal the privileges granted in this section, and to further limit the prices herein specified, is hereby expressly reserved; any company charging or collecting an amount in excess of the rates prescribed in this section shall be deemed guilty of a misdemeanor, and shall pay to the District of Columbia the sum of fifty dollars for each and every offense, to be collected as other fines are collected in the District of Columbia. (Mar. 3, 1899, 30 Stat. 1053, ch. 422 § 1.)

CROSS REFERENCES

Criminal penalties for discriminatory or unreasonable rate, see §§ 43-902 to 43-904.

Illegal rates, see § 43-301.

Rates and rate making generally, see § 43-401.

NOTES TO DECISIONS

Discretion of commission 1
Rates, computation of 2

1. Discretion of commission

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

2. Rates, computation of

Normally, the unit for rate-making purposes for electricity is the entire inter-connected operating property

of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Leeman et al. v. Public Utilities Commission of District of Columbia et al.* (1952, 104 F. Supp. 553).

§ 43-1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

The Commissioners of the District of Columbia are hereby authorized, in their discretion, to permit the Potomac Electric Power Company to make connections between its conduits and the conduits of the Washington Railway and Electric Company and all other companies controlled by the Washington Railway and Electric Company for the purpose of furnishing electric current through the said conduits for public and private uses, the use of said railway companies' conduits to be upon such terms as may be agreed upon between the said companies. (Apr. 27, 1904, 33 Stat. 376, ch. 1628 § 1.)

CROSS REFERENCE

Joint use of utility facilities, see § 43-302.

§ 43-1109. Repealed. Aug. 4, 1955, 69 Stat. 490, ch. 547, § 1.

Section, act Mar. 2, 1907, 34 Stat. 1134, ch. 2510, dealt with annual reports to Congress by companies, associations or corporations engaged in the manufacture and sale of electricity for illuminating or heating or power purposes or either.

CROSS REFERENCE

Reports of utility companies, see § 47-318.

Chapter 12.—GAS COMPANIES—SPECIAL ACTS

Sec.

- 43-1201. Laboratory for testing gas of Washington Gas Light Company.
- 43-1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.
- 43-1203. Officer of company may be present at tests.
- 43-1204. Daily inspections—Reports.
- 43-1205. Removal of gas meters for neglect or refusal to pay amount due.
- 43-1206. Annual reports to Congress.
- 43-1207. Maximum rates for gas—Additional charge for nonpayment of bills.

§ 43-1201. Laboratory for testing gas of Washington Gas Light Company.

A laboratory shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Public Utilities Commission, in the central part of the City of Washington, at a distance as near as may be, of two thousand feet from any gas-works, and furnished with suitable apparatus for the transaction of the business of the inspector and assistant inspectors of gas and meters, for which it is intended, and the laboratory shall be kept open on all business-days between the hours of nine o'clock in the forenoon and four o'clock in the afternoon: *Provided*, That the cost of fitting up said laboratory shall be paid for by each gas company in the District of Columbia in proportion to their sale of gas for the year 1873. (June 23, 1874, 18 Stat. 278, ch. 480, § 3; Mar. 3, 1893, 27 Stat. 543, ch. 199; Mar. 11, 1902, 32 Stat. 63, ch. 181; Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

CODIFICATION

Section consolidates section 3 of act June 23, 1874, parts of acts Mar. 3, 1893, and Mar. 11, 1902, and section 8 of Act Mar. 4, 1913.

CROSS REFERENCE

Other provisions concerning gas inspector and testing of meters, see § 43-603.

§ 43-1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.

Two additional laboratories shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Commissioners of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Commissioners, at a total cost not to exceed one thousand dollars, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Washington Gas Light Company. One of the said laboratories shall be located in the northwestern portion of the city of Washington and the other in the southeastern portion of said city, and the cost of providing and fitting up the said laboratories shall be paid for by the said Washington Gas Light Company. A laboratory shall be provided and fitted up by the Georgetown Gas Light Company, subject to the approval of the Commissioners of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Commissioners at a total cost not to exceed one thousand dollars, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Georgetown Gas Light Company: *Provided*, That the cost of providing and fitting up the said laboratory shall be paid by the said Georgetown Gas Light Company: *Provided further*, That the Washington Gas Light Company and the Georgetown Gas Light Company shall, at the beginning of each fiscal year, in proportion to their respective receipts from sales of gas for the fiscal year immediately preceding, provide in advance, by depositing with the collector of taxes of the District of Columbia, a sum sufficient to pay the necessary expenses of maintaining the service of inspecting and testing illuminating gas and gas meters, herein provided for, as estimated by the Commissioners of the District of Columbia, and not to exceed five hundred dollars per annum for each of the said additional laboratories. (Mar. 3, 1893, 27 Stat. 543, ch. 199.)

§ 43-1203. Officer of company may be present at tests.

The company, person or persons furnishing the gas may, if they see fit, on each occasion of the testing of the gas by the inspector, be represented by some officer, but such officer shall not interfere in the testing. (June 23, 1874, 18 Stat. 278, ch. 480, § 4, July 1, 1882, 22 Stat. 138, ch. 263, § 1.)

AMENDMENT

1882—Act July 1, 1882, abolished the office of assistant inspector.

§ 43-1204. Daily inspections—Reports.

Daily inspections, Sundays excepted, shall be made at any time after twelve o'clock noon and before twelve o'clock midnight, in the discretion of the inspector of gas and meters. (June 23, 1874, 18 Stat. 278, ch. 480, § 5; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

AMENDMENT

1893—Act Mar. 3, 1893, changed the hours of inspection from between five and eleven o'clock in the afternoon to between twelve o'clock noon to twelve o'clock midnight.

CROSS REFERENCE

Right of access to make examinations and inspections, see § 43-601.

§ 43-1205. Removal of gas meters for neglect or refusal to pay amount due.

If any person or persons, supplied with gas, neglect or refuse to pay the amount due for the same, such company may stop the gas from entering the premises of such person or persons. In no case shall the officers, servants, or workmen of the company remove a meter from premises supplied by the company, unless by consent of the consumer, without first giving forty-eight hours' notice in writing by leaving the same at the premises of the consumers; and said removal shall take place only between the hours of eight o'clock in the forenoon and two o'clock in the afternoon. It shall be lawful for Congress at any time hereafter to alter, amend, or repeal this section. (June 23, 1874, 18 Stat. 280, ch. 480, §§ 13, 14.)

CROSS REFERENCE

Defective meter as defense, see § 43-604.

§ 43-1206. Annual reports to Congress.

Any association or corporation engaged in the manufacture and sale of gas for illuminating and fuel purposes in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the 1st day of February in each year. Said report shall contain a detailed statement of the condition of the business of said association or corporation for the year ending December 31st next preceding, and such statement shall set forth the actual cost and also present value of the property of such association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such association or corporation, the amount and cost of materials used in making gas, the amount of gas manufactured, the amount of gas sold, the average price per thousand cubic feet received for gas sold, the revenue from the sale of all by-products, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set apart for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public utility corporations, in the

District of Columbia, the names of the stockholders and the amount of the stock held in such association or corporation by each of them on December 31st next preceding the date of such report. (Mar. 2, 1907, 34 Stat. 1133, ch. 2510 § 1.)

CROSS REFERENCE

Reports generally, see § 43-318.

§ 43-1207. Maximum rates for gas—Additional charge for nonpayment of bills.

No part of any money appropriated by any Act shall be used for the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies for use in any of the public buildings of the United States or the District of Columbia at a rate in excess of 70 cents per one thousand cubic feet.

The Washington Gas Light Company shall not charge or collect for gas furnished a private consumer in any part of the District of Columbia a rate in excess of 75 cents per one thousand cubic feet of gas so furnished: *Provided*, That if a consumer of gas other than the Government or the District of Columbia shall not pay monthly any gas bill within ten days after the same shall have been presented, said gas company may charge and collect from any such consumer so failing to pay said gas bill as aforesaid 10 cents additional for each one thousand cubic feet of gas represented by said bill: *And provided further*, That nothing contained in this section shall be construed as limiting or taking away any of the powers vested by law in the Public Utilities Commission of the District of Columbia.

The Georgetown Gas Light Company shall not be permitted to charge or collect more than 85 cents per one thousand cubic feet for gas for cooking, illuminating, or other purposes. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 6.)

CROSS REFERENCE

Rates and rate making generally, see § 43-401.

NOTES TO DECISIONS**1. Rates, computation of**

Whatever formula is adopted by District of Columbia Public Utilities Commission for gas rate purposes, the commission's findings must be based on substantial evidence in the record. *Washington Gas Light Co. v. Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Id.*

Chapter 13.—PRIVATE CONDUITS**Sec.**

- 43-1301. Conditions under which private conduits may be laid.
- 43-1302. Refusal to remove conduits—Penalty.
- 43-1303. Right to alter, amend, or repeal reserved.
- 43-1304. Construction of tunnels and structures in Anacostia River.

§ 43-1301. Conditions under which private conduits may be laid.

The Commissioners of the District of Columbia are hereby authorized to grant permission to lay conduits for the transmission of electric power and pipes

for the transmission of steam in alleys in the District of Columbia, under the following conditions, namely:

The conduits or pipes shall be laid entirely within a square or block, and shall not cross or enter any avenue, street, or highway.

The conduits and pipes shall be located as directed by said Commissioners and be laid under their inspection; and the cost of such inspection, together with the cost of replacing all improved pavements disturbed in connection with said work, shall be paid in advance by the party desiring to lay said conduits or steam pipes.

The conduits or pipes shall be used only to connect the premises owned and operated by the permittee, and no power or steam shall be supplied therefrom for any other purpose than the use of the permittee.

The permittee shall not rent the conduit or pipe or any portion thereof. (May 26, 1900, 31 Stat. 217, ch. 587, § 1.)

CROSS REFERENCE

Electrical conduits, provisions concerning, see § 43-1101 et seq.

§ 43-1302. Refusal to remove conduits—Penalty.

On violation of any of the provisions or restrictions of section 43-1301 the said Commissioners shall require the permittee, after thirty days' notice, to abandon the use of said conduits or pipes and remove them from the alley or alleys in which they are located, and if said permittee shall neglect or refuse to remove said conduits or pipes and place the surface of the alley in good condition within sixty days after the date of said notice, the said permittee shall be deemed guilty of a misdemeanor, and shall be liable to a fine of ten dollars for each and every day that said conduits or pipes are allowed to remain in the alley, or the said alley shall remain out of repair, which fine shall be recovered in the municipal court of said District, in the name of said District, as other fines and penalties are now recovered in said court. (May 26, 1900, 31 Stat. 218, ch. 587, § 2.)

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT
 "Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

§ 43-1303. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 43-1301 and 43-1302. (May 26, 1900, 31 Stat. 218, ch. 587, § 3.)

§ 43-1304. Construction of tunnels and structures in Anacostia River.

The Secretary of War is authorized to permit the construction and operation of any intake and discharge tunnels and/or other structures in the Anacostia River in so far as they affect navigable waters of the United States; and the Director of National Park Service is authorized, in consideration of the above-mentioned quitclaims to the United States, to convey, on behalf of the United States, to the owners of square 667 that portion of square east of 667 lying west of the direct southerly projection of the west line of Half Street as existing on June 15, 1932, north of U Street southwest; and said Director of National Park Service is authorized to permit the

construction and operation of any pipe lines and intake and discharge tunnels, upon such terms and conditions as shall be fair and reasonable, under and on any lands owned or claimed by the Government of the United States lying in the above area and/or between the east line of Water Street, or other streets, and the Anacostia River. All areas conveyed by the United States to the owners of square 667 shall thereafter be assessed on the books of the assessor of the District of Columbia the same in all respects as other private properties in the District of Columbia. (June 15, 1932, 47 Stat. 319, ch. 265, § 4.)

TRANSFER OF FUNCTIONS

Director of Public Buildings and Public Parks of the National Capital was changed to Director of National Parks, Buildings and Reservations by Ex. Or. No. 6166, June 10, 1933. This in turn was changed to Director of National Park Service by act of March 2, 1934, 48 Stat. 389, ch. 38, § 1.

Chapter 14.—TELEGRAPH AND TELEPHONE COMPANIES

Sec.

- 43-1401. Additional telegraph and telephone wires prohibited on streets—Extensions.
- 43-1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.
- 43-1403. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.
- 43-1404. Penalties.
- 43-1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.
- 43-1406. Regulations for inspection—Ducts for use of fire and police wires.
- 43-1407. Repairs and renewals.
- 43-1408. Right to alter, amend, or repeal reserved.
- 43-1409. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.
- 43-1410. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telegraph companies.
- 43-1411. Penalties.
- 43-1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.
- 43-1413. Conduits in public parks or reservations.
- 43-1414. Regulations for inspection—Ducts for use of fire and police wires.
- 43-1415. Repairs and renewals.
- 43-1416. Right to alter, amend, or repeal reserved—Rights under U. S. Code, title 47, sections 1 et seq. preserved.
- 43-1417. Rights to build and lay conduits not to be paid for in event of condemnation.

§ 43-1401. Additional telegraph and telephone wires prohibited on streets—Extensions.

The commissioners of the District of Columbia shall not permit or authorize any additional telegraph, telephone, electric lighting or other wires to be erected or maintained on or over any of the streets or avenues of the City of Washington: *Provided*, That the Commissioners of the District may, under such reasonable conditions as they may prescribe, authorize the wires of any electric light company existing on July 18, 1888, and then operating in the District of Columbia, to be laid under any street, alley, highway, footway or sidewalk in the District, whenever in their judgment the public interest may require the exercise of such authority—such privileges as may be granted hereunder to be

revocable at the will of Congress without compensation and no such authority to be exercised after the termination of the Fiftieth Congress. (July 18, 1888, 25 Stat. 323, ch. 676, § 1.)

CROSS REFERENCES

Conduits in public parks and reservations, see § 43-1413. Jurisdiction and control over public ways, see § 7-102. Other provisions concerning electrical wiring, see § 43-1101 et seq.

Protection of life, health, and property, rules and regulations generally, see § 1-226 and notes.

Rules and regulations for construction of conduits, see §§ 43-1406, 43-1414.

NOTES TO DECISIONS

1. Existing lines

Under this section the Commissioners of the District might authorize the wires of any "existing telegraph, telephone or electric light company," to be laid under streets and alleys whenever public interest may exercise such authority. *Chesapeake & Potomac Tel. Co. v. Manning* (1902, 22 S. Ct. 881, 186 U. S. 238, 46 L. Ed. 1144).

§ 43-1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.

All telephone poles and wires attached thereto not the property of the United States or the District of Columbia existing June 20, 1902, upon the streets and avenues within the section of the District of Columbia bounded by a line beginning at Second and B Streets southeast and running thence along B Street south, Third Street west, Missouri Avenue, Sixth Street west, B Street north, Twenty-third Street west, Rock Creek, Cincinnati Street, Columbia Road, Sixteenth Street west (extended), Park Street, Whitney Avenue, Eleventh Street west, R Street north, New Jersey Avenue, C Street north, and Second Street east to the point of beginning, except as hereinafter provided, shall from time to time, as may be prescribed by the Commissioners of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said Commissioners, and it is hereby made the duty of said Commissioners to enforce compliance with the provisions of sections 43-1402 to 43-1408, inclusive, as expeditiously as may be consistent with the public interests; and the said Commissioners are hereby empowered from time to time to authorize any individual, company, or corporation operating on June 20, 1902, and maintaining a telephone plant or system, partly overhead and partly underground, in the District of Columbia, to extend and enlarge its system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said city and District as may be requisite and necessary for the purposes of sections 43-1402 to 43-1408, inclusive, and for the reception of such other cables and wires as may be reasonably required in the future by the growth of such individual, company, or corporation or to adequately meet the requirements of the public for telephone service. (June 20, 1902, 32 Stat. 393, ch. 1136, § 1.)

NOTES TO DECISIONS

1. Authority of commissioners

Commissioners of the District might authorize wires of telephone, telegraph or electric light company to be laid under streets and alleys whenever public interest

may exercise such authority. *Chesapeake & Potomac Tel. Co. v. Manning* (1902, 22 S. Ct. 881, 186 U. S. 238, 46 L. Ed. 1144).

§ 43-1403. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.

From time to time any individual, company, or corporation, maintaining and operating on June 20, 1902, a telephone plant or system in said District, partly overhead and partly underground, shall prepare and submit to the said Commissioners a plan or plans, or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof, and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Commissioners. Said Commissioners are empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Commissioners of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the section in said District described in section 43-1402 the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be, without impairing the efficiency of the telephone service in said District, the individual, company, or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and wires except such as said Commissioners may, in accordance with the provisions of sections 43-1402 to 43-1408, inclusive, permit to remain for the purpose of distributing wires for house connections. (June 20, 1902, 32 Stat. 393, ch. 1136, § 2.)

§ 43-1404. Penalties.

Any individual, company, or corporation owning and maintaining such poles and wires attached thereto on or over any street or avenue within the section of the District described in section 43-1402 who shall wilfully neglect or refuse to remove the same, as provided in section 43-1403, shall be liable to a penalty of not more than twenty-five dollars for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (June 20, 1902, 32 Stat. 394, ch. 1136, § 3.)

§ 43-1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.

Said Commissioners are empowered to authorize the erection and maintenance of poles in the alleys of said city and District and the stringing thereon of telephone conductors from alley poles or house-top fixtures in one square to alley poles or housetop fixtures in another square for the purpose of enabling house connections to be made, and also to au-

thorize the erection of telephone poles in the District of Columbia outside the limits of the section of said District described in section 43-1402 and the stringing thereon of telephone conductors for house connections or for connection with lines outside the District of Columbia; also to authorize the erection of such poles and the stringing thereon of such wires in the streets and avenues of said city and District in the parts thereof in which there are no public alleys, and in such other places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said commissioners impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in section 43-1402 said commissioners are also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, but where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said commissioners; but in issuing such temporary permits said commissioners shall bear in mind the purpose and policy of sections 43-1402 to 43-1408, inclusive, which is to cause to be removed from the streets and avenues within the section of said District described in section 43-1402 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telephone service in said District and without denying to the public reasonable telephone facilities at all times. (June 20, 1902, 32 Stat. 394, ch. 1136, § 4.)

§ 43-1406. Regulations for inspection—Ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of sections 43-1402 to 43-1408, inclusive, shall be subject to such reasonable regulations as the Commissioners of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires: *Provided*, That in all conduits so constructed such space shall be furnished to the District of Columbia as may be necessary for its fire-alarm or police-patrol wires or cables, carrying low potential currents of electricity, free of charge: *And provided further*, That the number of ducts so reserved in any one conduit shall not be more than three. (June 20, 1902, 32 Stat. 395, ch. 1136, § 5.)

§ 43-1407. Repairs and renewals.

The said commissioners are empowered to authorize any such individual, company, or corporation owning and operating on June 20, 1902, any lines of street poles and wires and any alley poles or alley-pole line within the District of Columbia and outside of the section described in section 43-1402 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for the purpose of making house connections or for connecting with telephone lines outside the District of Columbia. (June 20, 1902, 32 Stat. 395, ch. 1136, § 6.)

§ 43-1408. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 43-1402 to 43-1408, inclusive. (June 20, 1902, 32 Stat. 395, ch. 1136, § 7.)

§ 43-1409. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.

All telegraph poles and the wires attached thereto, not the property of the United States or the District of Columbia, upon the streets, avenues and alleys on March 3, 1905 within the fire limits of the District of Columbia, except as hereinafter provided, shall from time to time, as may be prescribed by the commissioners of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said commissioners, and it is hereby made the duty of said commissioners to enforce compliance with the provisions of sections 43-1409 to 43-1417, inclusive, as expeditiously as may be consistent with the public interests; and the said commissioners are hereby empowered, from time to time, to authorize any company or corporation on March 3, 1905, or thereafter operating and maintaining a telegraph plant or system in the District of Columbia to locate and construct a system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said District, as may be requisite and necessary for the purpose of sections 43-1409 to 43-1417, inclusive, and for the reception of such other conduits, cables, and wires as may be reasonably required in the future by the growth of such company or corporation or its assigns, or to adequately meet the requirements of the public for telegraph service. (Mar. 3, 1905, 33 Stat. 984, ch. 1415, § 1.)

§ 43-1410. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telegraph companies.

From time to time, any company or corporation, or its assigns, on March 3, 1905, or thereafter maintaining and operating a telegraph plant or system in said District, shall prepare and submit to the said commissioners a plan or plans or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof; and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Commissioners. Said Commissioners are empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Commissioners of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the said limits described in section 43-1409, or in such part thereof as said Commissioners shall require and direct, the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be without impairing the efficiency of the telegraph service in said District, the company

or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and the wires thereon, except such as said commissioners may, in accordance with the provisions of sections 43-1409 to 43-1417, inclusive, permit to remain for the purpose of distributing wires for house or other connections. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 2.)

§ 43-1411. Penalties.

Any company or corporation now or hereafter owning and maintaining such poles and wires attached thereto on or over any street or avenue within the said limits described in section 43-1409, which shall willfully neglect or refuse to remove the same, as provided in section 43-1409, shall be liable to a penalty of not more than twenty-five dollars for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 3.)

§ 43-1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.

Said Commissioners are empowered to authorize the erection and maintenance of poles in the alleys of said District, and the stringing thereon of wires or conductors for telegraph purposes from alley poles or house-top fixtures in one square to alley poles or house-top fixtures in another square for the purpose of enabling house connections to be made, and to authorize the erection of poles and the stringing thereon of wires on and upon the streets and avenues of said District in the parts thereof in which there are no public alleys and in such places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said commissioners impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in section 43-1409 said commissioners are also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said commissioners; but in issuing such temporary permits said commissioners shall bear in mind the purpose and policy of sections 43-1409 to 43-1417, inclusive, which is to cause to be removed from the streets and avenues within the said limits described in section 43-1409 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telegraph service in said District and without denying to the public reasonable telegraph facilities. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 4.)

§ 43-1413. Conduits in public parks or reservations.

Any officer of the United States Government charged with the care, maintenance, and supervision of any public park or reservation may grant permis-

sion to any company or corporation maintaining and operating a telegraph plant or system in said District on March 3, 1905, or thereafter, upon application being made therefor, to construct conduits, subsidiaries, or manholes in said park or reservation, under such reasonable regulations as said officer may prescribe, unless, in the judgment of said officer, said construction will result in injury to the United States or its properties. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 4a.)

§ 43-1414. Regulations for inspection—Ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of sections 43-1409 to 43-1417, inclusive, shall be subject to such reasonable regulations as the Commissioners of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires: *Provided*, That in all underground conduits so constructed such space shall be furnished to the said District of Columbia and the United States as may be necessary for their telegraph, fire alarm, and police-patrol wires or cables carrying low potential currents of electricity, free of charge: *And provided further*, That the number of ducts so reserved in any one conduit shall not be more than two. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 5.)

§ 43-1415. Repairs and renewals.

The said commissioners are empowered to authorize any such company or corporation owning and operating lines of street poles and wires on March 3, 1905, or thereafter and any alley poles or alley-pole line or house-top wires within the said District and outside of the limits described in section 43-1409 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for their telegraphic purposes. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 6.)

§ 43-1416. Right to alter, amend, or repeal reserved—Rights under U.S. Code, title 47, section 1 et seq. preserved.

Congress reserves the right to alter, amend, or repeal sections 43-1409 to 43-1417, inclusive, but nothing herein shall abridge or lessen the rights granted telegraph companies under title sixty-five, section fifty-two hundred and sixty-three and the following, United States Revised Statutes of the Code of the Laws of the United States of America. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 7.)

REFERENCE IN TEXT

Sections 5236 to 5269, inclusive, of the Revised Statutes, referred to in the text, were formerly classified to sections 1-6 and 8 of U.S. Code, title 47, and were repealed July 16, 1947, 61 Stat. 327, ch. 256, § 1.

§ 43-1417. Rights to build and lay conduits not to be paid for in event of condemnation.

If at any time the District of Columbia or the National Government shall acquire, by purchase, condemnation proceedings, or otherwise, the property of any telegraph company in the District of Columbia, nothing shall then be paid for the rights ac-

corded under sections 43-1409 to 43-1416, inclusive, to build and lay such conduits. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 8.)

Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

- Sec.
- 43-1501. Water mains, pipes, and fire plugs—Commissioners to have power to erect.
 - 43-1502. Water department—Operations of, to be under direction of Engineer's Office.
 - 43-1503. Water supply—Rules and regulations.
 - 43-1504. Fiscal year of water department.
 - 43-1505. Water-main taxes and rents to be uniform.
 - 43-1506. Water registrar.
 - 43-1507. Prevention of water waste.
 - 43-1508. Use of Potomac water for mechanical and manufacturing purposes.
 - 43-1509. Water supply in large quantities to be determined by meters maintained by consumers.
 - 43-1510. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.
 - 43-1511. Assessments for water mains.
 - 43-1511a. Increased rate of assessment for laying mains.
 - 43-1512. Assessor to give notice of assessments.
 - 43-1513. Watermain and service sewer assessments payable in three installments.
 - 43-1514. Assessment of property in county of Washington for water mains and service sewers.
 - 43-1515. Relevying assessments when assessments declared void.
 - 43-1516. Disposal of funds received by collector of taxes.
 - 43-1517. Definition—Service sewer.
 - 43-1518. Refund of overpaid assessments.
 - 43-1519. Refund of water rents erroneously paid.
 - 43-1520. Water rents—Rates.
 - 43-1520a. Increase in water rents.
 - 43-1520b. Additional charge on unpaid water bills.
 - 43-1520c. Commissioners to have authority to fix water rates.
 - 43-1521. Commissioners to have authority to collect water rates in advance.
 - 43-1521a. Additional charge on unpaid water bills.
 - 43-1521b. Discontinuance of water service for failure to pay water charges.
 - 43-1521c. Lien for water charges.
 - 43-1521d. Remedies not exclusive.
 - 43-1522. Water rates not to be a source of revenue.
 - 43-1523. Water tax to be a fund to defray cost of water distribution.
 - 43-1524. Water rents from Washington Aqueduct to be applied to improvement of same.
 - 43-1525. Fire plug tax.
 - 43-1526. Same—Rates.
 - 43-1527. Same—Cessation upon introduction of water.
 - 43-1528. Same—Levy upon discontinuance of water service.
 - 43-1529. Water not to be diverted beyond District.
 - 43-1530. Commissioners authorized to deliver water in nearby Maryland—Contract.
 - 43-1531. Delivery of water to Arlington County, Virginia.
 - 43-1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.
 - 43-1531b. Investigation of distribution systems outside District of Columbia.
 - 43-1531c. Acquiring of lands for pipe lines authorized.
 - 43-1532. Acquisition of land and right of way for pipe lines.
 - 43-1533. Potomac water to be furnished to charitable institutions without charge.
 - 43-1534. Unlawful tapping of water pipe—Penalty
 - 43-1535. Notification of violations.
 - 43-1536. Penalty for damaging or defacing water pipes.
 - 43-1537. Main pipes—Laying for use of public buildings.
 - 43-1538. Unauthorized opening.
 - 43-1539. District of Columbia water system defined.
 - 43-1540. Loans authorized to expand water system.
 - 43-1541. Water and water service supplied for the use of the Government of the United States.

CROSS REFERENCE

Annual payment of \$1,000,000 by United States to the water fund of the District, see § 47-2501a.

§ 43-1501. Water mains, pipes, and fireplugs—Commissioners to have power to erect.

The Commissioners of the District of Columbia shall have the power to lay water mains and water pipes and to erect fire plugs and hydrants wherever the same may be in their judgment necessary for the public safety, comfort, or health. (R. S., D. C., § 204; June 17, 1890, 26 Stat. 159, ch. 428.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated Apr. 3, 1953, established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the order are set out in the Appendix to title 1, Administration.

CROSS REFERENCES

Annual estimate of expenses, see § 47-210.

Construction of sewers and water-mains under District of Columbia Alley Dwelling Act, see § 5-103.

Fees for connections to sewers, water-main, gas-main or other underground structure, see § 1-726.

Jurisdiction and control over public ways, see § 7-102.

NOTES TO DECISIONS

1. In general

By this act Congress enacted that the Commissioners of the District shall have the power to lay water mains, pipes, fireplugs, and hydrants for the public safety, comfort, or health. *Parsons v. District of Columbia* (1898, 18 S. Ct. 521, 170 U. S. 45, 42 L. Ed. 943). See, also, *Wight v. Davidson* (1901, 21 S. Ct. 616, 181 U. S. 371, 45 L. Ed. 900).

§ 43-1502. Water department—Operations of to be under direction of Engineer's Office.

The operations of the water department of the District of Columbia shall be under the direction of the engineer's office of the District, subject to the control of the commissioners. (July 1, 1882, 22 Stat. 143, ch. 263, § 2.)

§ 43-1503. Water supply—Rules and regulations.

Full power is given to the commissioners to supply the inhabitants of the District with the Potomac water from the aqueduct mains or pipes laid in the streets and avenues by the United States; and to make all laws and regulations for the proper distribution of the same, subject to the provisions of this chapter, and to the control of the Chief of Engineers, as provided in section 51 of title 40, U. S. Code. The supply of Potomac water may be extended to points in the District beyond the limits of Washington upon like terms and conditions as are provided by law for the supply of the same in that city. (R. S., D. C., § 195; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3; June 10, 1879, 21 Stat. 9, ch. 16; Feb. 25, 1885, 23 Stat. 319, ch. 145; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

CODIFICATION

Section consolidates parts of acts June 20, 1874, June 11, 1878, June 10, 1879, Feb. 25, 1885, Feb. 11, 1895, and Rev. Stat. D.C., § 195.

CROSS REFERENCES

General limitation on power of Commissioners, see § 1-801.

Protection of life, health, and property rules and regulations generally, see § 1-226.

Sanitary sewage works, commissioner's authority to make regulations, see § 43-1618.

NOTES TO DECISIONS

1. Jurisdiction

United States possesses complete jurisdiction, both of a political and municipal nature, over the District of Columbia. *Parsons v. District of Columbia* (1898, 18 S. Ct. 521, 170 U. S. 45, 42 L. Ed. 943).

§ 43-1504. Fiscal year of water department.

The fiscal year of the water department of the District of Columbia shall conform to the regular fiscal year of the General Government; the rates shall be levied and collected at least once every twelve months, or whenever practicable in the judgment of the Commissioners, at least once every six months. (July 1, 1882, 22 Stat. 144, ch. 263, § 2; May 18, 1954, 68 Stat. 103, ch. 364, § 107.)

AMENDMENT

1954—Act May 18, 1954, struck the word "annually" following the word "collected" and substituted the words "at least once every twelve months or whenever practicable in the judgment of the Commissioners at least once every six months."

§ 43-1505. Water-main taxes and rents to be uniform.

Water-main taxes and water rents shall be uniform in said District. (June 10, 1879, 21 Stat. 9, ch. 16.)

§ 43-1506. Water registrar.

The water registrar shall perform such duties connected with the water department of the District as may be proper and necessary, under the direction of the commissioners. He shall give bonds for the faithful performance of his duty in the sum of ten thousand dollars. (Leg. Assem., Aug. 23, 1871, ch. 108, § 16; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

CODIFICATION

Acts June 20, 1874, and June 11, 1878, confer upon and define the powers of the Commissioners.

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated Apr. 3, 1953, established a department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including water distribution, sanitary, storm and combined sewer systems, sewage treatment, and collection and disposal of waste material. The office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the order are set out in the Appendix to title 1, Administration.

CROSS REFERENCE

General limitations on power of Commissioners, see § 1-801.

§ 43-1507. Prevention of water waste.

In order to prevent unnecessary waste of Potomac water, and in order to more fully enforce the laws in relation to the distribution of the same, the Chief of Engineers is authorized, after giving notice, to shut off the water when such notice shall be disregarded

from any places where a waste of water is occurring. (R. S., D. C., § 214.)

§ 43-1508. Use of Potomac water for mechanical and manufacturing purposes.

The use of Potomac water for mechanical and manufacturing purposes, or for private fountains, street and pavement washers, shall be allowed only when, in the opinion of the Chief of Engineers, it will not be detrimental to the general distribution of water in the District of Columbia. (R. S., D. C., § 215; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

§ 43-1509. Water supply in large quantities to be determined by meters maintained by consumers.

The supply of water to all manufacturing establishments, hotels, livery-stables, and other places requiring a large quantity, shall be determined by meters erected and maintained at the expense of the consumer. (R. S., D. C., § 216.)

§ 43-1510. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.

The Commissioners of the District of Columbia are authorized and directed, whenever in their judgment the same may be necessary for the public safety, health, comfort, or convenience, to construct water mains and service sewers in any street, avenue, road, or alley in the District of Columbia; and the assessor of said District shall levy assessments for the same against abutting property in the amount and manner hereinafter prescribed. (Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 1.)

CROSS REFERENCES

Jurisdiction and control over public ways, see § 7-102. Laying pipes in streets under the control of the United States, see § 7-1204.

Laying water mains and sewers on permit plan, see §§ 7-608, 7-609.

Special assessments, protests against, generally, see § 47-1101 et seq.

NOTES TO DECISIONS

1. Tort liability of district

District of Columbia has no immunity from consequences of its negligent operation of sewerage department. *Scull et al. v. District of Columbia, et al.* (1958, 250 F. 2d 767, 102 U. S. App. D. C. 104, certiorari denied 78 S. Ct. 703, 356 U. S. 920, 2 L. Ed. 2d 715).

For tort liability purposes, if installation of water mains was a "governmental" function when performed by District of Columbia, District would not be subject to suit. *Id.*

§ 43-1511. Assessments for water mains.

For laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of \$3 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a water main shall be laid, and that for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of \$4 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid: *Provided*, That assessments for water mains and service sewers in the case of lots or parcels of land not more than one hundred feet in depth shall be levied upon the fronts or rears of such lots or parcels of land, and not upon both the fronts and rears of such lots or

parcels of land; but lots or parcels of land more than one hundred feet in depth, except corner lots, shall be assessed upon both their fronts and rears when water mains or service sewers are laid abutting the same: *Provided*, That corner lots shall be assessed for water mains and service sewers only on their short fronts with a depth of not exceeding one hundred feet; any excess of the other front over one hundred feet shall be subject to assessment, as hereinbefore provided: *Provided*, That the areas of all lots or parcels of land which have been assessed for water mains by the square foot under any previous Act of Congress, or of the late legislative assembly of the District of Columbia, shall not be again assessed for water mains: *Provided further*, That when the Commissioners of the District of Columbia shall deem it advantageous to lay water mains or service sewers on each side of any street, avenue, road, or alley assessments shall be levied at the rate, within the time and in the manner in this section provided for, against the lots abutting the side of the street, avenue, road, or alley in which the water main or service sewer is laid. (Aug. 11, 1894, 28 Stat. 275, ch. 253; Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 2; Dec. 22, 1927, 45 Stat. 11, ch. 5; July 3, 1930, 46 Stat. 989, ch. 848; June 4, 1934, 48 Stat. 876, ch. 389, § 1; July 16, 1947, 61 Stat. 360, ch. 258; May 18, 1954, 68 Stat. 109, ch. 218, §§ 301, 302.)

AMENDMENTS

1954—Act May 18, 1954, amended the first sentence of the section by increasing the rate of assessment for water mains from \$1.90 to \$3.00 per linear foot, and the rate of assessment for service sewers from \$1.50 to \$4.00 per linear foot for service sewers and water mains constructed after June 30, 1954.

1947—Act July 16, 1947, fixed the rate of assessment for water mains at \$1.90 per linear foot for water mains constructed on or after July 1, 1947.

1934—Act June 4, 1934, fixed the rate of assessment for service sewers at \$1.50 per linear foot for sewers constructed on or after July 1, 1934.

1930—Act July 3, 1930, increased rate for water-mains to three dollars per linear foot.

1927—Act Dec. 22, 1927, provided that rates of assessment in effect on June 30, 1927, for laying or constructing water mains and service sewers in the District of Columbia under provisions of act of 1904 should continue in effect during the remainder of the fiscal year 1928 and thereafter.

1904—Act Apr. 22, 1904, amended section generally, and among other changes, included assessments for service sewers as well as water-mains.

NOTES TO DECISIONS

Excess of cost, assessment in 1
Frontage rule inapplicable 2
Necessity and benefits of work 3
Powers of Congress 4

1. Excess of cost, assessment in

Assessment exceeding actual cost of the work is not bad where the laying of the main was a part of a water-system and the assessment included a fund to keep the system in efficient repair. *Parsons v. District of Columbia* (1898, 18 S. Ct. 521, 170 U.S. 45, 42 L. Ed. 943).

2. Frontage rule inapplicable

If the paving of an avenue be treated as an original improvement, converting a highway into a paved city street, its constitutional infirmities are emphasized by reason of the existence of physical conditions forbidding any equal, fair, or equitable application of the frontage rule of taxing benefits, and, if considered as a repair of the avenue, in the form of repaving, its validity must be condemned on theory that it taxes individual property fronting on the improvement for all or fixed portion of the expense, to exemption of all other property in the

municipality. *Johnson v. Rudolph* (1927, 16 F. 2d 525, 57 App. D. C. 29.)

3. Necessity and benefits of work

This act must be deemed conclusive alike of the question of the necessity of the work, and of the benefits as against abutting property; and to open such questions for review by the courts, on the petition of any and every property holder, would create endless confusion; and when questions submitted to Commission, the inquiry becomes in its nature judicial. *Parsons v. District of Columbia* (1898, 18 S. Ct. 521, 170 U.S. 45, 42 L. Ed. 943). See, also, *Wight v. Davidson* (1901, 21 S. Ct. 616, 181 U. S. 900, 45 L. Ed. 900):

4. Powers of congress

Congress has the power to provide for assessments in the District of Columbia for the opening of streets. *Wight v. Davidson* (1901, 21 S. Ct. 616, 181 U. S. 371, 45 L. Ed. 900).

Congress of the United States has the entire control over the District for every purpose of government. *Sims v. Rives* (1936, 84 F. 2d 871, 66 App. D. C. 24).

§ 43-1511a. Increased rate of assessment for laying mains.

CODIFICATION

Section, act July 16, 1947, 61 Stat. 360, ch. 258, Act V, § 2, which established the rate of assessment for laying or constructing water mains in the District of Columbia, on and after July 1, 1947, at \$1.90 per linear foot, is omitted as superseded by section 43-1511.

§ 43-1512. Assessor to give notice of assessments.

The assessor of the District of Columbia shall give notices as herein provided of the levying of assessments for water mains and service sewers. Assessments shall be levied within sixty days after the completion of the main or service sewer, and the owner or owners affected by such assessments shall be notified that the same have been levied by a notice which shall be served upon the owner of the lot or parcel of land if he or she be a resident of the District of Columbia, and his or her residence be known. If the owner be a nonresident or his or her residence be unknown, the notice shall be served on his or her agent or tenant. The service of such notice, where the owner or his or her agent or tenant resides in the District of Columbia, shall be personal or by leaving the same with some person of suitable age, either a member of his family or in his employ, at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing under oath and filed in the office of the assessor of the District of Columbia. If there be no agent or tenant known to said assessor, and the owner or owners be not residents of the District of Columbia, or if the owner be a resident of the District of Columbia and can not be found therein, and no person of suitable age as aforesaid can be found at his or her residence or place of business, notice shall be given by advertisement once a week for three successive weeks in some daily newspaper published in said District, and in said publication of said notice each several piece of property shall be described in a separate paragraph, and the cost of such advertisement shall be added to the amount of said assessment and collected in the same manner that said assessment is collected. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 3.)

§ 43-1513. Water main and service sewer assessments payable in three installments.

Assessments for water mains and service sewers shall be payable in three equal installments, the first

of which shall be due and payable without interest within thirty days from date of service of notice or of the last publication of notice as the case may be, the second within one year, and the third within two years from the date of assessment, and interest at the rate of six per centum per annum shall be charged on all amounts which shall remain unpaid at the expiration of thirty days from the date of service of notice or last publication as the case may be; but the owner of the property assessed may, at his option, at any time after the levying of such assessment, pay the same in full: *Provided*, That if any installment of any assessment for water main or service sewer levied under the provisions of sections 43-1510 to 43-1517, inclusive, shall not be paid when due and payable the property against which said assessment was levied may be sold for said delinquent installment at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said installment shall not have been paid prior to said sale. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 4.)

CROSS REFERENCE

Payment of taxes and special assessments on family dwellings, see § 47-901 et seq.

§ 43-1514. Assessment of property in county of Washington for water mains and service sewers.

Property in the county of Washington, not subdivided into blocks or lots, or both, shall not be assessed for water mains or service sewers until subdivided: *Provided*, That where houses are built on any unsubdivided land and connection is made with a water main or service sewer, assessment shall be made as herein provided for in the case of subdivided property by assessing a frontage of fifty feet on each side of said connection with a depth of one hundred feet, except that no double assessment shall be levied; said assessment to be levied within sixty days after said connection is made; and if such unsubdivided land is thereafter subdivided into blocks or lots, such lots shall be assessed as herein provided as to subdivided lands, but the fifty feet on each side of said connection, with a depth of one hundred feet, shall not be again assessed: *Provided further*, That assessments at the rate and in the manner herein provided for shall be levied against each lot or parcel of land abutting any water main or service sewer in all subdivisions of land, within sixty days after the recording of such subdivision in the office of the surveyor of the District of Columbia, except in cases where said lots or parcels of land have been previously assessed for the same main or service sewer. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 5.)

§ 43-1515. Relevying assessments when assessments declared void.

The assessor of the District of Columbia is hereby authorized and directed in cases where water-main assessments, or assessments for service sewers, may be quashed, canceled, set aside, or declared void by the United States District Court for the District of Columbia, or may otherwise be canceled or set aside, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied, by reason of such tax or assessment not having been authenticated by

the proper officer or by reason of a defective return of service of notice, or for any technical reason other than the right of the authorities of the District of Columbia to levy assessment or lay the main or service sewer in respect of which assessment was levied, to relevy such assessment at the rate and in the manner provided for in sections 43-1510 to 43-1517, inclusive: *Provided*, That such reassessment shall be made within sixty days from date of such cancellation. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

§ 43-1516. Disposal of funds received by collector of taxes.

All sums received by the collector of taxes under the provisions of sections 43-1510 to 43-1517, inclusive, on account of assessments levied for the construction of service sewers shall be credited to the appropriation under which the sewer was constructed for the fiscal year in which such sums shall be received. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 8.)

§ 43-1517. Definition—Service sewer.

A service sewer within the meaning of the provisions of sections 43-1510 to 43-1517, inclusive, shall be a sewer with which connection may be directly made for the purpose of providing sewerage facilities to abutting property, and such sewers shall be so indicated on the records of the sewer division of the engineer department of the District of Columbia. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 9.)

§ 43-1518. Refund of overpaid assessments.

In all cases where a water-main has heretofore been or may hereafter be laid in a public street or way, and in order to secure the laying of such main the cost or a part thereof has been paid to the District of Columbia prior to the laying of said main by any person or corporation, there shall be repaid from time to time to such person or corporation, out of the collections from the assessment for such main, all of the amounts so paid over and above the assessment chargeable against the land owned or controlled by said person or corporation. (June 2, 1900, 31 Stat. 252, ch. 612, § 2.)

CROSS REFERENCE

Refund of taxes generally, see § 47-1016 et seq.

§ 43-1519. Refund of water rents erroneously paid.

The Commissioners of the District of Columbia are hereby authorized to cause all water rents erroneously paid after March 3, 1905, in the District of Columbia to be refunded in the manner prescribed by law for the refunding of erroneously paid taxes: *Provided*, That application for refund shall be made within two years after such erroneous payment. And after March 3, 1905, the said commissioners are authorized to cause to be refunded in the same man-

ner and subject to the same limitations all money paid for water for any special purpose where the project is abandoned and the water not used, and for tapping water mains and for furnishing stop-cock where the service is not rendered and the material is not furnished; and all money refunded under this section shall be paid from and charged to the water fund. (Mar. 3, 1905, 33 Stat. 912, ch. 1406.)

CROSS REFERENCE

Refund of taxes and assessments generally, see § 47-1016.

NOTES TO DECISIONS

1. Liability of collector of taxes

Where record showed that protest made upon payment of water bill was handed to water registrar with request that he show protest to commissioners, and there was no showing that collector of taxes took any part in the controversy or committed any of the acts which compelled the payment or that he had any notice that bill was being paid under protest no personal liability rested on collector upon showing that the collection was erroneously made. *Farrell v. Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

§ 43-1520. Water rents—Rates.

The following schedule of water rents in the District of Columbia shall be fixed by the commissioners of said District:

For the use of water for domestic purposes through unmetered services, \$9.85 per annum for all tenements two stories high, or less, with a front width of sixteen feet, or less; for each additional front foot or fraction thereof greater than one-half, 62 cents; and for each additional story or part thereof, one-third of the charges as computed above. For business places that are not required to install meters under existing regulations, the rates in effect June 30, 1930, to be increased by 40 per centum per annum. For the use of water through metered services, a minimum charge of \$8.75 per annum for seven thousand five hundred cubic feet of water, and 7 cents per one hundred cubic feet for water used in excess of that quantity. For water for building construction purposes when not supplied through a meter, 6 cents per one thousand brick and 3 cents per cubic yard of concrete, with a minimum charge of \$1 for each separate building project. All water required for purposes which are not covered by the foregoing classifications shall be paid for at such rates as may be fixed by the Commissioners of the District of Columbia. (July 3, 1930, 46 Stat. 988, ch. 848.)

CROSS REFERENCE

Increase in rents by 25 per centum, see § 43-1520a.

§ 43-1520a. Increase in water rents.

Water rents charged by the District of Columbia for water used in the District of Columbia on and after July 1, 1947, shall be increased 25 per centum over the rents now in effect. Whenever the application of this increase to an existing rate results in a rate with a fractional part of a cent, the rate shall be, if the fraction be one-half cent or more, the nearest higher amount not containing a fraction, and, if the fraction be less than one-half cent, the nearest lower amount not containing a fraction. In computing the rent for the consumption of water in excess of the minimum amount allowed by law for metered service, if the rent is charged for

a period beginning prior to July 1, 1947, and ending thereafter, the rent for such excess consumption shall be prorated. (July 16, 1947, 61 Stat. 360, ch. 258, Art. V, § 1.)

§ 43-1520b. Additional charge on unpaid water bills.

CODIFICATION

Section, act June 27, 1942, 56 Stat. 458, ch. 452, § 1, relating to arrearage charges is omitted as superseded by § 43-1521a.

§ 43-1520c. Commissioners to have authority to fix water rates.

The Commissioners are authorized, in their discretion, to fix from time to time, the rates charged by the District for water and water services furnished by the District water supply system. Such rates so fixed, whether involving one or more changes in rate, or one or more changes in the basic quantity of water to be supplied at a given rate, or the combined effect of both such changes, shall not, in any event, result in increasing by more than 33⅓ per centum the rates in effect on the day preceding the effective date of this section. In computing the charge for the consumption of water in excess of the minimum amount allowed for metered service, if such charge is for a period beginning prior to so fixing such rates and ending thereafter, the charge for such excess consumption shall be prorated on a monthly basis, in accordance with the rates prevailing in the respective periods. Nothing in this title shall be construed to modify the provisions of section 43-1530 relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101.)

EFFECTIVE DATE

Section 109 of act May 18, 1954, provided that: "Sections 101 to 105 inclusive [this section and sections 43-1521a to 43-1521d], of this title shall take effect on the first day of the third month following its enactment [May 18, 1954]".

CROSS REFERENCE

Sanitary sewage works, commissioners' authority to make regulations, see § 43-1618.

§ 43-1521. Commissioners to have authority to collect water rates in advance.

The commissioners have authority to provide for the collection of water rates, in advance or otherwise, from the owner or occupants of all buildings or establishments using the water; and to provide for stopping the supply of water to any dwelling or establishment upon a failure to pay the rate, and to carry into full effect the provisions of this chapter. (R. S., D. C., § 197; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

CODIFICATION

Acts June 20, 1874, and June 11, 1878, confer upon and define the powers of the Commissioners.

CROSS REFERENCE

Discontinuance of water service for failure to pay water changes, see, also, § 43-1521b.

General limitation on power of Commissioners, see § 1-801.

NOTES TO DECISIONS

Date of liability 1
Liability of
Prior tenant 2
Purchaser 3
Scope of official duties 4
Voluntary payment 5

1. Date of liability

Where plaintiff was highest bidder at a foreclosure sale of realty under a deed of trust, plaintiff became owner as of date of sale and not as of date of delivery of deed for purposes of determining when plaintiff should give notice to Water Registrar of District of Columbia of purchase of such property. *Urciolo v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 909).

2. Liability of prior tenant

A tenant, who became secondarily liable for water bill which accrued during prior tenancy by his failure to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, was entitled to pay accrued water rent without submitting to the cutting off of his water supply, and could look to prior tenant for indemnity regardless of prior tenant's lack of consent notwithstanding his protest. *Simmons v. Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

Fact that a tenant, by failing to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, became secondarily liable for water bill which accrued during a prior tenancy, did not relieve prior tenant of his primary liability. *Id.*

A tenant who was seeking reimbursement for water bill which accrued during a prior tenancy stood in the shoes of a creditor and could not recover more than was actually due by prior tenant. *Id.*

A purchaser of property could not be compelled to pay for water used by former occupants of purchased property either by sections 1519 to 1522 of this title regulating water system or regulations issued by commissioners pursuant thereto. *Farrell v. Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

3. Liability of purchaser

One purchasing property within District of Columbia without notifying Water Registrar may be compelled to pay full current water rates for property. *Urciolo v. District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 909).

4. Scope of official duties

District of Columbia officials acted within their authority in refusing to turn water on for new principal tenant of premises where owners of premises had not, for many years, paid, or secured to be paid, water rents, and having voluntarily paid such arrearages in order to secure water supply, tenant could not recover from such officials the amount paid by him and damages claimed to have resulted from alleged conspiracy to illegally force him to pay such amount. *Quick v. District of Columbia* (1952, 90 A. 2d 235).

Commissioners and water registrar, in requiring purchaser of property to pay for water used by former occupants of purchased property, were acting within scope of their official duties, and even though they made a mistake in exercise of judgment or acted on erroneous construction of the law, they could not be held personally liable to purchaser. *Farrell v. Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

5. Voluntary payment

A tenant who failed to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, and who was thereafter required to pay water bill which accrued during a prior tenancy upon municipal authorities' threatening suspension of water service, was not a mere "volunteer," so as to preclude recovery from prior tenant. *Simmons v. Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

§ 43-1521a. Additional charge on unpaid water bills.

An additional charge of 10 per centum shall be added to any water charge remaining unpaid after the expiration of thirty days from the date of rendition of a bill for such charge. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 102.)

EFFECTIVE DATE

Section effective on the first day of the third month after May 18, 1954, see section 109 of act May 18, 1954, set out as a note under section 43-1520c.

CROSS REFERENCES

Sanitary sewage works,
Charges for overdue bills and enforcement of liens, see § 43-1609.
Commissioners' authority to make regulations, see § 43-1618.

§ 43-1521b. Discontinuance of water service for failure to pay water charges.

The Commissioners are authorized to provide for the collection of water charges, in advance or otherwise, from the owner or occupant of any building, establishment, or other place furnished water or water service by the District, and to shut off the water supply to any such building, establishment, or other place upon failure of the owner or occupant thereof to pay such water charges within thirty days from the date of rendition of the bill therefor. Such authority to shut off the water supply may be exercised by the Commissioners regardless of any change in ownership or occupancy of such building, establishment, or other place. When the water supply to any such building, establishment, or other place has been shut off for failure to pay such water charges, whether the water supply to such building, establishment, or other place was shut off before or after the enactment of this title, the Commissioners shall not again supply such building, establishment, or other place with water until all arrears of water charges, together with penalties and the costs actually incurred in shutting off and restoring the water supply, are paid. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 103.)

EFFECTIVE DATE

Section effective on the first day of the third month after May 18, 1954, see section 109 of act May 18, 1954, set out as a note under section 43-1520c.

CROSS REFERENCE

Sanitary sewage works, charges for overdue bills and enforcement of liens, see § 43-1609.

§ 43-1521c. Lien for water charges.

The District shall have a continuing lien for water charges upon any land and the improvements thereon to which water or water service is or has been furnished. Such lien shall have priority over all other liens except liens for District taxes. If any water charges shall remain unpaid after the expiration of two years from the date of rendition of the bill for such charges, or two years from the effective date of this title, whichever is later, the property which has been furnished such water or water service may be sold for such unpaid water charges, together with penalties thereon and costs, at the next ensuing tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such water charges, together with penalties thereon and costs, shall not have been paid in full prior to said sale. So much of the proceeds of said sale as represents said unpaid water charges shall be credited to the water fund of the District. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 104.)

EFFECTIVE DATE

Section effective on the first day of the third month after May 18, 1954, see section 109 of act May 18, 1954, set out as a note under section 43-1520c.

CROSS REFERENCE

Sanitary sewage works, charges for overdue bills and enforcement of liens, see § 43-1609.

§ 43-1521d. Remedies not exclusive.

The remedies set forth in sections 43-1521a, 43-1521b, and 43-1521c are hereby declared to be cumulative and not exclusive. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 105.)

EFFECTIVE DATE

Section effective on the first day of the third month after May 18, 1954, see section 109 of act May 18, 1954, set out as a note under section 43-1520c.

CROSS REFERENCE

Sanitary sewage works, charges for overdue bills and enforcement of liens, see § 43-1609.

§ 43-1522. Water rates not to be a source of revenue.

The water rates levied in the District of Columbia shall never be a source of revenue other than as a means of keeping up to said District a supply of water, but shall constitute a fund exclusively for the maintenance, management, and repair of the system of water-distribution. (R. S., D. C., § 198; July 12, 1876, 19 Stat. 87, ch. 180, § 18; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

CODIFICATION

Act 1876 extended water taxes, water rents, and taxation for water mains, over all parts of the District of Columbia, and act 1885 extended points of water supply beyond Washington and Georgetown.

NOTES TO DECISIONS

1. Governmental function

Circumstance that District was not permitted by Code to make profit on water sold would not convert function of selling water into purely governmental one, such as providing police force for protection of all, and District of Columbia could be held liable for negligent operation of motor vehicle by employee of District government in connection with installation of water mains. *Scull et al. v. District of Columbia et al.* (1958, 250 F. 2d 767, 102 U. S. App. D. C. 104, certiorari denied 78 S. Ct. 703, 356 U. S. 920, 2 L. Ed. 2d 715).

§ 43-1523. Water tax to be a fund to defray cost of water distribution.

The water tax authorized to be levied and collected by the provisions of this chapter shall constitute a fund to be used exclusively to defray the cost of distribution of the water, including all necessary fixtures and machines connected with such distribution. (R. S., D. C., § 203.)

§ 43-1524. Water rents from Washington Aqueduct to be applied to improvement of same.

All water rents derived from the Washington Aqueduct shall be applied to the improvement and repair of the same, and for no other purpose. (R. S., D. C., § 217.)

§ 43-1525. Fire plug tax.

To aid in the erection, maintenance, and efficiency of fire-plugs, a special annual tax may be levied on all buildings in the City of Washington within five hundred feet of any main water-pipe, into which,

or the premises connected therewith, the water has not been introduced, and the owners or occupants of which do not pay any annual water-rate in accordance with law. (R. S., D. C., § 205; June 17, 1890, 26 Stat. 159, ch. 428.)

§ 43-1526. Same—Rates.

The fire-plug tax shall be levied with reference to the value of the building so taxed, and shall not be more than five dollars nor less than one dollar per year. (R. S., D. C., § 206.)

§ 43-1527. Same—Cessation upon introduction of water.

Whenever the water is introduced, in conformity with law, into any building or premises, the fire-plug tax thereon shall cease. (R. S., D. C., § 207.)

§ 43-1528. Same—Levy upon discontinuance of water service.

Whenever water is discontinued from any building or premises into which it has been introduced, such building shall be subject to the fire-plug tax from the date of the discontinuance of the water. (R. S., D. C., § 208.)

§ 43-1529. Water not to be diverted beyond District.

Except as provided in sections 43-1530 and 43-1531 no portion of the water conveyed or to be conveyed through or by means of the Washington Aqueduct, or any appurtenance thereof, shall be diverted to the supply or use of any building, premises or establishment located outside of the limits of the District of Columbia. (Mar. 3, 1893, 27 Stat. 544, ch. 199.)

§ 43-1530. Commissioners authorized to deliver water in nearby Maryland—Contract.

For the protection of the health of the residents of the District of Columbia and the employees of the United States Government residing in Maryland near the District of Columbia boundary, the Commissioners of the District of Columbia, upon the request of the Washington Suburban Sanitary Commission, a body corporate, established by chapter 313 of the acts of 1916 of the State of Maryland, or upon the request of its legally appointed successor, are authorized to deliver water from the water-supply system of the District of Columbia to said Washington Suburban Sanitary Commission or its successor for distribution to territory in Maryland within the Washington Suburban Sanitary District as designated in the aforesaid act, or any amendment thereto, and to connect District of Columbia water-mains with water-mains in the state of Maryland at such points at or near the District of Columbia line as may be agreed upon from time to time by the Commissioners of the District of Columbia and the Washington Suburban Sanitary Commission, under the conditions hereinafter named, namely:

That before such connections shall be made the said Washington Suburban Sanitary Commission or its legally-appointed successor shall secure authority from the Legislature of the state of Maryland to enter into an agreement with the said Commissioners of the District of Columbia outlining the conditions under which the service is to be rendered.

The agreement between the Commissioners of the District of Columbia and the said Washington Suburban Sanitary Commission or its legally appointed successor shall provide, among other things—

First. That the meters on each of said connections shall be located within the District of Columbia and shall remain under the jurisdiction of the commissioners of the District of Columbia.

Second. The rates at which water will be furnished, said rates to be based on the actual cost to the United States and the District of Columbia of delivering water to the points designated above, including an interest charge at 4 per centum per annum and a suitable allowance for depreciation.

Third. That payments for water so furnished shall be made through the collector of taxes of the District of Columbia at such times as the Commissioners of the District of Columbia may direct, said payments to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited.

Fourth. That at no time shall the amount of water furnished the said Washington Suburban Sanitary Commission or its successor exceed the amount that can be spared without jeopardizing the interests of the United States or of the District of Columbia.

Fifth. That the Commissioners of the District of Columbia shall have at all times the right to investigate the distribution system in Maryland, and if, in their opinion, there is a wastage of water they shall have the right to curtail the supply to said sanitary district to the amount of such wastage. (Mar. 3, 1917, 39 Stat. 1043, ch. 160; June 30, 1930, 46 Stat. 838, ch. 764; Apr. 14, 1932, 47 Stat. 79, ch. 100.)

CODIFICATION

This section, after having been amended by the act of June 30, 1930, 46 Stat. 838, ch. 764, was repealed and reenacted as set out in the text by the act of 1932.

§ 43-1531. Delivery of water to Arlington County, Virginia.

The Secretary of War is hereby authorized, in his discretion and subject to the approval of the Chief of Engineers, upon the request of the board of supervisors of Arlington County, Virginia, to permit the delivery of water from the Federal water supply pumping station at the Dalecarlia Reservoir to the Arlington County sanitary district, created by an act of the General Assembly of the State of Virginia, of March 15, 1922, and to connect the force main of said pumping station with the water main in Arlington County at the southerly end of the Chain Bridge: *Provided*, That all expenses of installing said connection and its appurtenances and any subsequent changes therein shall be borne by said Arlington County, which shall pay such charges for the use of such water as may be determined from time to time in advance by the Secretary of War, the payments to be made at such time and under such regulations as the Secretary of War may prescribe, all payments for the use of water to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited: *And provided further*, That the Secretary of War may revoke at any time any permit for the use of said water that may have been granted. (Apr. 14, 1926, 44 Stat. 251, ch. 140, § 1.)

§ 43-1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.

The Secretary of War, on the recommendation of the Chief of Engineers, United States Army, and the Board of Commissioners of the District of Columbia, is hereby authorized in his discretion, upon request of the town council of the town of Falls Church, Fairfax County, Virginia, or any other competent State or local authority in the Washington metropolitan area in Virginia, to permit the delivery of water from the District of Columbia water system at the Dalecarlia Filtration Plant, or at other points on said water system to the Falls Church water system for the purpose of supplying water for the use of said town and such adjacent areas as are now or shall hereafter be served by the water system of said town; or to any other competent State or local authority in said metropolitan area in Virginia. The Secretary of War is hereby further authorized, in his discretion and upon the recommendation of the Chief of Engineers, and said Board of Commissioners, to permit the delivery of such water through the water mains of Arlington County by a connection to Arlington mains at the southerly end of Chain Bridge, or to make connections with the Arlington County water system at one or more points along the boundary line of Arlington County: *Provided*, That all expense of installing any such connection or connections or other appurtenances and any subsequent changes therein shall be borne by said town of Falls Church, or such other communities of said metropolitan area requesting such services: *Provided further*, That all payments for water taken directly from the mains of the water supply system of the District of Columbia at the Dalecarlia Filtration Plant, or from other points on said water system, shall be made at such time and in such manner as the Secretary of War and said Board of Commissioners may prescribe; all such payments to be deposited in the Treasury of the United States as other water rents now collected in the District of Columbia are now deposited, but for water as may be supplied through the water mains of Arlington County, as hereinabove authorized, such payments shall be made by said Arlington County in the same manner as payments for water supplied for the use of said Arlington County: *Provided further*, That payment for water delivered to communities in said metropolitan area from or through the water mains of Arlington County shall be made to said county as may be mutually arranged on an equitable basis and as approved by the Secretary of War and said Board of Commissioners: *And provided further*, That the Secretary of War, directly or upon the request of the Board of Commissioners, may revoke at any time any permit for the use of said water that may have been granted. (June 26, 1947, 61 Stat. 181, ch. 149, § 1.)

§ 43-1531b. Investigation of distribution systems outside District of Columbia.

The Secretary of War, through the Chief of Engineers, shall have the right at all times to investigate the distribution systems of any community outside the District of Columbia supplied with water from the said District of Columbia water system

and if, in his opinion, there is an excessive wastage of water, he shall have the right to curtail the supply to said communities to the amount of such wastage. (June 26, 1947, 61 Stat. 182, ch. 149, § 2.)

§ 43-1531c. Acquiring of lands for pipe lines authorized.

The Secretary of War or the said Board of Commissioners is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights-of-way for pipe lines within the District of Columbia, needed for the purposes of section 43-1531a. (June 26, 1947, 61 Stat. 182, ch. 149, § 3.)

§ 43-1532. Acquisition of land and right of way for pipe lines.

The Secretary of War is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights of way for pipe lines within the District of Columbia to connect the force main of said pumping station with the water main in Arlington County as herein authorized. (Apr. 14, 1926, 44 Stat. 252, ch. 140, § 2.)

CROSS REFERENCE

Condemnation generally, see § 16-601 et seq.

§ 43-1533. Potomac water to be furnished to charitable institutions without charge.

The Commissioners of the District of Columbia are authorized to furnish Potomac water without charge to charitable institutions and such institutions as receive annual appropriations from Congress, to an amount to be fixed in each case by the said commissioners, not to exceed a rate of one hundred gallons per day for each inmate of said institutions; and for all water used beyond such an amount, to be ascertained by water meters installed and maintained at the expense of the consumer, the institution shall be charged at the prevailing rate for the use of water in the District of Columbia, which shall be collected in the manner prescribed for the collection of water rents. The said commissioners are further authorized to furnish Potomac water without charge to churches to an amount to be fixed in each case by the said commissioners, and any amount used in excess of the amount allowed, to be ascertained in the manner aforesaid, shall be charged and collected as hereinbefore described. For the purposes of this section a charitable institution is one whose objects are primarily eleemosynary; and nothing herein contained shall be so construed as to include educational institutions other than charity schools wholly supported by voluntary contributions or institutions supported wholly or in part by Congressional appropriation. (Feb. 23, 1905, 33 Stat. 742, ch. 742, § 1.)

§ 43-1534. Unlawful tapping of water pipe—Penalty.

The unlawful tapping of any water pipe laid down in the District by authority of the United States is a misdemeanor and an indictable offense; and any person convicted of such offense in the criminal court of the District shall be subject to a fine not exceeding five hundred dollars, or to imprisonment for a term not exceeding one year. (R. S., D. C., § 218.)

CROSS REFERENCES

Unauthorized tapping or opening of mains or pipes laid by the Federal Government, penalty, see U.S. Code, title 40, § 56; § 43-1538.

§ 43-1535. Notification of violations.

It is the special duty of the Chief of Engineers to bring to the notice of the attorney of the United States for the District of Columbia, or to the grand jury, any infraction of section 43-1534. (R. S., D. C., § 219.)

§ 43-1536. Penalty for damaging or defacing water pipes.

Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service-pipe, or any other fixture used for the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of the District of Columbia, shall be punishable by imprisonment in the District jail for not more than two years. (R. S., D. C., § 220; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

CODIFICATION

Act Feb. 25, 1885, provides: "And hereafter the supply of Potomac water may be extended to points in the District beyond the limits of Washington and Georgetown upon like terms and conditions as are provided by law for the supply of the same in those cities."

§ 43-1537. Main pipes—Laying for use of public buildings.

No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington, must be paid by the District of Columbia, in the manner provided by law. (R. S., U. S., § 1805; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

CODIFICATION

Act Feb. 11, 1895, provides in part: "All general laws, ordinances and regulations of the city of Washington be, and the same are hereby, extended and made applicable to that part of the District of Columbia formerly known as the city of Georgetown."

§ 43-1538. Unauthorized opening.

No person, unless by consent of the Chief of Engineers, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than \$50 nor more than \$500. (R.S., D.S., § 1803.)

CODIFICATION

Section is also classified to U.S. Code, title 40, § 56.

§ 43-1539. District of Columbia water system defined.

As used in section 43-1540, unless the context otherwise requires—

(a) "Commissioners" means the Board of Commissioners of the District of Columbia.

(b) "District of Columbia water system" or "water system" means any and all of the facilities used or to be used for the supply of raw or partly purified water wherever situated and all of the facilities used or to be used for the distribution of purified water situated within the District of Columbia which are operated by the District of Columbia Water Division or the Washington Aqueduct Division of the Washington District of the Corps of Engineers, Department of the Army, or both. (June 2, 1950, 64 Stat. 195, ch. 218, § 1.)

§ 43-1540. Loans authorized to expand water system.

(a) The Commissioners of the District of Columbia are hereby authorized to accept loans for the District of Columbia from the United States Treasury and the Secretary of the Treasury of the United States is hereby authorized to lend to the Commissioners of the District of Columbia, such sums as may hereafter be appropriated, to finance the expansion and improvement of the water system when sufficient funds therefor are not available from the District of Columbia water fund established by this chapter: *Provided*, That the total principal amount of loans made under the provisions of this section shall not exceed \$35,000,000: *And provided further*, That a loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District of Columbia for that fiscal year, with a full statement of the work contemplated to be done and the need thereof, and must be specifically approved by the Congress. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the said District of Columbia water fund.

(b) The loans authorized under this section, or any parts thereof, shall be advanced to the Commissioners on their requisitions therefor and shall be available to the Commissioners or the Chief of Engineers, Department of the Army, for the performance of the said expansion and improvement of the water system, and shall be available until expended.

(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Water Fund: *Provided*, That any such loan advanced prior to May 18, 1954, shall, for the purpose of determining the time when repayment thereof shall begin, be deemed to have been credited to the Water Fund on May 18, 1954, and interest accrued on any such loan advanced prior to May 18, 1954, shall be paid at such time and in such manner as the Secretary of the Treasury shall determine: *Provided further*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any loan advanced pursuant to this section. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Water Fund.

(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending June 30, 1953) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

(e) Moneys for the payments to the United States Treasury herein required shall be included in the

budget estimates of the Commissioners of the District of Columbia, and shall be payable from the water fund. (June 2, 1950, 60 Stat. 195, ch. 218, § 2; May 18, 1954, 68 Stat. 103, ch. 218, § 108.)

AMENDMENTS

1954—Act May 18, 1954, amended subsection (a) by inserting "\$35,000,000" in lieu of "\$23,000,000", subsections (c) and (d) so as to change repayment and interest provisions so that all loans under the act of June 2, 1950, are repaid within a 30-year period beginning the second fiscal year after the loans are received, with interest at a rate which is equivalent to the cost of money to the Treasury.

Subsection (e) was amended by striking "beginning with the budget estimates for fiscal year 1961" from the subsection following the words "District of Columbia".

CROSS REFERENCE

Sanitary sewage works, commissioners' authority to make regulations, see § 43-1618.

§ 43-1541. Water and water service supplied for the use of the Government of the United States.

(a) All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated outside the District in the States of Maryland or Virginia, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at rates comparable to those which may be in effect and charged to State, municipal, or county agencies or other political authorities or jurisdictions within the respective States wherein said Federal facilities may be situated for similar water service from the District water supply system: *Provided*, That conditions as to water pressure, quantity, rates of demand, and points of connection available or permissible at any time for service outside the District, if any, shall be fixed by the Commissioners so as to fully protect the prior interests of water consumers within the District: *Provided further*, That as a condition of service, at each point of Federal connection to the water system of the District for service outside the District there shall be installed and maintained at the expense of the department, independent establishment, or agency of the United States which is to use water therefrom a suitable meter or meters and incidental vaults, valves, piping and recording devices, and such other equipment as the Commissioners in their discretion deem necessary to control and record the use of water through each such connection. Payment shall be made as provided in subsection (b) of this section. Whenever any payment authorized by this section is made, such payment shall be in lieu of so much of the annual payment authorized by section 47-2501a, as pertains to the Water Fund of the District. The

provisions of sections 43-1521a, 43-1521b, and 43-1521c, relating, respectively, to enforcement of payment for water charges by penalty charge for late payment, by shutting off of the water supply for nonpayment, and the imposition of lien and sale of property, shall not apply in any case where water or water service is furnished to a building, establishment, or other place owned by the Government of the United States and occupied by a department, independent establishment, or agency thereof.

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Commissioners the value, as determined by the Commissioners, of the water and water services furnished to the United States during the most recent preceding fiscal year for which such value can be determined, based on the water rates prevailing during the period of consumption, and there shall be appropriated annually for the District to the credit of the said Water Fund, out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954), a sum corresponding to the value of the water and water services furnished the United States. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 106.)

CROSS REFERENCE

Sanitary sewage works, commissioners' authority to make regulations, see § 43-1618.

Chapter 16.—SANITARY SEWAGE WORKS

Sec.

43-1601. Definitions.

43-1602. D. C. Sanitary Sewage Works Fund.

43-1603. Use of the D. C. Sanitary Sewage Works Fund.

43-1604. Advances for sanitary sewage works—Reimbursement for amounts advanced.

43-1605. Service charges for sanitary sewer service—Authority of Commissioners.

43-1606. Methods of determination of sanitary sewer service charges.

43-1607. Persons obligated to pay sanitary sewer service charges.

43-1608. Meters and measuring devices—Maintenance and repairs.

43-1609. Additional charge for overdue bills—Enforcement of lien.

43-1610. Sanitary sewer service charges as to churches and institutions.

43-1611. Sanitary sewer service charges for sewer services furnished for direct use by the Government of the United States.

43-1612. Loans from the United States Treasury for sanitary and combined sewer systems of the District.

43-1613. Limit of loans for the sanitary and combined sewer systems.

43-1614. Use of funds from D. C. Sanitary Sewage Work Fund for certain sewers—Allocation of cost.

43-1615. Advancement and availability of funds from loans.

43-1616. Repayment of loans.

43-1617. Interest rates on loans.

43-1618. Commissioners' authority to make regulations.

DULLES INTERNATIONAL AIRPORT SANITARY SEWER

43-1620. Commissioners authorized to develop plan for interceptor and sewer line.

43-1621. Potomac interceptor—Acquisition of rights-of-way—Plans and specifications—Operation and maintenance of regional sanitary sewer system—Charges for use of interceptor—Deposit of funds.

Sec.

43-1622. Authorization of appropriations.

43-1623. Advancement of funds—Crediting and repayment of loans.

43-1624. Acquisition of land in Maryland or Virginia for Potomac interceptor—Title to and jurisdiction over land—Condemnation proceedings.

§ 43-1601. Definitions.

For the purposes of this chapter—

(a) The term "sanitary sewage" means (1) domestic sewage with storm and surface water limited; (2) sewage discharging from sanitary conveniences; (3) commercial or industrial wastes; and (4) water supply after it has been used.

(b) The term "stormwater sewage" means liquid flowing in sewers resulting directly from precipitation.

(c) The term "combined sewage" means sewage containing both sanitary sewage and stormwater sewage.

(d) The term "sewer" means a pipe or conduit carrying sewage.

(e) The term "sanitary sewer" means a sewer which carries sanitary sewage.

(f) The term "stormwater sewer" means a sewer which carries stormwater sewage.

(g) The term "combined sewer" means a sewer which carries both sanitary sewage and stormwater sewage.

(h) The term "sanitary sewage works" means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.

(i) The term "stormwater sewer system" means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.

(j) The term "combined sewer system" means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 201.)

SHORT TITLE

1954—Section 1 of act May 18, 1954, provided in part: "That (a) this Act, divided into titles and sections, may be cited as the 'District of Columbia Public Works Act of 1954'."

SEPARABILITY OF PROVISIONS

Section 1702 of act May 18, 1954, the District of Columbia Public Works Act of 1954, provided that:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

The District of Columbia Public Works Act of 1954 has been classified to the District of Columbia Code in the following sections: 7-132, 7-133, 7-901, 25-124, 25-138, 40-102, 40-103, 43-1504, 43-1520c, 43-1521a, 43-1521b, 43-1521c, 43-1521d, 43-1540, 43-1541, 43-1601, 43-1602, 43-1603, 43-1604, 43-1605, 43-1606, 43-1607, 43-1608, 43-1609, 43-1610, 43-1611, 43-1612, 43-1613, 43-1614, 43-1615, 43-1616, 43-1617, 46-1618, 47-312, 47-313, 47-501a, 47-1203, 47-1206, 47-1208, 47-1209, 47-1210, 47-1211, 47-1567b, 47-1701, 47-2331, 47-2501a, 47-2501b, 47-2601, 47-2602, 47-2604, 47-2605, 47-2701, 47-2702, 47-2705, 47-2802.

CURRENT APPROPRIATIONS

Section 205 of act May 18, 1954, provided that:

"Notwithstanding the provisions of this title [this chapter] any current appropriation available to the District for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair

of the sanitary sewage works of the District shall remain available for the purposes for which appropriated."

§ 43-1602. D. C. Sanitary Sewage Works Fund.

There is hereby created in the Treasury of the United States a special fund which shall be known as the D. C. Sanitary Sewage Works Fund, and which shall be composed of such sums as shall be deposited to the credit of such fund, including, but not limited to, sums received by the Commissioners under the provisions of sections 43-1510 to 43-1517, on account of assessments levied for the construction of sewers and including any payment made to the District by any governmental agency of the States of Maryland or Virginia on account of any sewer service furnished any such agency by the District. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 202.)

§ 43-1603. Use of D. C. Sanitary Sewage Works Fund.

Subject to appropriations, the D. C. Sanitary Sewage Works Fund shall be available for use by or under the direction and control of the Commissioners for—

(a) the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, including all expenses;

(b) payment of a portion of such administrative expenses as may not be wholly allocated to the sanitary sewage works or to any other sewage works of the District, but which expenses are incurred in connection with the operation of the sanitary sewage works and either or both the stormwater sewer system and the combined sewer system. The portion of such expenses to be paid from the D. C. Sanitary Sewage Works Fund shall be fixed from time to time by the Commissioners at such a percentage of the total of such expenses for the said sewer systems as the Commissioners, in their discretion, may determine;

(c) payment of such portion of all expenses for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the combined sewer system of the District as the Commissioners, in their discretion, determine to be attributable to the sanitary sewer function of such combined sewer system;

(d) payment of the District's contribution to the expenses of the Interstate Commission on the Potomac River Basin;

(e) payments by the District to agencies in the State of Maryland providing services to the District for conveying, treating, or disposing of sanitary sewage: *Provided*, That the said fund shall not be available to pay the cost of providing sewage service to institutions of the District located in the State of Maryland;

(f) payments to the General Fund and other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this chapter;

(g) payment to the United States Treasury of the interest, in accordance with the provisions of this chapter, on loans to the District for such Sanitary Sewage Works Fund;

(h) repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this chapter, and of any advancements made to the District in accordance with the provisions of section 204 of this chapter; and

(i) refund of part or all of any sanitary sewer service charges erroneously paid: *Provided*, That application for refund shall be made within two years after such erroneous payment. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 203.)

§ 43-1604. Advances for sanitary sewage works—Reimbursement for amounts advanced.

The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922 (42 Stat. 668), is authorized and directed to advance, on the requisition of the Commissioners, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the expenses of the District in connection with the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Commissioners to the Treasury out of the moneys deposited to the credit of the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 105, ch. 218, title II, § 204.)

§ 43-1605. Service charges for sanitary sewer service—Authority of Commissioners.

The Commissioners are authorized to establish charges for the provision of sanitary sewer service, such charges to be collected in the same manner and at the same time as water charges are collected, and to be paid into the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 206.)

EFFECTIVE DATE

Section 219 of act May 18, 1954, provided that: "The provisions of sections 206 to 211, inclusive, [this section, and §§ 43-1606 to 43-1610] of this title shall become effective on the first day of the third month following the enactment of this Act [May 18, 1954]."

§ 43-1606. Methods of determination of sanitary sewer service charges.

The sanitary sewer service charges established under the authority of this chapter shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

(a) Where water is supplied from the District water supply system at meter rates, the Commissioners shall establish the sanitary sewer service charge as a percentage of the water charge applicable in the District, but such percentage shall not exceed 60 per centum of the water charge.

(b) Where water is supplied from the District water supply system, which water is not measured by meter, but is supplied at special business and miscellaneous rates, the Commissioners shall establish the sanitary sewer service charge at a percentage of such special business and miscellaneous

rates, but such percentage shall not exceed 60 per centum of such rates.

(c) For each property using water, all or part of which is from a source or sources other than the District water supply system, the Commissioners shall establish a sanitary sewer service charge separate from and in addition to any sanitary sewer service charge levied under paragraph (a) or (b) of this section. Such separate or additional sanitary sewer service charge shall be measured by the quantity of water from the source or sources other than the District water supply system discharged into the District sanitary sewer system from said property. The owner or occupant of each such property shall install and maintain, without cost to the District, a meter or meters to measure the quantity of water received from other than the water supply system of the District, and the sanitary sewer service charge based upon water received from other than the water supply system of the District shall be the same in amount as would be paid by the owner of a metered property receiving the same quantity of water from the water supply system of the District. No meter shall be installed or be used for such purpose without the approval of the Commissioners. In the event the owner or occupant of property fails or refuses to furnish and properly maintain such meter or meters as are prescribed herein in the manner required by the Commissioners, then the supply of water from the District water supply system to the property or premises may be suspended by the Commissioners and the said supply shall not be restored until the metering of such supplementary water source has been accomplished by the owner or occupant to the satisfaction of the Commissioners, and any costs devolving upon the District as a result of the suspension of service from the District water supply system shall be paid to the District prior to the restoration of water service from the District water supply system.

(d) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Commissioners, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be not more than 60 per centum of the water charge which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property: *Provided*, That all water from the water supply system of the District used by such property shall be paid for at established

rates, whether or not such water is discharged into the sanitary sewage works of the District. Where in the opinion of the Commissioners, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Commissioners shall determine periodically, in such manner and by such methods as the Commissioners may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Commissioners and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Commissioners as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 207.)

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43-1605.

§ 43-1607. Persons obligated to pay sanitary sewer service charge.

(a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this chapter.

(b) If the sanitary sewer service charge imposed by this chapter is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to August 1, 1954. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 208.)

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43-1605.

§ 43-1608. Meters and measuring devices—Maintenance and repairs.

All meters or other measuring devices installed or required to be used under the provisions of this chapter shall be under the control of the Commissioners, who shall promulgate all regulations necessary in their judgment to effectuate the purposes of this chapter. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made

necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Commissioners are authorized to provide for stopping the supply of water to any building or establishment upon the failure to pay such charge for meter repairs. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 209.)

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43-1605.

§ 43-1609. Additional charge for overdue bills—Enforcement of lien.

The Commissioners are hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this chapter, to impose an additional charge of 10 per centum for any sanitary sewer service charge remaining unpaid for more than thirty days, to shut off the water of premises for which such charge is not paid within thirty days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if sections 43-1521a, 43-1521b, 43-1521c, and 43-1521d were set forth in this chapter, and such sections shall be deemed to be applicable in every particular to the sanitary sewer service charge imposed by this chapter: *Provided*, That whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 210.)

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43-1605.

§ 43-1610. Sanitary sewer service charges as to churches and institutions.

The sanitary sewer service charges applicable to such churches and institutions as may under existing law be furnished water without charge by the Commissioners shall be predicated only on the quantity of water used in excess of the amount fixed by the Commissioners in each case as to which no water charge is made. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 211.)

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43-1605.

§ 43-1611. Sanitary sewer service charges for sewer services furnished for direct use by the Government of the United States.

(a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency

thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the Government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section: *Provided*, That the aggregate amount of such sanitary sewer service charge for each fiscal year shall be determined in the manner prescribed in section 43-1606: *Provided further*, That the obligation to pay for sanitary sewer services received by the Government of the United States or any department, independent establishment, or agency thereof shall be with respect to such service furnished on and after July 1, 1954.

(b) For the purpose of effectuating the provisions of subsection (a) of this section there shall be included annually in the budget estimates of the Commissioners beginning with the estimates for the fiscal year ending June 30, 1955, the value as determined by the Commissioners of the sanitary sewer service furnished to the United States or to any department, independent establishment, or agency thereof during the most recent preceding fiscal year for which such value can be determined based on the rates for such charges prevailing during the period of such service, and there shall be appropriated annually for the D. C. Sanitary Sewage Works Fund out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954) a sum corresponding to the said value of charges for sanitary sewer service furnished the United States. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 212.)

§ 43-1612. Loans from the United States Treasury for the sanitary and combined sewer systems of the District.

The Commissioners are hereby authorized to accept loans for the District from the United States Treasury to finance the construction, expansion, relocation, replacement, or renovation of (1) the sanitary sewer system of the District or (2) the combined sewer system of the District; and the Secretary of the Treasury is authorized to advance such sums as may be appropriated for such purposes. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 213.)

§ 43-1613. Limit of loans for the sanitary and combined sewer systems.

The total principal amount of loans made in connection with the construction, expansion, relocation, replacement, or renovation of the sanitary and combined sewer systems of the District shall not exceed \$32,000,000. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 214; Sept. 6, 1960, 74 Stat. 811, Pub. L. 86-711, § 1.)

AMENDMENT

1960—Act Sept. 6, 1960, substituted "\$32,000,000" for "\$5,000,000."

§ 43-1614. Use of funds from D. C. Sanitary Sewage Works Fund for certain sewers—Allocation of cost.

Nothing herein contained shall prohibit the use of funds deposited to the credit of the D. C. Sanitary Sewage Works Fund from being used for the construction, expansion, relocation, replacement, or renovation of any sewer in the combined sewer system of the District, but the Commissioners, prior to authorizing the use of moneys from such fund for such work, shall determine the percentage of the cost to be borne by the D. C. Sanitary Sewage Works Fund and the percentage to be borne by the General Fund. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 215.)

§ 43-1615. Advancement and availability of funds from loans.

The loans authorized by this chapter shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for the construction, expansion, relocation, replacement, or renovation of all parts of the sanitary sewage works of the District, and shall be available until expended. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 216.)

§ 43-1616. Repayment of loans.

(a) Any loan advanced under this chapter shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the D. C. Sanitary Sewage Works Fund: *Provided*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the D. C. Sanitary Sewage Works Fund.

(b) Notwithstanding the provisions of the preceding subsection, the interest and principal payments on not to exceed \$10,000,000 of the loans authorized by section 43-1613 shall be deferred whenever the Secretary of the Treasury finds that the income received from charges for sewage service attributable to sewage flowing into the District of Columbia sanitary sewage works from the Potomac interceptor (authorized by sections 43-1620 to 43-1624) is inadequate to provide for the payment of such interest or principal, or both interest and principal, and such deferred interest and principal shall be added to the sums payable to the Secretary of the Treasury in later years. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 217; Sept. 6, 1960, 74 Stat. 812, Pub. L. 86-711, § 1).

AMENDMENT

1960—Act Sept. 6, 1960, designated existing provisions as subsec. (a), and added subsec. (b).

§ 43-1617. Interest rates on loans.

Loans advanced pursuant to this chapter during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in

his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 218.)

§ 43-1618. Commissioners' authority to make regulations.

The Commissioners are authorized to make rules and regulations to carry out the provisions of this chapter. (May 18, 1954, 68 Stat. 120, ch. 218, title XVII, § 1701.)

CODIFICATION

In addition to the sections contained in this chapter the authority of the Commissioners to make regulations extends to all of the act of May 18, 1954, known as the District of Columbia Public Works Act of 1954, which has been classified to the following sections of the District of Columbia Code: §§ 7-132, 7-133, 7-901, 25-138, 40-102, 40-103, 43-1504, 43-1520c, 43-1521a, 43-1521b, 43-1521c, 43-1521d, 43-1540, 43-1541, 43-1601 to 43-1618, 47-313, 47-314, 47-501a, 47-1203, 47-1206, 47-1208 to 47-1211, 47-1567b, 47-1701, 47-2331, 47-2501a, 47-2501b, 47-2601, 47-2602, 47-2604, 47-2605, 47-2701, 47-2702, 47-2705, 47-2802.

**DULLES INTERNATIONAL AIRPORT
SANITARY SEWER**

§ 43-1620. Commissioners authorized to develop plan for interceptor and sewer line.

The Commissioners of the District of Columbia (or their designated agents), hereinafter called the Commissioners, are hereby authorized to develop a plan for a sanitary interceptor and trunk sewer line to extend from Dulles International Airport to the District of Columbia system, hereinafter called the Potomac interceptor, which shall be of sufficient capacity to provide service for such airport and for the expected community growth and development in the adjacent areas in the States of Maryland and Virginia. Such plan shall be developed in consultation with the National Capital Planning Commission and the National Capital Regional Planning Council. (June 12, 1960, 74 Stat. 210, Pub. L. 86-515, § 1.)

§ 43-1621. Potomac interceptor—Acquisition of rights-of-way—Plans and specifications—Operation and maintenance of regional sanitary sewer system—Charges for use of interceptor—Deposit of funds.

(a) Upon completion of the plan authorized by section 43-1620, the Commissioners are authorized to provide for acquisition of rights-of-way, development of the detailed plans and specifications, and construction of the Potomac interceptor. When such interceptor is completed, it shall be operated and maintained by the Commissioners as a part of a regional sanitary sewer system in co-operation with the proper authorities of the State and local jurisdictions concerned, under such regulations as may be prescribed by the Commissioners.

(b) The Commissioners are authorized to establish, by agreements with the appropriate agencies of the United States and with the proper authorities of the States and local jurisdictions concerned, charges for the use of the Potomac interceptor, which shall be based upon the costs of operation, maintenance, and amortization of the cost of all planning and construction (including acquisition of rights-of-way) of such interceptor, but which shall exclude such amount as may be appropriated pursuant to section 43-1622. The Commissioners shall

credit all receipts from such charges for the use of the Potomac interceptor to a special fund which is hereby established and which shall be known as the Metropolitan Area Sanitary Sewage Works Fund of the District of Columbia. Such special fund shall be available in such amounts as may be appropriated from time to time for expenses necessary to plan, construct, maintain, and operate the Potomac interceptor.

(c) The Commissioners shall also charge all users of the Potomac interceptor, including any agency of the United States for carrying, treating, and disposing of sewage in the sewerage system of and within the District of Columbia consistently with the provisions of section 1-817c and section 1-817, and the receipts derived from said charges shall be deposited to the credit of the D.C. Sanitary Sewage Works Fund (created by section 43-1602). (June 12, 1960, 74 Stat. 211, Pub. L. 86-515, § 2.)

§ 43-1622. Authorization of appropriations.

For the purposes of carrying out the provisions of sections 43-1620 to 43-1624, there is authorized to be appropriated, without fiscal year limitation, to the Metropolitan Area Sanitary Sewage Works Fund the sum of \$3,000,000, as the Federal contribution toward the cost of planning, acquiring rights-of-way for, and constructing the Potomac interceptor. (June 12, 1960, 74 Stat. 210, Pub. L. 86-515, § 3.)

§ 43-1623. Advancement of funds—Crediting and repayment of loans.

The Secretary of the Treasury is authorized and directed to advance to the Commissioners, from time to time, and the Commissioners are authorized to accept as loans, such additional funds, not exceeding a total of \$25,000,000, as may be appropriated to carry out the purposes of sections 43-1620 to 43-1624. Any loan advanced under this section shall be credited to the Metropolitan Area Sanitary Sewage Works Fund, and shall be repaid to the Secretary of the Treasury, from the receipts credited to said fund, in substantially equal annual payments including principal and interest, within

a period of forty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to this fund: *Provided*, That interest and principal payments shall be deferred whenever the Secretary of the Treasury finds that the income received from charges for sewage services is inadequate to cover these and other expenses properly chargeable to these receipts, and such deferred interest and principal shall be added to the sums payable to the Secretary of the Treasury in later years. The interest rates on such loans shall be determined in accordance with the provisions of section 43-1617. (June 12, 1960, 74 Stat. 211, Pub. L. 86-515, § 4.)

§ 43-1624. Acquisition of land in Maryland or Virginia for Potomac interceptor—Title to and jurisdiction over land—Condemnation proceedings.

(a) The Commissioners are authorized to acquire by purchase, condemnation, donation, or otherwise, any land or any interest in land located in Maryland or Virginia needed for construction and operation of the Potomac interceptor. Title to any such land or interest in land shall be taken in the name of the United States but shall be under the jurisdiction and control of the Commissioners. For the purpose of acquiring any such land or any interest in land, the Commissioners shall be deemed to be officers of the Government within the meaning and for the purposes of section 257 of title 40, U.S. Code. The provisions of sections 257a—257e and 258f of title 40, U.S. Code, shall be applicable to any condemnation proceedings instituted pursuant to authority of sections 43-1620 to 43-1624.

(b) When any land under the jurisdiction of any department or agency of the United States may be needed for the construction or operation of the Potomac interceptor, the appropriate officer of such department or agency is authorized, upon request of the Commissioners, to transfer to the Commissioners jurisdiction over so much of such land, or of such interests therein, as the Commissioners shall request. (June 12, 1960, 74 Stat. 211, Pub. L. 86-515, § 5.)

TITLE 44.—RAILROADS AND OTHER CARRIERS

Chap.	Sec.
1. Railroads -----	44-101
2. Street Railways and Bus Lines-----	44-201
3. Passenger Motor Vehicles for Hire-----	44-301
4. Employers' Liability-----	44-401

Chapter 1.—RAILROADS

Sec.
44-101. Sale of unclaimed freight.
44-102. Disposition of property under court order.
44-103. Disposition of proceeds of sale.
44-104. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.
44-105. Waiting room on platform authorized.
44-106. Reversion of property to District of Columbia—Adequate walkways provided.
44-107. Right to alter, amend, or repeal reserved.

§ 44-101. Sale of unclaimed freight.

Whenever any freight, baggage, or other property transported by a common carrier to, or deposited with a common carrier at, any point in the District of Columbia, shall remain unclaimed by the owner or consignee, or the charges thereon shall remain unpaid for the space of six months after arrival at the point to which the same shall have been directed or transported, or after deposit as aforesaid, and the owner or person to whom the same is consigned, or by whom the same shall have been deposited, shall, after notice of such arrival, or after notice to take away such property so deposited, neglect or refuse to receive the same and pay the charges thereon within such period of six months, then it shall be lawful for such carrier to sell such freight, baggage, or other property at public auction, after giving three weeks' notice of the time and place of sale, once a week for three successive weeks, in a newspaper published in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 642.)

§ 44-102. Disposition of property under court order.

Upon the application of such carrier, verified by affidavit, to the United States District Court for the District of Columbia holding a special term, setting forth that the place of residence of the owner or consignee of any such freight, baggage, or other property is unknown, or that such freight, baggage, or other property is of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice or delay the sale for the period provided in section 44-101, then it shall be lawful for such court to make an order authorizing the sale of such freight, baggage, or other property upon such terms as to notice as the nature of the case may admit of and to such court shall seem meet: *Provided*, That in case of perishable property the affidavit and proceedings required and authorized by this section may be had before the municipal court in cases where the value of the property involved does not exceed one thou-

sand dollars. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 643; June 30, 1902, 32 Stat. 534, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1921—Act Mar. 3, 1921, increased the value of property from "three hundred dollars" to "one thousand dollars."

1902—Act June 30, 1902, added at the end of the section the words "in cases where the value of the property involved does not exceed three hundred dollars."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act Feb. 17, 1909, changed the name from justice of peace court to municipal court of the District of Columbia.

§ 44-103. Disposition of proceeds of sale.

The residue of moneys arising from any such sale, under either section 44-101 or 44-102, after deducting the amount of charges, including charges for transportation, the cost of handling and storage, demurrage, and the costs and expenses of proceedings to authorize the sale, and of advertising and sale, shall be paid to the owner of such freight, baggage, or other property on demand. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 644.)

§ 44-104. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.

Upon the completion by it of the substitute facilities authorized by section 44-105 hereof, The Philadelphia, Baltimore and Washington Railroad Company is authorized, without any further or other authority, to abandon and remove the Seventh Street substation built and maintained by it pursuant to the requirements of Act of February 3, 1909 (35 Stat. 593, ch. 63), and to abandon the ticket agency and baggage accommodations maintained by it pursuant to the requirements of said Act. (July 25, 1935, 49 Stat. 497, ch. 415, § 1.)

§ 44-105. Waiting room on platform authorized.

In lieu of the said substation and facilities maintained at the intersection of Seventh Street and C Street Southwest, in the City of Washington, The Philadelphia, Baltimore and Washington Railroad Company is authorized to construct and maintain on the train platform an enclosed waiting room for passengers, with convenient means of ingress and egress leading from and to the street level below. (July 25, 1935, 49 Stat. 498, ch. 415, § 2.)

§ 44-106. Reversion of property to District of Columbia—Adequate walkways provided.

The area in square south of 463 on the map of the City of Washington heretofore used for station purposes shall revert to the District of Columbia upon the completion of these improvements: *Provided*, That the said Philadelphia, Baltimore and Washington Railroad Company shall construct and maintain thereon, subject to the approval of the Commissioners of the District of Columbia, adequate walkways to the adjacent streets. (July 25, 1935, 49 Stat. 498, ch. 415, § 3.)

§ 44-107. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 44-104 to 44-106. (July 25, 1935, 49 Stat. 498, ch. 415, § 4.)

Chapter 2.—STREET RAILWAYS AND BUS LINES

Sec.

- 44-201. Competing lines—Certificates of convenience and necessity.
- 44-202. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.
- 44-203. Prosecutions to be by information.
- 44-204. Fenders required on street cars.
- 44-205. Glass vestibules to be provided for motormen.
- 44-206. Construction of duct lines authorized.
- 44-207. Transfers to be issued only to passenger entitled thereto.
- 44-208. Reciprocal transfer and trackage agreements.
- 44-209. Type of rails to be used.
- 44-210. Underground lines prohibited.
- 44-211. Removal of disused tracks.
- 44-212. Free transfers.
- 44-213. Free transportation of policemen and firemen.
- 44-214. Reduced fares for school children.
- 44-214a. Fares for schoolchildren not over eighteen years of age.
- 44-215. Annual reports to Congress.

§ 44-201. Competing lines—Certificates of convenience and necessity.

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia to the effect that the competitive line is necessary for the convenience of the public. (Jan. 14, 1933, 47 Stat. 760, ch. 10, § 4.)

CROSS REFERENCES

Merger of street railroads, see § 43-501 et seq.
Powers of Public Utilities Commission, see § 43-202.

PAVING REGULATIONS—REPEAL

All provisions of law making it incumbent upon any street-railway company to bear the expense of policemen at street railway crossings and intersections, the laying of new pavement, the making of permanent improvements, renewals, or repairs to the pavement of streets and public bridges, and the permanent improvements, renewals, or repairs to public bridges over which the streetcar lines operate, are hereby repealed, such repeal to be effective on the date the unification herein authorized becomes operative: *Provided*, That the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance

of public bridges: *Provided further*, That nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right-of-way occupied by its tracks as provided by section 8 of the Act of Congress entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes," approved September 1, 1916, as amended to date. (Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

NOTES TO DECISIONS

Application 1
Findings 2
Injunction 3
Notice of hearing 4

1. Application

Provision of this section prohibiting establishment of bus line, competitive with named transit company, over a given route on a fixed schedule, unless Public Utilities Commission has issued certificate to competing carrier that its line is necessary for convenience of public, gives transit company a status which is legally protectible. *Capital Transit Co. v. Safeway Trails, Inc.* (1953, 201 F. 2d 708, 92 U. S. App. D. C. 20).

Provision that no competitive street railway or bus line for transportation of passengers of character which runs over a given route on a fixed schedule shall be established without prior issuance of certificate by Public Utilities Commission of District of Columbia to effect that competitive line is necessary for convenience of public covers all kinds of operations of a competitive bus line, regardless of whether they are intrastate or interstate, and such provision is not limited to interstate operations. *Oriole Motor Coach Co. v. Public Utilities Commission* (1953, 111 F. Supp. 621).

2. Findings

There was no such absence of substantial evidence in support of Public Utilities Commission's finding that bus service extension was necessary for convenience of public as would overcome conclusiveness thereof. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1953, 114 F. Supp. 321).

3. Injunction

The Public Utilities Commission of the District of Columbia is not entitled to an injunction restraining a utility from retiring bonds and from paying a proposed dividend, pending Commission's investigation of utility's financial structure, even if neither stockholders nor bondholders nor utility would be significantly injured by delay, unless there appears a legal basis for issuance of injunction. *Public Utilities Commissioner of District of Columbia v. Capital Transit Co. et al.* (1954, 214 F. 2d 242, 94 U. S. App. D. C. 140).

4. Notice of hearing

Where, on appeal from order extending bus lines, court found it reasonably possible that a competitor's interests might be adversely affected thereby, but, being unable to determine if such were the fact, remanded the case to the Commission with direction that competitor be accorded a fair hearing after due notice, any defect in original proceeding caused by lack of notice to competitor was corrected by remand and subsequent action of competitor in proceeding. *Washington, Marlboro & Annapolis Motor Lines, Inc. v. Public Utilities Commission of District of Columbia et al.* (1953, 114 F. Supp. 321).

§ 44-202. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.

Every street railroad company or corporation owning, controlling, leasing or operating one or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage,

not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs, to all persons desirous of the use of the said cars, without crowding said cars. The Public Utilities Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be made by said commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said commission, or permitting such violation, shall be punished by a fine of not more than one thousand dollars. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the commission made thereunder, shall be regarded as a separate offense. (May 23, 1908, 35 Stat. 250, ch. 190, § 16.)

CODIFICATION

As originally enacted, the words "not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs" after the words "expeditious passage" were included. These speed limits have been superseded by various traffic regulatory laws. See §§ 40-602 (j), 40-603, 40-605.

AMENDMENT

1913—Act Mar. 4, 1913, transferred powers over street railways from Interstate Commerce Commission to Public Utilities Commission.

CROSS REFERENCES

Cars required to be brought to full stop at certain intersections, § 4-112.

Merger of street-railway corporations operating in District of Columbia, see §§ 43-501 to 43-503.

Other provisions for care, maintenance, and repair of street cars, see § 43-208.

Prosecutions hereunder, see § 44-203.

NOTES TO DECISIONS

Construction 1
Prosecutions 2

1. Construction

This act does not repeal the Act of Congress March 3, 1905, 33 Stat. 1001 (§ 44-205), but on the contrary both are capable of concurrent enforcement. *Washington R. & Elec. Co. v. District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

2. Prosecutions

Prosecutions under this section should be conducted by the corporation counsel in the name of the District of Columbia. *United States v. Capital Trac. Co.* (38 App. D. C. 469).

§ 44-203. Prosecutions to be by information.

Prosecutions for violations of any of the provisions of sections 44-202, 44-206, and 44-207 shall be on information of the Public Utilities Commission filed in the municipal court by or on behalf of the commission. (May 23, 1908, 35 Stat. 250, ch. 190, § 17; Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

REFERENCES IN TEXT

In the original, "provisions of sections 44-202, 44-206, and 44-207" referred to in the text read "provisions of this act," sections 4, 15, 16 and 17 of which are classified to sections 44-206, 44-207, 44-202, 44-203, respectively.

AMENDMENT

1913—Act Mar. 4, 1913, transferred powers over street railways from Interstate Commerce Commission to Public Utilities Commission.

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Criminal offenses generally, see § 43-901 et seq.

NOTES TO DECISIONS

1. In general

This act does not repeal the Act of Congress March 3, 1905, 33 Stat. 1001 (§ 44-205), but on the contrary both are capable of concurrent enforcement. *Washington R. & Elec. Co. v. District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

Prosecutions under section 44-202 should be conducted by the corporation counsel in the name of the District of Columbia. *United States v. Capital Trac. Co.* (38 App. D. C. 469).

§ 44-204. Fenders required on streetcars.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and to enforce all reasonable regulations in respect to requiring street cars operated by other means than horse power in the District of Columbia to be provided with proper fenders for the protection of the lives and limbs of all persons within the District of Columbia. Such power and authority shall extend to the adoption by the said commissioners of any fender or fenders deemed by them to be superior to the fenders now in use as the fender or fenders which shall be used on cars operated within said District: *Provided*, That nothing contained in this section shall operate to relieve any street railway company from liability for accidents on its lines. (Aug. 7, 1894, 28 Stat. 250, ch. 232.)

CROSS REFERENCES

Other provisions for care, maintenance, and repair of street cars, see § 43-208.

Rules and regulations generally, see § 43-202.

§ 44-205. Glass vestibules to be provided for motorists.

Every person or corporation operating street cars in the District of Columbia shall provide each of the same with a glass vestibule, surrounding, as nearly as possible, the place where the motorman, operating said car stands, so that said motorman shall be protected from inclement weather. Every person or corporation who or which shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred nor more than five hundred dollars for each and every day any street car is operated not provided with the vestibule required by this section: *Provided, however*, That the requirements of this section shall not apply to cars operated from the 1st day of April to the 1st day of November of each and every year. (Mar. 3, 1905, 33 Stat. 1001, ch. 1434.)

CROSS REFERENCE

Other provisions for care, maintenance, and repair of street cars, see § 43-208.

NOTES TO DECISIONS

Constitutionality 1
Open vestibule 2

1. Constitutionality

This act is not void for indefiniteness. *Washington R. & Elec. Co. v. District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

The act is valid and was not impliedly repealed by act May 23, 1908, § 16 (§ 44-202) or act of March 4, 1913, § 8, par. 96 (§§ 43-207, 43-208). *Id.*

2. Open vestibule

Vestibule open on each side of platform did not comply with this act. *Washington R. & Elec. Co. v. District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

§ 44-206. Construction of duct lines authorized.

The Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway Company, and the Capital Traction Company are hereby permitted to lay duct lines on such streets as may be necessary for the proper operation of their lines, the location of such duct lines to be approved by the Commissioners of the District of Columbia, and the cost thereof shall be borne and paid solely by said street railway companies, and they shall be solely liable for all damages to persons and property occasioned by any construction or work authorized by this section. (May 23, 1908, 35 Stat. 247, ch. 190, § 4.)

CROSS REFERENCES

Easement to Washington Railway and Electric Company over Michigan Avenue, see § 7-131.

Merger of street railway corporations operating in District of Columbia, see §§ 43-501 to 43-503.

Prosecutions hereunder, see § 44-203.

§ 44-207. Transfers to be issued only to passenger entitled thereto.

No transfer ticket or written or printed instrument giving or purporting to give the right of transfer to any person or persons from a public conveyance operated upon one line or route of a street railroad or from one car to another car upon the line of any street railroad, shall be issued, sold, or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell, or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage shall be punished by a fine not exceeding twenty-five dollars. (May 23, 1908, 35 Stat. 250, ch. 190, § 15.)

CROSS REFERENCES

Prosecutions hereunder, see § 44-203.

Rates and rate making, see § 43-401.

NOTES TO DECISIONS

1. Prosecutions

Prosecutions for violating act should be conducted by the corporation counsel in the name of the District of Columbia. *United States v. Capital Trac. Co.* (38 App. D. C. 469).

§ 44-208. Reciprocal transfer and trackage agreements.

Every street railway in the District of Columbia whose lines connect, or whose lines may, after

August 2, 1894, connect, with the lines of any other street railway company, is hereby required to make reciprocal transfer arrangements with such street railway companies, and to furnish such facilities therefor as the public convenience may require, and to enter into reciprocal trackage arrangements with such connecting roads. The schedules and compensation shall be mutually agreed upon between the said railway companies; and in case of failure to reach such mutual agreement, the matter in dispute shall be determined by the United States District Court for the District of Columbia, upon petition filed by either party. (Aug. 2, 1894, 28 Stat. 218, ch. 189, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

CROSS REFERENCE

Joint use of utility facilities, see § 43-302.

§ 44-209. Type of rails to be used.

No other rail than a flat grooved rail made level with the surface of the streets upon each side of the tracks or roadbeds, so that no obstruction shall be presented to vehicles passing over said tracks, shall be laid by any street railway company in the streets of Washington: *Provided*, That the foregoing requirements as to rail and roadbed shall not apply to street railroads outside the City of Washington. (Mar. 2, 1889, 25 Stat. 797, ch. 370; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

Act 1895 abolished provisions as to City of Georgetown, and its street regulations were given to Washington.

CROSS REFERENCE

Jurisdiction and control over public ways, see § 7-102.

§ 44-210. Underground lines prohibited.

It shall be unlawful for any street railway company operating its system or parts of its system over any portion of the underground electric lines owned and operated by another street railway company in the City of Washington to continue such operation, or to enter into reciprocal trackage relations with any other company, unless its motive power for the propulsion of its cars shall be the same as that of the company whose tracks are used or to be used. For every violation of sections 44-210 to 44-212 the company violating it shall be subject to a fine of ten dollars for every car operated in violation of the provisions of sections 44-210 to 44-212, said fine to be collected and applied in the same manner as is provided by section 44-211. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 711.)

CODIFICATION

The phrase "as provided for under existing law" following the words "reciprocal trackage relations with any other company" was omitted as unnecessary.

§ 44-211. Removal of disused tracks.

Whenever the track or tracks, or any part thereof, of any street railway company in the District of Co-

lumbia shall not have been regularly operated for railway purposes upon a schedule as required by its charter for a period of three months, the Commissioners of said District, in their discretion, may thereupon notify such company to remove said unused tracks and to place the street in good condition; and if such company shall neglect or refuse to remove said tracks and place the street in good condition within sixty days after such notice, the said company shall be deemed guilty of a misdemeanor and shall be liable to a fine of ten dollars for each and every day during which said tracks are permitted to remain upon the street or streets, or said roadway shall remain out of repair, which fine shall be recovered in the municipal court of said District, in the name of said District, as other fines and penalties are recovered in said court. (Mar. 3, 1901, 31 Stat. 1302, ch. 854; § 710; June 30, 1902, 32 Stat. 534, ch. 1329; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

AMENDMENT

1902—Act June 30, 1902, substituted "as required by its charter" for "approved by the commissioners."

CONSOLIDATION OF POLICE COURT AND MUNICIPAL COURT

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11-751.

CROSS REFERENCES

Fine for violation of provisions of this section, see § 44-210.

Jurisdiction and control over public ways, see § 7-102.

NOTES TO DECISIONS

1. Abandoned structures

Abandoned structures in streets or highways are, when ordered removed by competent authority, illegally in such streets or highways. *Capital Transit Co. v. Hazen* (1938, 93 F.2d 250, 68 App. D. C. 91).

§ 44-212. Free transfers.

All street railway companies within the District of Columbia on January 1, 1902, operating their systems, or parts of their systems, in the city of Washington by use of the tracks of one or more of such companies, under a reciprocal trackage agreement, which shall be compelled to discontinue the use of the tracks of another company, shall issue free transfers to their patrons from one system to the other at such junctions of their respective lines as may be provided for by the Commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 712.)

CROSS REFERENCES

Fine for violation of provisions of this section, see § 44-210.

Power of Public Utilities Commission over rates, see § 43-401.

§ 44-213. Free transportation of policemen and firemen.

On and after September 1, 1916 the several street railway companies in the District of Columbia are authorized and required to transport free of charge all members of the Metropolitan police, crossing police, park police, and fire department of the District of Columbia when in uniform and in the performance of their duties. (Sept. 1, 1916, 39 Stat. 683, ch. 433.)

SIMILAR PROVISIONS

Similar provisions were contained in the District of Columbia Appropriation Act, 1916, act Mar. 3, 1915, 38 Stat. 900, ch. 80.

FURNISHING TRANSPORTATION FOR PERSONS ON OFFICIAL BUSINESS

Provision which authorized the Commissioners to furnish necessary transportation for persons on official business by purchasing street car and bus fare but did not include the appropriation made for the fire and police departments was contained in the District of Columbia Appropriation Act, 1944, act July 1, 1943, 57 Stat. 318, ch. 184, § 1. Similar provisions were contained in the following prior appropriation acts:

1943—June 27, 1942, 56 Stat. 429, ch. 452, § 1.

1942—July 1, 1941, 55 Stat. 505, ch. 271, § 1.

1941—June 12, 1940, 54 Stat. 312, ch. 333, § 1.

1940—July 15, 1939, 53 Stat. 1010, ch. 281 § 1.

1939—Apr. 4, 1938, 52 Stat. 163, ch. 62, § 1.

1938—June 29, 1937, 50 Stat. 364, ch. 403, § 1.

1937—June 23, 1936, 49 Stat. 1860, ch. 726, § 1.

1936—June 14, 1935, 49 Stat. 346, ch. 241, § 1.

CROSS REFERENCE

Rates and rate making, see § 43-401.

§ 44-214. Reduced fares for school children.

CODIFICATION

Section, act Feb. 25, 1931, 46 Stat. 1419, ch. 302, became inoperative upon acceptance of the agreement between the Capital Traction Company and the Washington Railway and Electric Company for unification under act Jan. 14, 1933, 47 Stat. 759, ch. 10.

Act Feb. 25, 1931, and section 1, par. 19 of act Jan. 14, 1933, providing for reduced fares for children under 18 years of age, were also superseded by act Aug. 9, 1955, 69 Stat. 616, ch. 680, § 1, which is classified to section 44-214a.

CROSS REFERENCE

Rates and rate making, see § 43-401.

§ 44-214a. Fares for schoolchildren not over 18 years of age.

Notwithstanding provisions of the joint resolution entitled "Joint resolution to authorize the merger of street-railway corporations operating in the District of Columbia, and for other purposes", approved January 14, 1933, and the provisions of the unification agreement incorporated therein, and notwithstanding the provisions of the Act entitled "An Act to provide for the transportation of schoolchildren in the District of Columbia at a reduced fare", approved February 25, 1931, the Public Utilities Commission of the District of Columbia shall fix the rate of fare for transportation by street railway and bus of schoolchildren going to and from public, parochial, or like schools in the District of Columbia at not more than one-half the cash fare established from time to time by the Public Utilities Commission for regular route transportation within the District of Columbia, and shall establish rules and regulations governing the use thereof. No fares for schoolchildren shall be available to persons over eighteen years of age. (Aug. 9, 1955, 69 Stat. 616, ch. 680, § 1.)

REFERENCES IN TEXT

Act Jan. 14, 1933, referred to in text, was act Jan. 14, 1933, 47 Stat. 759, ch. 10, and was superseded by this section.

Act Feb. 25, 1931, referred to in text, was act Feb. 25, 1931, 46 Stat. 1419, ch. 302, and was superseded by this section.

§ 44-215. Annual reports to Congress.

Every street railroad corporation in the District of Columbia, and every such corporation which shall be organized after June 10, 1896, shall, on or before the first day of February in each year, make a report to each the Senate and the House of Representatives, which report shall be sworn to and signed by the president and treasurer of such corporation, and shall cover the period of one year ending the thirty-first day of December previous to the date of making the report. Such report shall state the amount of capital stock, with a list of the stockholders and the amount of stock held by each; the amount of capital stock paid in; the total amount now of funded debt; the amount of floating debt; the average rate per annum of interest on funded debt; amount of dividends declared; cost of roadbed and superstructure, including iron; cost of land, buildings, and fixtures, including land damages; cost of cars, horses, harness, and motors and other machinery; total cost of road and equipment; length of road in miles; length of double track, including sidings; weight of rail, by yard; the number of cars and of horses; the number of motors; the total number of passengers carried in cars; the average time consumed by passenger cars in passing over the road; repairs of roadbed and railway, including iron, and repairs of buildings and fixtures; total cost of maintaining road and real estate; cost of general superintendence; salaries of officers, clerks, agents, and office expenses; wages paid conductors, drivers, engineers, and motor men; water and other taxes; damages to persons and property, including medical attendance; rents, including use of other roads; total expense of operating road, and repairs; receipts from passengers; receipts from all other sources, specifying what, in detail; total receipts from all sources during the year; payments for maintenance and repairs; payments for interest; payments for dividends on stock, amount and rate per centum; total payments during the year; the number of persons injured in life and limb; the cause of the injury, and whether passengers, employees, or other persons. (June 10, 1896, 29 Stat. 320, ch. 395, § 10.)

CROSS REFERENCE

Records and reports of utilities generally, see § 43-318.

NOTES TO DECISIONS

1. Reimbursement of deficits

Reimbursement of railway company for deficits incurred in extending bus lines were properly included in gross receipts for tax purposes. *Potomac Elec. Power Co. v. Rudolph* (1929, 29 F. 2d 634, 58 App. D. C. 261, certiorari denied 49 S. Ct. 185, 278 U. S. 656, 73 L. Ed. 565).

Chapter 3.—PASSENGER MOTOR VEHICLES FOR HIRE

Sec.

44-301. Passenger motor vehicles for hire to carry insurance—Exceptions—Liability of insurance company absolute.

44-302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.

Sec.

44-303. Unlawful to operate vehicle without approved bond or policy.

44-304. Commission authorized to make rules and regulations.

44-305. Alternate provisions for insurance coverage—Blanket policy for more than one vehicle—Sinking fund in lieu of insurance—Conditions for creation and maintenance of sinking fund—Proof of financial responsibility—Admission of liability by owner for tortious acts of drivers of vehicles—Sinking fund exempt from attachment or levy for other obligations of depositor.

44-306. "Owner" defined.

44-307. Penalties.

§ 44-301. Passenger motor vehicles for hire to carry insurance—Exceptions—Liability of insurance company absolute.

The Public Utilities Commission of the District of Columbia (hereafter referred to in this chapter as the "Commission") is hereby directed to require any and all corporations, companies, associations, joint-stock companies or associations, partnerships, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, operating, controlling, managing, or renting any passenger motor vehicles for hire in the District of Columbia, except as to operations licensed under section 47-2331 (b), and except such common carriers as have been expressly exempted from the jurisdiction of the Commission, to file with the Commission for each such motor vehicle to be operated, evidence, in such form and on such terms and conditions as the Commission may prescribe with the approval of the Superintendent of Insurance of the District of Columbia (hereafter referred to in this chapter as the "Superintendent"), that such motor vehicle is covered by a bond or liability insurance in a surety or insurance company authorized to do business in the District of Columbia, conditioned for the payment to any person of any legal obligation of, or judgment recovered against, such corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, or renters of their cabs, for death or for injury to any person or damage to any property, or both, arising out of the ownership, maintenance, or use of such motor vehicle by any person for any purpose within the United States. Such bond or insurance may limit the liability of the surety or insurer on any one judgment to \$10,000, for bodily injuries or death, and \$5,000 for damage to property, and on all judgments recovered upon claims arising out of the same subject of action to \$20,000 for bodily injuries or death, and \$5,000 for damage to property, to be apportioned ratably among the creditors according to the amount of their respective legal obligations. The liability of an insurance company in any policy of insurance or of any indemnity company in a bond issued pursuant to this chapter shall, within the limits of coverage required by this chapter, become and be absolute for damages adjudged against the insured on account of injuries to or death of persons or damage to or destruction of property resulting from the insured's ownership, maintenance, or use of the motor vehicle or vehicles described in the said policy or bond. (June 29, 1938,

52 Stat. 1233, ch. 809, § 1; Dec. 15, 1942, 56 Stat. 1051, ch. 734; Aug. 28, 1958, 72 Stat. 952, Pub. L. 85-792, § 2.)

AMENDMENTS

1958—Act Aug. 28, 1958, amended section to permit the filing of evidence of coverage by a bond or liability insurance in such form and on such terms and conditions as the Commission with the approval of the Superintendent may prescribe, increased the limits of liability of the insurer or surety on any one judgment from \$5,000 to \$10,000 for bodily injuries or death, from \$1,000 to \$5,000 for damage to property, and on all judgments recovered upon claims arising out of the same subject of action from \$10,000 to \$20,000 for bodily injuries or death and from \$1,000 to \$5,000 for damage to property, made absolute the liability of the insurance company and deleted provisions relating to eligibility requirements of insurance companies, maintenance of reserves for certain purposes by such companies, powers of the Superintendent of Public Utilities Commission to make rules and regulations, cancellation of bonds or policies of insurance, filing of blankets bonds in lieu of bonds or policies of insurance by owners of public vehicles, creation and maintenance of a sinking fund, definition of "owner," and penalties for violation of regulations promulgated under this section, which provisions have been incorporated in sections 44-302 to 44-307.

1942—Act Dec. 15, 1942, prohibited any insurance company or corporate surety from conducting the business of insurance under this section without a finding by the Superintendent of Insurance that such company or surety was capable of conducting such business in the public interest, required possession of a certificate of approval issued by the Superintendent, maintenance of reserves for losses, unearned premiums or other liabilities, empowered the Superintendent to make rules and regulations governing the writing of bonds and the business of insurance or bonding of risks, including the expenses of management, administration, and acquisition of business, and authorized the Superintendent after a hearing to withdraw the certificate of approval for violation of any provision of this chapter.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 17 of act Aug. 28, 1958, provided that: "Section 2 of this Act [amending this section and enacting sections 44-302 to 44-307] shall take effect 60 days after its enactment [Aug. 28, 1958]."

SHORT TITLE

Section 1 of act Aug. 28, 1958, provided that: "Section 2 of this Act [classified to sections 44-301 to 44-307] may be cited as the 'District of Columbia Taxicab Insurance Act of 1958.'"

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

Section 16 of act Aug. 28, 1958, provides as follows: "Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

CROSS REFERENCES

General provisions concerning powers and duties of Public Utilities Commission, see § 43-202.

Rules and regulations by insurance department, see § 35-102.

NOTES TO DECISIONS

Certificate of insurance 1
Coverage 2
Duty of superintendent of insurance 3
Terms and conditions of insurance 4

1. Certificate of insurance

Where insurance company over its signature on certificate of insurance filed with Public Utility Commission of the District of Columbia by owner of taxicab recited

that policy and endorsement on certificate would remain in full force and effect until cancelled, insurance company could not successfully contend that it never in fact executed the endorsement. *Thompson v. Amalgamated Cas. Ins. Co., Inc.* (1953, 207 F. 2d 214, 92 U. S. App. D.C. 307).

2. Coverage

Insurer of owner of taxicab, by signing certificate of insurance filed with Public Utility Commission of the District of Columbia and embodying endorsement stating that coverage was in accordance with provision providing that one operating or running motor vehicle for hire must file with the commission a bond or liability insurance covering any judgment for injury to any person arising from operation of motor vehicle assumed liability for judgment rendered in action for wrongful death occurring in Virginia, while taxicab was being driven by one other than owner, though policy provided for coverage only within District of Columbia while taxicab was being used with permission of owner. *Thompson v. Amalgamated Cas. Ins. Co., Inc.* (1953, 207 F. 2d 214, 92 U.S. App. D.C. 307).

3. Duty of superintendent of insurance

The duty of Superintendent of Insurance is to see that form of taxicab liability policies accurately and equitably meet requirements of Public Utilities Commission. *Bennett v. Amalgamated Cas. Ins. Co.* (1953, 200 F. 2d 129, 91 App. D.C. 279).

4. Terms and conditions of insurance

Superintendent of Insurance, acting alone, has no power to prescribe the terms and conditions of public liability policies covering taxicabs, since Public Utilities Commission has duty of regulating public liability insurance under statutory provision that taxicab insurance contract shall be in such form and on such terms or conditions as the Commission may direct. *Bennett v. Amalgamated Cas. Ins. Co.* (1953, 200 F. 2d 129, 91 App. D.C. 279).

§ 44-302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.

(a) Any policy of liability insurance required by this chapter shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any bond or undertaking required by this chapter shall be secured by a corporate surety approved by the Superintendent.

(b) No insurance company or corporate surety shall engage in or conduct the business of insuring or bonding any risk arising out of the operation of any passenger motor vehicle for hire required to be insured or bonded under this chapter unless the Superintendent shall find that the management of such company is capable, by experience or otherwise, of conducting such business in the public interest and unless such insurance company or corporate surety shall possess a certificate of approval issued by the Superintendent for such business. Every such insurance company or corporate surety, whether or not it shall be a mutual company, shall have and shall at all times maintain reserves for losses, unearned premiums, and all other liabilities as will meet the requirements of any regulation issued by the Superintendent applicable to such company or such classifications of companies. The Superintendent is empowered to make reasonable rules and regulations governing the writing of such insurance, and the making of such bonds, and the

business of insuring or bonding such risks, including the expenses of management, administration, and acquisition of business and the rates to be charged.

(c) The Superintendent is authorized and empowered, after hearing, to withdraw his certificate of approval of the business of insuring or bonding taxicab risks of any insurance company or corporate surety violating any provision of this chapter or the rules and regulations promulgated hereunder.

(d) No bond or policy of insurance required by this chapter may be canceled unless not less than twenty days prior to such cancellation or termination, notice of intention so to do has been filed in writing with the Commission, unless such cancellation is for nonpayment of premiums, in which event five days' notice as above provided shall be given. (June 29, 1938, ch. 809, § 2, as added Aug. 28, 1958, 72 Stat. 952, Pub. L. 85-792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44-301.

NOTES TO DECISIONS

1. Notice of cancellation

Where this section and first insurer's liability policy covering taxicab authorized cancellation only on filing of notice with public utility commission and insured, on obtaining new policy from second insurer, ceased paying premiums on first policy but first insurer had not, at time of taxicab accident, filed cancellation notice with commission, as between the two insurers, the loss should fall on the second insurer. *Amalgamated Casualty Ins. Co. v. Winslow* (1943, 135 F. 2d 663, 77 U.S. App. D.C. 382).

Where this section and first insurer's liability policy covering taxicab authorized cancellation only on filing of notice with public utility commission and insured, on obtaining new policy from second insurer, ceased paying premiums on first policy but first insurer had not, at time of taxicab accident, filed cancellation notice with commission, the first policy had not been canceled as against person injured in taxicab accident and the public. *Id.*

§ 44-303. Unlawful to operate vehicle without approved bond or policy.

It shall be unlawful to operate any vehicle subject to the provisions of this chapter unless such vehicle shall be covered by an approved bond or policy of liability insurance as provided in this chapter. (June 29, 1938, ch. 809, § 3, as added Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44-301.

§ 44-304. Commission authorized to make rules and regulations.

The Commission is empowered to make all reasonable rules and regulations which, in its opinion, are necessary to make effective the purposes of this chapter. (June 29, 1938, ch. 809, § 4, as added Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44-301.

NOTES TO DECISIONS

1. Display of stickers

Provisions requiring taxicab insurance and the display of a sticker evidencing such insurance is for the protec-

tion of pedestrians and others traveling the streets as well as for passengers, and the requirement is not limited to the times when the vehicle is being used or offered for hire. *Stewart v. District of Columbia* (D.C. Mun. App. 1944, 35 A. 2d 247).

Provision under this section requires taxicab to display current insurance sticker at all times, allegation in information charging failure to display sticker "while transacting business" may be treated as surplusage. *Id.*

§ 44-305. Alternate provisions for insurance coverage—Blanket policy for more than one vehicle—Sinking fund in lieu of insurance—Conditions for creation and maintenance of sinking fund—Proof of financial responsibility—Admission of liability by owner for tortious acts of drivers of vehicles—Sinking fund exempt from attachment or levy for other obligations of depositor.

(a) Any owner of a public vehicle required by this chapter to file a bond or policy of insurance may, in lieu thereof—

(1) file with the Commission a blanket bond or a blanket policy of liability insurance, in an amount to be approved by the Commission, but not to exceed \$75,000, conditioned as required by this chapter, and covering all vehicles lawfully displaying the trade name or identifying design of any individual, association, company, or corporation; or

(2) create and maintain a sinking fund in such amount as the Commission may require, but not to exceed \$75,000, and deposit the same, in trust, for the payment of any judgment recovered against such owner, as provided in this chapter, with such person, official, or corporation as the Commission shall designate. Such sinking fund shall not be created unless the Commission is satisfied that such owner is possessed and will continue to be possessed of financial ability to pay judgment obtained against such owner. If such a fund has been created, the Commission shall have authority to require whatever evidence of such owner's financial status may be necessary to satisfy the Commission that such owner is possessed and will continue to be possessed of financial ability to pay judgments obtained against such owner, and may at such time or times as, in its discretion, may be necessary, require such owner to submit in affidavit form detailed information from which such ability may be determined. When upon not less than five days' notice and a hearing pursuant to such notice (unless the right to such hearing is waived in writing by such owner) the Commission finds that any such owner having created and maintained a sinking fund is not possessed or probably will not continue to be possessed of financial ability to pay judgments obtained against such owner the Commission shall require that such owner file with the Commission a bond or policy of insurance as described in this chapter in lieu of such sinking fund and shall thereafter return to the owner the amount of such sinking fund when the Commission is satisfied that the maintenance thereof is not needed to assure the payment of any claim or judgment then outstanding against such owner. Failure to pay any judgment within thirty days after such judgment shall have become final shall consti-

tute a reasonable ground for a finding by the Commission that the owner is not possessed of financial ability to pay judgments.

(b) If any owner elects to comply with paragraph (1) or (2) of subsection (a) of this section, he shall first file with the Commission an admission of liability, in conformity with the principle of respondeat superior, for the tortious acts of the driver or drivers of such vehicle or vehicles displaying the trade name or identifying design of the company or owner.

(c) Any cash or collateral deposit and/or any sinking fund provided for in this chapter shall be exempt from attachment or levy for any obligation or liability of the depositor except as provided in this chapter. (June 29, 1938, ch. 809, § 5, as added Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44-301.

§ 44-306. "Owner" defined.

Within the meaning of this chapter, the word "owner" shall include any corporation, company, association, joint-stock company or association, partnership or person, and the lessees, trustees, or receivers appointed by any court whatsoever, permitting his, their, or its trade name and/or identifying design to be displayed upon vehicles governed by this chapter. (June 29, 1938, ch. 809, § 6, as added Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44-301.

§ 44-307. Penalties.

Each violation of this chapter or of the regulations lawfully promulgated thereunder shall be deemed a misdemeanor and upon conviction shall be punishable by a fine of not more than \$300 or by imprisonment for not more than ninety days, and/or cancellation of license. (June 29, 1938, ch. 809, § 7, as added Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44-301.

Chapter 4. EMPLOYERS' LIABILITY

Sec.

- 44-401. Liability of common carriers for injuries to employees.
- 44-402. Contributory negligence no bar to recovery.
- 44-403. Insurance contracts no bar to recovery.
- 44-404. Suit to be brought within one year.
- 44-405. Certain prior laws not affected.

§ 44-401. Liability of common carriers for injuries to employees.

Every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any

State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works. (June 11, 1906, 34 Stat. 232, ch. 3073, § 1.)

CROSS REFERENCES

Actions for wrongful death in general, see §§ 16-1201 to 16-1203.

Employers' Liability Act (Railroads), see U.S. Code, title 45, § 51 et seq.

Limitations on duties of carriers and rights of employees, see § 44-405.

Longshoremen's and Harbor Workers' Compensation Act, see § 36-501.

Time of commencement of action, see § 44-404.

NOTES TO DECISIONS

In general 1
Application 2
Assumption of risk 3
Constitutionality 4
Construction with other laws 5
Elevator in office building 6
Insurance contracts 7
Interstate commerce 8
Personal representatives 9
Territories 10
Vessels 11

1. In general

Act March 4, 1097, 34 Stat. 1415, ch. 2939, § 1, is materially different from Act June 11, 1906, 34 Stat. 232. *Baltimore & O.R. Co. v. Interstate Commerce Comm.* (1911, 31 S. Ct. 621, 221, U.S. 612, 55 L. Ed. 878). See, also *U.S. v. Chicago M. & P.S.R. Co.* (1915, 218 F. 701).

This act relates solely to commerce. *Southern R. Co. v. Taylor* (1927, 16 F. 2d 517, 57 App. D. C. 21, certiorari denied 47 S. Ct. 571, 273 U.S. 767, 71 L. Ed. 882).

The intent of Congress in the enactment of this statute, was plainly to create liability on the part of the carriers to their employees and to curtail a part of the defenses which were before legal. *Malloy v. Northern Pac. R. Co.* (C. C. Wash. 1907, 151 F. 1019).

Act prospective in operation. *Winfree v. Northern P. R. Co.* (C. C. Wash. 1908, 164 F. 698, affirmed 173 F. 65, 97 C.C.A. 392, 44 L. R. A., N. S., 841, affirmed 33 S. Ct. 273, 227 U.S. 296, 57 L. Ed. 518).

This case distinguishes the extent of liability under this act and that of the act of 1908 (U. S. Comp. St. Supp., p. 1148). *Taylor v. Southern R. Co.* (C. C. Ga. 1910, 178 F. 380).

2. Application

Where appellant was injured while working in appellee's car barn, he could not recover under this section since § 36-501 has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of § 36-501. *Keffer v. Capital Transit Co.* (1950, 183 F. 2d 808, 87 U. S. App. D. C. 13).

3. Assumption of risk

This act so far as assumption of risk is concerned, as applied to the District of Columbia, is superseded by section 4 of the act of April 22, 1908. *Washington Terminal Co. v. Sampson* (1923, 289 F. 577, 53 App. D. C. 179).

Where plaintiff was injured while operating an unboxed saw in the car shops of defendant, an interstate railway company, by which he was employed, plaintiff did not assume the risk of voluntarily accepting employment in the shop, though the danger was obvious. *Malloy v. Northern Pac. R. Co.*, (C.C. Wash. 1907, 151 F. 1019).

4. Constitutionality

Act held unconstitutional in part. *Howard v. Illinois Cent. R. Co.* (1908, 28 S. Ct. 141, 207 U. S. 463, 52 L. Ed. 297).

Validity of section, see *Howard v. Illinois C. R. Co.* (1908, 28 S. Ct. 141, 207 U. S. 463, 52 L. Ed. 297). See, also, *Philadelphia, B. & W. R. Co. v. Schubert* (1912, 32 S. Ct. 589, 224 U.S. 603, 56 L. Ed. 911); *Chicago, I. & L. R. Co. v. Hackett* (1918, 38 S. Ct. 581, 228 U. S. 559, 57 L. Ed. 966); *Pedersen v. Delaware, L. & W. R. Co.* (1913, 33 S. Ct. 648, 229 U. S. 146, 57 L. Ed. 1125); *Howard v. Illinois Cent. R. Co.* (C. C. Tenn. 1907, 148 F. 997); *Hall v. Chicago, R. I. & P. R. Co.* (C. C. Iowa 1907, 149 F. 564); *Spain v. St. Louis & S. F. R. Co.* (C. C. Ark. 1907, 151 F. 522); *Lancer v. Anchor Line* (D. C. N. Y. 1907, 155 F. 433); *Smelzer v. St. Louis & S. F. R. Co.* (C. C. Ark. 1908, 158 F. 649); *United States v. Southern R. Co.* (D. C. Ala. 1908, 164 F. 347); *Missouri Pac. R. Co. v. Castle* (C. C. A. 8, 1909, 172 F. 841); *Oregon R. & N. Co. v. Campbell* (C. C. Ore. 1910, 177 F. 318); *Chicago, M. & St. P. R. Co. v. Westby* (C. C. A. 8, 1910, 178 F. 619); *Zikos v. Oregon R. & N. Co.* (C. C. Wash. 1910, 179 F. 893); *McCrabe v. Atchison, T. & S. F. R. Co.* (C. C. A. 8, 1911, 186 F. 966); *St. Louis, I. M. & S. R. Co. v. Conley* (C. C. A. 8, 1911, 187 F. 949); *United States v. St. Louis, S. W. R. Co.* (D. C. Tex. 1911, 189 F. 954); *Cain v. Southern R. Co.* (C. C. Tenn. 1912, 199 F. 211).

Constitutional so far as relates to District of Columbia and Territories, in which places section supersedes prior territorial legislation. *El Paso & N. E. R. Co. v. Gutierrez* (1909, 30 S. Ct. 21, 215 U. S. 87, 54 L. Ed. 106). See, also, *Butts v. Merchants & Miners Transp. Co.* (1913, 33 S. Ct. 964, 230 U. S. 126, 57 L. Ed. 1422); *Southern Pac. Co. v. McGinnis* (C. C. A. 5, 1910, 174 F. 649).

Act is valid in District of Columbia and Territories. *El Paso & N. E. R. Co. v. Gutierrez* (1909, 30 S. Ct. 21, 215 U. S. 87, 54 L. Ed. 106). See, also, *Pawnee* (D. C. Mich. 1913, 205 F. 333); *Friday v. Santa Fe Cent. R. Co.* (1912, 120 Pac. 316, 16 N. Mex. 434, affirmed 34 S. Ct. 468, 232 U.S. 694, 58 L. Ed. 802); *Gutierrez v. El Paso & N. E. R. Co.* (1909, 117 S. W. 426, 102 Tex. 378); *Atchison, T. & S. F. R. Co. v. Pickens* (Tex. Civ. App. 1909, 118 S.W. 1133); *Missouri, K. & T. R. Co. v. Poole* (Tex. Civ. App. 1910, 123 S. W. 1176); *Missouri, K. & T. R. Co. v. Rogers* (Tex. Civ. App. 1910, 128 S. W. 710); *Atchison, T. & S. F. R. Co. v. Tack* (Tex. Civ. App. 1910, 130 S. W. 596). Contra, *Atchison, T. & S. F. R. Co. v. Mills* (1916, 180 S. W. 596, 49 Tex. Civ. App. 349).

Statute applicable locally in District of Columbia, though unconstitutional as to the States. *Washington, A. & Mt. V. R. Co. v. Downey* (1915, 35 S. Ct. 406, 236 U. S. 190, 59 L. Ed. 533).

5. Construction with other laws

Insofar as it applies to the District of Columbia and the Territories this act was not repealed by the Employers' Liability Act of April 22, 1908, 35 Stat. 65, ch. 149. *Walsh v. Alaska S.S. Co.* (1918, 172 Pac. 269, 101 Wash. 295).

6. Elevator in office building

Railroad company operating elevator in office building held not a "common carrier." *Southern R. Co. v. Taylor* (1927, 16 F. 2d 517, 57 App. D. C. 21, certiorari denied 47 S. Ct. 571, 273 U. S. 767, 71 L. Ed. 882).

7. Insurance contracts

Insurance contracts as a defense. *Philadelphia, B. & W. R. Co. v. Schubert* (1912, 32 S. Ct. 589, 224 U. S. 603, 56 L. Ed. 911).

8. Interstate commerce

"Interstate" and "intrastate" commerce. *Hall v. Louisville & N. R. Co.* (C. C. Fla. 1908, 157 F. 464).

The question of the creation of right of action, by State or by Federal act, depends on whether the carrier is engaged in interstate or intrastate commerce. *Id.*

9. Personal representatives

Right of action to personal representatives. *Winfree v. Northern Pac. R. Co.* (C. C. A. 9, 1909, 173 F. 65, 44 L.R.A., N.S., 841, affirmed 38 S. Ct., 227 U. S. 296, 57 L. Ed. 518).

10. Territories

United States District Court in Territory of New Mexico had jurisdiction of cases arising under this act. *Santa Fe Cent. R. Co. v. Friday* (1914, 34 S. Ct. 468, 232 U. S. 694, 58 L. Ed. 802).

Unconstitutional as applied to Oklahoma. *Chicago, R. I. & P. R. Co. v. Holliday* (1915, 145 Pac. 786, 45 Okla. 536).

11. Vessels

Not applicable to marine torts within admiralty jurisdiction. *Alaska S. S. Co. v. McHugh* (1925, 45 S. Ct. 396, 268 U. S. 23, 69 L. Ed. 825).

This act does not have the same effect as regards ship owners engaged in coastwise trade in Alaska as it does in the District of Columbia. *Id.*

Act does not apply to vessels generally. *Pawnee* (D. C. Mich. 1913, 205 F. 333).

Applies to action for death of sailor from injuries received on vessel used as common carrier in Alaska. *Sandstrom v. Pacific S. S. Co.* (C. C. A. 9, 1919, 260 F. 661).

Act June 11, 1906, where territorially applicable, embraces carriers by water and modifies or repeals inconsistent admiralty or maritime laws. *Walsh v. Alaska S. S. Co.* (1918, 172 Pac. 269, 101 Wash. 295).

Act June 11, 1906, applies to the case of a seaman, employed on a vessel engaged in commerce within the Territory of Alaska and between ports thereof and of the State of Washington, who was injured while unloading a cargo at an Alaska port. *Id.*

§ 44-402. Contributory negligence no bar to recovery.

In all actions brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributed negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury. (June 11, 1906, 34 Stat. 232, ch. 3073, § 2.)

CROSS REFERENCES

Employers' Liability Act (Railroads), see U.S. Code, title 45, § 51 et seq.

Limitations on duties of carriers and rights of employees, see § 44-405.

Time of commencement of action, see § 44-404.

NOTES TO DECISIONS

Constitutionality 1
Contributory negligence 2
Interstate commerce 3

1. Constitutionality

Validity of section, see *Howard v. Illinois Cent. R. Co.* (1908, 28 S. Ct. 141, 207 U.S. 463, 52 L. Ed. 297). See, also, *Brooks v. Southern Pac. Co.* (C.C. Ky. 1907, 148 F. 986); *Snead v. Central of Georgia R. Co.* (C.C. Ga. 1907, 151 F. 608); *Plummer v. Northern Pac. R. Co.* (C.C. Wash. 1907, 152 F. 206); *Kelley v. Great Northern R. Co.* (C. C. Minn. 1907, 152 F. 211).

2. Contributory negligence

Contributory negligence and assumed risk, see *Powell v. Wisconsin Cent. R. Co.* (C. C. A. 8, 1908, 159 F. 864).

One is liable for negligence proximately causing the injury, regardless of contributory negligence. *Atchison, T. & S. F. R. Co. v. Mills* (1909, 116 S. W. 852, 53 Tex. Civ. App. 359).

3. Interstate commerce

"Interstate" and "intrastate" commerce, see *Hall v. Chicago, R. I. & P. R. Co.* (C. C. Iowa 1907, 149 F. 564).

§ 44-403. Insurance contracts no bar to recovery.

No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages

for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative. (June 11, 1906, 34 Stat. 232, ch. 3073, § 3.)

CROSS REFERENCES

Employers' Liability Act (Railroads), see U.S. Code, title 45, § 51 et seq.

Limitations on duties of carriers and rights of employees, see § 44-405.

Time of commencement of action, see § 44-404.

NOTES TO DECISIONS

In general 1
Risk 2

1. In general

Act prospective in operation. *Hall v. Chicago, R. I. & P. R. Co.* (C. C. Iowa 1907, 149 F. 564).

2. Risk

Assumed risk, see *Malloy v. Northern Pac. R. Co.* (C. C. Wash. 1907, 151 F. 1019).

§ 44-404. Suit to be brought within one year.

No action shall be maintained under sections 44-401 to 44-405, inclusive, unless commenced within one year from the time the cause of action accrued. (June 11, 1906, 34 Stat. 232, ch. 3073, § 4.)

CROSS REFERENCES

Employers' Liability Act (Railroads), see U.S. Code, title 45, § 51 et seq.

Limitations on duties of carriers and rights of employees, see § 44-405.

NOTES TO DECISIONS

1. Limitation

Limitation fixed by this act governs action against traction company operating in District of Columbia. *Man-gum v. Capital Trac. Co.* (1930, 39 F. 2d 286, 59 App. D. C. 241).

Time limit for action. *Winfree v. Northern Pac. R. Co.* (C.C.A. 9, 1909, 173 F. 65, 44 L.R.A., N.S., 841, affirmed 33 S. Ct. 273, 227 U. S. 296, 57 L. Ed. 518).

Action for death is barred after one year from date of death. *Sandstrom v. Pacific S. S. Co.* (C. C. A. 9, 1919, 260 F. 661).

§ 44-405. Certain prior laws not affected.

Nothing in sections 44-401 to 44-404, inclusive, shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903. (June 11, 1906, 34 Stat. 233, ch. 3073, § 5.)

REFERENCES IN TEXT

Act Mar. 2, 1893 as amended, referred to in text, is classified generally to ch. 1 of title 45 U.S. Code.

CROSS REFERENCES

Employers' Liability Act (Railroads), see U.S. Code, title 45, § 51 et seq.

Time of commencement of action, see § 44-404.



